

**Constitutional Origins and Liberal Democracy:  
A Global Analysis**

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### **Abstract**

A strong tradition in democratic theory, often invoked by popular social movements, claims that only constitutions made by the people themselves can establish or deepen democracy. Against this view, we argue that new constitutions are more likely to enhance liberal democracy when they emerge through cooperation among a plurality of elites representing distinct political interests. The dispersion of power that induces elite cooperation in constitution writing favors the adoption of institutions that impose constraints on executive authority and enable opposition parties and citizens to detect and punish constitutional transgressions. Yet incumbents may renege on the original bargain if opponents lose social support and institutional influence over time. The democratizing effect of inclusive constitutional agreements is thus likely to be larger in the short term, when the identity of negotiating political forces and the balance of power between them tend to remain stable. We find support for these arguments using an original global dataset on the origins of constitutions between 1900 and 2015 and a difference-in-differences design.

## **Introduction**

New constitutions were adopted in 93 of the 141 transitions to democracy that took place in the world between 1900 and 2010. During this period, 21 democracies at least five years old also replaced their constitutions. Today, amidst widespread citizen dissatisfaction with representative institutions, remaking constitutions is seen in several countries as a potential answer to address democratic crisis. At these critical moments, popular movements that contributed to the fall of autocracies or questioned the quality of existing democracies often claim that the establishment or deepening of democracy requires marginalizing political elites while expanding the direct participation of the people in the making of a new constitution. The idea that participatory constitution making improves democracy derives from a strong tradition in democratic theory that sees the sovereign people as holding ultimate constituent power. It also underlies our current understanding of democratic legitimacy.

In contrast to this view, we argue that new constitutions are more likely to enhance liberal democracy when they emerge through cooperation among a plurality of elites representing distinct political interests. The dispersion of power that induces elite cooperation in constitution writing favors the adoption of institutions that impose constraints on executive authority and enable opposition parties and citizens to detect and punish constitutional transgressions. Yet incumbents may renege on the original bargain if opponents do not retain sufficient social support and institutional influence during the implementation stage. For this reason, the salutary effect of inclusive constitutional agreements on liberal democracy is likely to be larger during the early years of life of the new constitution, when the identity of negotiating political forces and the balance of power between them tend to remain stable. We find support for these arguments

using an original global dataset on the origins of constitutions between 1900 and 2015 and a difference-in-differences design.

By advancing a theoretical framework that ties together insights from the literature on regime transitions and constitution making, this paper makes a significant contribution to understanding the link between the political origins of constitutions, the enforceability of institutions, and democratization. It also sheds light on contemporary debates about the potential uses of constitution making to address governance and representation crises in democratic regimes. From an empirical standpoint, we present the most comprehensive historical dataset on constitutional replacements available to date and adopt a credible empirical strategy to identify the causal effects of different modalities of constitution making on liberal democracy.

We start with a critical assessment of existing hypotheses about the origins of a self-enforcing liberal democracy in participatory processes or elite agreements during the creation of new constitutions, and propose a theory of elite-mass interdependence to account for the impact of different modalities of constitution making on the adoption and enforceability of liberal institutions. The second section describes our *Comparative Constitution Making Database*, which codes key features of all constitution-making processes since the early twentieth century resulting in constitutions that regulated democratic regimes for most of their legal life. The third and fourth sections explain the empirical approach and present the results. The last section discusses the normative and policy implications of our argument and findings.

## Constitutional origins and liberal democracy

Most political scientists advocate a minimal definition of democracy centered on selection of the head of government and members of the legislature in free and fair elections.<sup>1</sup> Yet there is a debate about whether for a minimal democracy to exist, the power of executives should be limited in practice and basic civil liberties be effectively protected (see Przeworski *et al.* 2000, Mainwaring, Brinks, and Perez-Liñan 2001, and Coppedge and Gerring *et al.* 2011). If we shift our perspective from measurement issues at a single point in time to actual political dynamics, this debate seems largely artificial. Although we may analytically isolate the features that differentiate a liberal democracy from a purely electoral one, free and (above all) fair elections are unlikely to hold over time if institutional constraints over the executive and basic citizen rights, such as freedom of expression and assembly, can be easily violated.

If the electoral and liberal dimensions of democracy are intertwined in practice, constitutions may play a role in the deepening of democracy. It is not apparent, however, how democracy-enhancing provisions emerge and what factors make their effective implementation possible. Two very different literatures have explicitly or implicitly suggested looking at the origins of constitutions for an answer. A well-established tradition in democratic and constitutional theory proposes that the direct involvement of citizens during constitution writing creates a heightened sense of collective ownership over the new text, promotes a democratic institutional design, and facilitates its enforcement. By contrast, a long-standing hypothesis in comparative political science has traced the emergence of a self-enforcing democracy back to an agreement among political elites that succeeds in creating a constitution that reduces the stakes of competition.

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<sup>1</sup> The other basic property of a democratic regime, but one which is today mostly taken for granted, is that most adult citizens be able to vote (see Dahl 1971).

These theories share similar shortcomings: they fail to deal with the problem of what makes constitutional provisions enforceable after enactment and insufficiently consider the interdependence between bargaining political elites and the mass of citizens during and after constitution making. We will argue, however, that the proposition highlighting the importance of elite cooperation at the constitution-making stage provides the most appropriate starting point for examining the impact of constitutional origins on liberal democracy.

Democratic theories of power and sovereignty have extensively analyzed the link between constitution making and democracy. The most widely held view in this literature emphasizes the positive effect of public participation in constitution making during the foundational or transformational moments of a democratic regime.<sup>2</sup> This theory, born out of the great revolutions of the late eighteenth century, claims that only the people are the legitimate holder of constituent power, so regular government institutions and ordinary representatives should be sidelined during the making of a new constitution. As Thomas Paine summarized it, “a constitution is not the act of a government but of a people constituting a government” (Paine 1995, 467-468).<sup>3</sup>

In the early versions of the constituent power theory, the popular origins of constitutions often referred to a founding principle that could be satisfied by representative channels, such as the election of a constituent assembly. However, contemporary advocates of this tradition take the idea of popular authorship to its natural conclusion and claim the need for actual and direct citizen participation in processes of deliberation and voting for a constitutional change to qualify as democratic and improve democratic practices. As Kalyvas argues, the democratic nature of a constitution depends on how inclusive and effective the direct participation of the people is

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<sup>2</sup> A few important recent works in constitutional theory go against this tradition. Students of constitution making during transitions to democracy in Eastern Europe have highlighted the importance that negotiation and deliberation among political elites should have for the foundation of democratic constitutions (see Holmes and Sunstein 1995; Arato 2016).

<sup>3</sup> On constituent power theory, see Loughlin (2003), Kalyvas (2005), and Colon-Ríos (2012).

during the extraordinary and exceptional moment of constitution making (2005, 230).

Negotiation or deliberation among the elite is not necessarily excluded from this analysis but plays a less important role than direct engagement of citizens during the making of the fundamental norm (Banks 2008; Fishkin 2011; Tierney 2012).

Most works in this literature are predominantly normative. Yet in spite – or perhaps because – of this normative goal, the idea of participatory constitutional change as a vehicle for deepening democracy is extremely influential not only within the legal academia or among democratic theorists, but also in actual political practice. Popular social movements that contributed to democratic transitions or democratic reforms have frequently demanded engaging citizens directly in constitution making (Wheatley and Mendez 2016). At times of political crisis, populist forces around the world also claim that rewriting the constitution is a unique opportunity for the people to get rid of a corrupt political elite (Mueller 2017). In order to strengthen the legitimacy of a new constitutional order, public participation in constitution making is also promoted by several international agencies that provide constitution-building assistance (see Brandt, Cottrell, Ghai, and Regan 2011). For this reason, a growing number of scholars have attempted to make explicit the mechanisms that might link citizen engagement in constitutional change with democratization, and test them empirically.

The most general proposition in participatory theories is that direct citizen involvement in the making of constitutions increases public awareness of accepted behavior under the new constitution, which, in turn, enables citizens to monitor elected officials and prevent transgressions (see Widner 2008; Eisenstadt, LeVan and Maboudi 2015, 2017).<sup>4</sup> This argument,

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<sup>4</sup> For other, less general arguments about the link between participatory constitution making and democratization, see Voigt (2004), Ginsburg, Blount and Elkins (2008), Carey (2009), Ginsburg, Elkins, and Blount (2009).

however, rests on dubious assumptions about the preferences of citizens regarding the content of constitutions and their collective capacity to act in defense of legality.

Direct citizen participation in the formulation, discussion, or promulgation of a new constitution does not generate consensus about the rules and rights that should be included in it. As Weingast (1997) has argued, the most natural equilibrium in a society is a nondemocratic one in which citizens are unable to coordinate on punishing constitutional transgressions by the state because they are divided along ethnic, religious, ideological, or socio-economic lines. These divisions are not likely to disappear just because citizens engage in the process of constitutional change. Moreover, even if they were to agree on what rights should be universally protected, citizens do not normally have the ability to mobilize spontaneously against an incumbent government that transgresses the constitution. Aside from some episodic outbursts of protest, the capacity of the masses for sustained and effective mobilization is usually dependent on the leadership or organizational resources provided by political and social elites that oppose incumbents (see Albertus and Menaldo 2018).

In a recent statistical analysis of modalities of constitution writing and democracy, Eisenstadt, LeVan and Maboudi (2015, 2017) show that “bottom-up” constitution-making processes, in which citizens genuinely participate, are more likely to improve levels of democratization after enactment than “top-down” ones, which are based on elite bargains. They interpret their findings as a demonstration of the “systematic benefits of direct citizen involvement” during constitutional change (2017, 51-53). This interpretation is highly questionable, however, because these authors do not differentiate between indirect, representative channels of citizen influence and direct mechanisms of citizen input, either conceptually or empirically.

After defining “participation” as any instance of mediated or unmediated citizen involvement in constitution making, Eisenstadt *et al.* (2017, 30) code the convening stage (the most important process variable in their analysis) as “popular” when there is “systematic civil society input or strong transparency or specially elected drafters freely and fairly elected”. This conflates cases in which citizens had a voice through the standard and indirect representative procedure of free and fair elections with those in which citizens were directly involved in deciding the content of the constitution through mechanisms of public consultation or referenda.<sup>5</sup> Yet there is a difference of kind, not just of degree between these two forms of citizen involvement. Most of the time, representatives are either rank-and-file party members who follow orders from the leaders of the organization or individuals who themselves occupy a position of authority in the party.<sup>6</sup> For this reason, it makes more sense to consider elected drafters as part of the political elite than to identify their decisions as those that ordinary citizens would make themselves.

In sum, the participatory theory is open to question because the proposed mechanism linking direct citizen involvement in constitution making with ex-post levels of democratization is unpersuasive, the operationalization of key variables is problematic, or both. It also fails to acknowledge how citizens and elites interact in different ways during and after constitution making. The analysis of this interaction is crucial and should start by acknowledging that while elite–mass linkages exist at every stage, the drafting of constitutions has historically been (and still is) a predominantly elite affair. Representatives of political parties and leaders from the most

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<sup>5</sup> Eisenstadt and Maboudi (2019) have recently reconsidered their previous analysis. They now distinguish between individual participation and group inclusion as two different dimensions of “popular” constitution making, and show that the latter is potentially more important for democratization than the former. However, they still conflate the notion of representation with direct participation. In particular, they maintain a measure of participation that includes both the election of the constitution-making body (which is a representative mechanism) and the ratification referendum (which is a mechanism of participation).

<sup>6</sup> A “citizen” assembly, where all or most of its members are randomly selected citizens, or an assembly whose members are elected on a non-partisan basis, will of course be made up of representatives who do not belong to the political elite. Yet these types of assemblies have not yet been used to adopt a whole new constitution or have failed to adopt one, as in the case of Iceland. See Negretto (2017).

important social groups are usually the ones who decide how constitutions should be drafted, including, of course, whether and how citizens participate in the process (see Saati 2015). They also decide the specific content the constitutions will have.

Implicitly or explicitly, the prominent role of political elites in constitution making is at the core of classic democratization studies. This literature has argued that a procedural compromise among the leaders of contending political groups is crucial for a democratic opening (Rustow 1971; O'Donnell and Schmitter 1986). Such a compromise creates a set of rules of mutual security that make it unlikely that the subsequent competitive political process would result in outcomes highly adverse to the interests of any of the main political and social groups (Dahl 1971; Przeworski 1988). It has also been proposed that elite settlements and pacts in which the main political actors commit to follow rules of mutual security are the very foundation of a self-enforcing or consolidated liberal democracy (see Weingast 1997; Higley and Burton 2006). This is not incompatible with the idea that for liberal democracy to be maintained in equilibrium, citizens, and not just elites, must reach a consensus on the limits of state action, so that incumbents are unable to retain the support of some groups while violating the rights of others (see Weingast 1997, 2004). Yet such generalized consensus, if it ever emerges at all, initially depends on successful negotiation of the content of the constitution among a plurality of political leaders representing the diversity of interests in society.<sup>7</sup>

The potentially positive impact of elite constitutional agreements on liberal democracy makes sense from the point of view of formal institutional design. When none of the political groups and leaders that participate in constitutional negotiations have the popular support or the institutional resources to make decisions alone or to form a coalition with a like-minded partner,

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<sup>7</sup> As Higley and Burton argue (2006, 3) elite bargains usually come before liberal democratic precepts and practices are adopted by any large number of citizens.

they are likely to cooperate in creating institutions that protect the interests of all the parties involved (see Knight 2001). These institutions will tend to establish legislative and judicial constraints on incumbent governments, reduce the power of electoral and legislative majorities, and establish rights that protect the interests of all the relevant groups in society (see Jung and Shapiro 1996; Alberts 2009; Alberts, Warshaw, and Weingast 2010). A constitutional design along these lines, in turn, might improve the quality and stability of liberal democracy.<sup>8</sup> As Przeworski has put it in a much-cited statement, “successful democracies are those in which institutions make it difficult to fortify a temporal advantage” (1991, 36).

Unfortunately, the relationship between elite constitutional agreements and the creation or deepening of a liberal democratic regime is still uncertain because there is no systematic theoretical and empirical research on this topic. The few works that have analyzed this issue are either purely analytic or based on a single case or restricted sample of cases (see Weingast 1997; Andrea Bonime-Blanc 1986; Mittal and Weingast 2011; Weingast 2014). A recent important comparative study by Albertus and Menaldo (2018) focuses on the elite origins of constitutions to analyze different routes to democracy, but does not delve into the actual modalities of constitution making under democratic and authoritarian conditions or into the various dimensions of the democratization process.

Although persuasive, the theory linking elite constitutional agreements and democratization is incomplete and shares some of the problems of participatory theories. In the first place, it is unclear exactly how negotiated constraints actually promote liberal democracy. Constitutional provisions listing citizens’ rights and imposing limits on executive power may not be sufficient to create a system of mutual security among contending political forces. Additional institutional

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<sup>8</sup> On the executive and majority-restraining features of the liberal model of democracy, see Held (1987); Coppedge and Gerring, *et al.* (2011).

devices are likely to be needed to allow opposition parties, civil society groups, and citizens to monitor those in power, detect transgressions of the constitutional order, and activate sanctioning mechanisms. Institutions such as explicit term limits or transparency regulations, for instance, may work as devices that signal compliance with or transgression of agreements. Judicial actions may also provide citizens and opposition parties with the legal capacity to challenge irregular or arbitrary government decisions. Such constitutional protections and instruments may thus alleviate commitment problems in founding and maintaining a liberal democratic order.<sup>9</sup> Yet however robust these formal devices might be, the possibility of betrayal cannot be eradicated. For this reason, the theory must also specify how the bargain is enforced over time.

Most constitutional pacts tend to be opportunistic, in the sense that they are not based on a real change in the actors' preferences toward a democratic plural coexistence but on their momentary inability to impose their preferred institutions and policies on others. Changing a preexisting pattern of polarized conflicts in multiple dimensions to stable cooperative relations would occur only if political actors committed to following actual norms of democratic behavior. This commitment, however, may depend on economic factors or critical events that precede constitution making and transform the preferences of individual agents. Some authors argue that democracy cannot emerge as a self-enforcing equilibrium out of elite pacts unless previous economic transformations (such as declining inequality or a shift from fixed to mobile assets as a source of wealth) reduce the costs of tolerance for democracy among economic elites and their political agents (see Boix 2003, 9-10). Others propose that successful and lasting elite settlements do not occur without previous experience of a costly, protracted elite conflict (see Higley and Burton 2006, 22).

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<sup>9</sup> See Haggard and Kaufman (2017) on how specific institutional rules may provide a standard that facilitates social and political opposition groups' ability to detect constitutional transgressions.

What seems clear is that in the absence of a rather exceptional and largely unobservable transformation of preferences, political actors will likely attempt to renegotiate the terms of a constitutional agreement or renege on it *ex post* if they have the opportunity to do so. This suggests that the actual enforcement of a constitutional agreement requires that the plurality of actors that had representation and influence at the constitution-making stage survive and maintain their power after enactment.<sup>10</sup> This is usually so in the short term. During the early years of life of a new constitution the actors responsible for its implementation tend to be the same ones who created it, and the distribution of institutional and political resources among reformers usually remains stable. For instance, the vast majority of constitutions in the world have been drafted by assemblies that continue as ordinary legislatures after the new constitutional text is in force, which means that they keep the same political representation until the next round of ordinary elections takes place (see Elster 2006; Negretto 2017).

In the medium and long term, however, the identity of or the balance of power among the political forces that created the constitution is likely to change. Some of the political forces that participated in the original constitutional compromise may suffer a sharp decline in electoral and social support or even disappear over time, and new political groups opposed to the existing constitution may gain a dominant or influential position.<sup>11</sup> Because of this possibility, whatever liberal institutions are included in the constitution will be effectively implemented only as long as those who lose in electoral competition retain the capacity to block government decisions that might violate the constitution, to organize mass actions against constitutional transgressions, or

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<sup>10</sup> Note that improving and sustaining liberal democracy after constitutional agreements depends on solving commitment and monitoring problems not unlike those that pervade the relationship between dictators and their allies in authoritarian regimes or the maintenance of peace agreements after civil wars (see Boix and Svolik 2013; Roessler and Ohls 2018).

<sup>11</sup> Alberts, Warshaw, and Weingast (2010, 70, 85) argue that a successful transition to a self-enforcing democracy depends both on the adoption of counter-majoritarian institutions that lower the costs of upholding a democratic bargain and on the balance of power between pro-authoritarian and pro-democratic groups. It is unclear, however, how this balance is maintained over time under varying social and political conditions.

both. If one political group gains control over the government and becomes a dominant actor in the institutional, electoral, and social arenas it would be difficult to prevent, monitor, and sanction transgressions to the constitution.

This analysis suggests that although political elites have a predominant role in deciding whether and how constitutions are changed, they ultimately depend on the preferences and actions of citizens for enforcing the constitutional bargain. In particular, they depend on citizens being willing and able to vote against incumbents or engage in massive acts of social protest when the government infringes constitutional provisions. The strength of a democratic political opposition hinges on electoral support from voters, which, in turn, translates into institutional influence. In addition, as students of contentious politics have emphasized, the success of elites that oppose authoritarian regimes or the arbitrary use of power in an electoral democracy is usually preceded and backed by the actions of pro-democratic social movements or groups with the capacity to mobilize (see Tarrow 1995; Bermeo and Yashar 2018).

To sum up, citizens need elites to bargain for them and produce a constitutional agreement that imposes limits on the arbitrary use of power, opens monitoring channels, and provides legal means to punish transgressions. At the same time, although elites may control mechanisms of direct citizen participation during constitutional change, they need the support of citizens both in their role as voters and as members of civil society organizations to maintain a plural equilibrium once the constitution has been adopted. The positive effect of constitution making on liberal democracy is thus the product of successful inter-elite bargaining and a stable and balanced distribution of institutional and societal power. Without the former, the constitutional framework for liberal democracy does not emerge; without the latter, it cannot be sustained.

Based on this discussion, we propose that a constitutional replacement is most likely to improve liberal democracy when as a result of power dispersion in the constitution-making body the new constitution is adopted by means of a cooperative agreement among representatives of a plurality of political forces. However, since most constitutional bargains are opportunistic, their enforcement depends on the maintenance of a balanced distribution of institutional and societal power between incumbents and opposition groups. As a consequence, we should expect the positive effects of a plural constitutional agreement on liberal democracy to be stronger during the first years after the establishment of a new constitution, when the identity of and the balance of power among the actors that created it tend to remain stable. Before exploring these propositions empirically, we present a novel dataset on which our analysis is based.

### **Constitution making and democracy around the world, 1900–2015**

To explore the link between constitution making and democratization, we have created the *Comparative Constitution-Making Database*. This dataset covers the period 1900 to 2015 and includes all constitutions in the world adopted under democracy, as well as those that, although adopted under autocracy, governed democratic political systems for most of their legal lifetime. To our knowledge, this is the most comprehensive dataset on the constitution-making processes of the world's democracies in the twentieth and twenty-first centuries. For each of these processes, we coded relevant procedural and political features that might have shaped the constitution's success in sustaining and deepening liberal democracy.

To distinguish regular constitutional reform, which are the focus of this article, from instances of constitutional replacement, a constitution was considered “new” when its drafters claimed to be adopting a new constitution rather than amending an existing one, and when state institutions

and official sources in the country acknowledged the text as such.<sup>12</sup> To determine whether a constitution was adopted or implemented in democratic years we relied on the minimal definition and coding of democracy of Boix, Miller, and Rosato (2010). For each country, years were coded as democratic if the majority of the male population was enfranchised and the head of government and members of the legislature were elected in free and fair elections.

Following these criteria, we gathered information on the origins of all new constitutions in the world adopted in democratic years between 1900 and 2015, and those created in an authoritarian year but retained and implemented during democratic years for the largest part of their lives.<sup>13</sup> The first type includes cases such as the 1999 Swiss constitution and the 2010 Kenyan constitution; the second, cases such as the 1979 Peruvian constitution and the 1980 Chilean constitution. The only new constitutions excluded from the database are those born and implemented mostly during authoritarian years. The total number of observations is 135, of which we were able to code 131. Table 1 lists these cases.

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<sup>12</sup> Conceptually, this definition departs from the perspective according to which constitutional replacements only occur when revisions are made without claiming to follow the procedure established in the preexisting constitution, which is the criterion adopted by the *Comparative Constitutions Project* (see Elkins, Ginsburg, and Melton 2009: 55). In practice, however, our database of new constitutions is largely consistent with the CCP.

<sup>13</sup> Most but not all constitutions enacted in an authoritarian year and later implemented in democracy were part of a transition to democracy.

**Table 1**  
**Constitutions Enacted or in Force in Democratic Regimes, 1900–2015**

<b>Region</b>	<b>Total (1)</b>	<b>Authoritarian (2)</b>	<b>Democratic (3)</b>
<b>Western Europe</b>	22	0	22
<b>Eastern Europe</b>	22	0	22
<b>Africa</b>	26	9	17
<b>Asia</b>	15	3	12
<b>Middle East</b>	3	1	2
<b>Latin America</b>	34	18	16
<b>Caribbean</b>	7	1	6
<b>Oceania</b>	2	0	2
<b>Total</b>	<b>131</b>	<b>32</b>	<b>99</b>

Source: Authors, *Comparative Constitution Making Database*

(1) Constitutions enacted or in force during democratic years

(2) Constitutions enacted in authoritarian years but implemented during democratic years for most of their lives

(3) Constitutions enacted and in force during democratic years

What features of constitution making capture the level of cooperation between political elites representing distinct camps and direct citizen participation during the process? In the first case, we should look at characteristics signaling that a plurality of different political actors had not only representation, but also real influence over constitution making; in the second, we must trace instances of active and direct involvement by ordinary citizens in the formulation of reform proposals and in voting to approve or reject them. Table 2 lists the features related to these two dimensions of constitution making across the set of cases.

**Table 2**  
**Features of Constitution Making, 1900–2015**

<b>Region</b>	<b>Plural Representation &amp; Decision Making</b>	<b>Non-Electoral Citizen Participation</b>	<b>Referendum Participation</b>
<b>Western Europe</b>	17	1	10
<b>Eastern Europe</b>	17	7	9
<b>Africa</b>	13	14	13
<b>Asia</b>	6	9	1
<b>Middle East</b>	1	2	2
<b>Latin America</b>	13	9	13
<b>Caribbean</b>	2	3	0
<b>Oceania</b>	2	1	1
<b>Total</b>	<b>71 (0.54)</b>	<b>46 (0.35)</b>	<b>49 (0.37)</b>

Source: Authors, *Comparative Constitution Making Database*

As argued before, constitutions are typically crafted by political elites. Yet in widely diverse contexts these elites may act in a cooperative or non-cooperative way while performing this task. Although both texts were enacted in authoritarian years, whereas Benin's 1990 constitution was written by a plural constitutional conference controlled by opponents of the outgoing autocrat, a de facto military government imposed Turkey's 1982 constitution. Russia's 1993 constitution and South Africa's 1996 constitution were approved after democratic elections had already been held. However, the former was drafted by a convention unilaterally appointed by the incumbent executive, while the latter was passed in a constituent congress through collaboration between the two main political parties in the country.

The key feature that signals the presence of elite cooperation is whether a single force or a plurality of distinct political forces was required to pass the constitution in the constitution-making body. Specifically, we consider the founding constitutional agreement to be politically plural when 1) two or more than two independent political parties or groups achieved

representation in the constitution-making body, either through elections, appointment, or mixed selection methods; and 2) the collaboration between at least two of these parties or groups was necessary to decide on the constitution's content and enact it, according to the decision rule governing the constitution-making body. This indicator is better than looking at formal election or decision rules or at the raw number of groups represented in the constitution-making body because it provides a factual and not merely procedural measure of cooperation among different fractions of the political elite during drafting and approval.<sup>14</sup> Using these criteria, 71 constituent processes in our dataset (54%) were coded as plural and 60 (46%) as non-plural.

The second relevant dimension of constitution-making processes coded in our dataset is the extent to which “the people” acted as a collective author of the constitution. In line with our theoretical discussion above and in order to avoid concept stretching, we restrict the notion of popular participation to instances of direct citizen involvement. Moreover, to capture variations in the type and timing of direct citizen involvement, we distinguish between instances of public participation that take place before or during the drafting process, in the form of public consultations and proposal submissions, and those that occur before and after the adoption of the new text, in the form of voting in referendums.

Citizens can contribute to the formulation of reform proposals in various types of public consultation channels before the formal initiation of the process, after its activation but before the writing of the initial draft, and after the initial draft is completed but before its final approval (see Widner 2008). Some of these channels involve forms of collective deliberation, such as public forums that take place before the process is activated to determine the content of the

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<sup>14</sup> Our concept and operationalization of elite cooperation is thus significantly different from what Eisenstadt and Maboudi (2019) call “group inclusion,” which refers to the sheer number of groups (both social and political) included in a constitution-making process, without consideration for their relative influence according to the decision rule.

future reform agenda. Others take the form of reform proposals or comments submitted by ordinary citizens and civil society groups, particularly during the writing and approval of a constitutional draft. Sometimes citizens participate both before the writing of the initial draft and before its final approval, as in the making of the 1997 Polish constitution, the 2015 Nepalese constitution, the 2008 Ecuadorean constitution, the 1999 Venezuelan constitution, and the 1976 constitution of Trinidad & Tobago. It is rare, however, to find all three forms of non-electoral citizen participation present simultaneously.

Constitutional referendums, the second type of direct citizen participation mechanisms coded in our dataset, can be implemented before or after the drafting process is completed. In the first case, voting is used to decide on a particular matter before a new constitution is actually drafted, such as choosing between a monarchical or a republican form of government, as was the case of the referendum held in Greece in 1946. They may also be called to authorize replacing the constitution through the election of a constituent assembly when this procedure is not provided for in the existing constitution, as in Colombia's 1990 referendum. The most common form of referendum, of course, is a referendum implemented to ratify or reject the new text after it has been voted on in a representative body.

As shown in Table 2, citizen participation through different forms of consultation or proposal submission took place in 46 cases (35%), and in 49 (37%) through voting in referendums. Citizen consultation and voting are, however, less frequently used together. In only 19 of 131 (14%) episodes of constitution making were both forms of citizen involvement observed. In fact, the correlation between these two ways of involving citizens in constitution making is weak and not statistically significant. This suggests that in practice, electoral and non-electoral

mechanisms of citizen participation are often seen as different and not necessarily complementary forms of popular participatory politics.

As already argued, there is a key conceptual difference between inclusive representation and decision-making at the elite level, and participation at the citizen level. This difference also holds on empirical grounds. There is no significant association in our database between the existence of a politically plural constitution-making body and the implementation of different forms of direct citizen involvement, either jointly or separately. Constitutions such as those of Sweden (1974), Finland (2000), Bulgaria (1991), and the Czech Republic (1993) were drafted by plural constituent assemblies but the process did not include any instance of direct citizen involvement either before, during, or after the new text was deliberated, negotiated, and voted on by members of the assembly. On the other hand, there are several cases, such as Chile 1980, Turkey 1982, Ecuador 2008, France 1958, Hungary 2011, Ireland 1937, Sri Lanka 1972, Trinidad & Tobago 1976, and Venezuela 1999, where there was centralized control by the executive or a single political party over the constitution-making body, yet some form of citizen consultation or voting was used during the writing or approval of the new constitution.<sup>15</sup>

### **Estimating the effects of constitutional origins on liberal democracy**

The theoretical section above specified the conditions under which we can expect a stronger liberal-constitutional order to emerge from a process of constitutional replacement and remain stable. We now subject some key elements of our theoretical framework to systematic empirical testing using our *Comparative Constitution-Making Database*. Our core argument has been that liberal democracy is most likely to improve when a plurality of political forces, given the

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<sup>15</sup> On the potentially negative correlation between some features of representation and direct citizen participation, see also Mendez and Wheatley (2013, 36).

distribution of power in the constitution-making body, must cooperate to adopt the new text. We also propose that given the need for the balance of institutional and societal power to remain relatively stable to prevent incumbents from renegeing on the constitutional agreement, the positive effects of plural constitution making should be concentrated in the early years of life of the new constitution, when such stability is more likely to hold.

*Dependent variables: Liberal democracy and de facto executive constraints*

In order to measure the level of liberal democracy and the implementation of liberal principles after the enactment of the new constitution, we rely on data from the *Varieties of Democracy* (V-DEM) project.<sup>16</sup> Our main indicator for the existence of a democracy with operating constraints on arbitrary government action is the liberal democracy index. This index captures the extent to which, in practice, constitutionally protected civil liberties, strong rule of law, an independent judiciary, and effective checks and balances limit the exercise of executive power. It ranges from 0 to 1, with higher scores reflecting the existence of institutional checks and balances, free and fair elections, and conditions for the effective exercise of civil and political liberties.

By construction, the V-DEM liberal democracy index reflects the effectiveness of vertical as well as horizontal constraints on rulers. Whereas vertical constraints work through the selection of representatives through free and fair electoral contests, horizontal constraints operate by means of binding institutional limits on the power of incumbents. This raises the question of whether any observed changes in the liberal democracy index after constitution-making are mainly driven by changes in the quality of vertical accountability through elections or by changes in the effectiveness of horizontal constraints. Because our theory is mostly concerned with the latter type of protections, we run additional tests that focus on variables that specifically

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<sup>16</sup> See *Varieties of Democracy, Version 8* (2018), at <https://www.v-dem.net/en/reference/version-8-apr-2018/>.

measure the effectiveness of institutional constraints on the executive. Two of these variables are the legislative and judicial constraints indexes, also from V-DEM. The former captures the extent to which the legislature is capable of questioning, investigating, and exercising oversight over the executive. The latter measures the extent to which the executive respects the constitution and complies with the rulings of an independent judiciary. For robustness, we also employ Polity IV's index of executive constraints (2016), which ranges from 1 to 7.<sup>17</sup>

Our analysis is centered on the *de facto* implementation of liberal institutions in a democratic regime because their formal adoption is not a good indicator of their actual level of enforcement. However, our argument does imply that these formal institutions were created in the first place as a result of cooperation among a plurality of political elites during constitution making. To verify that the evidence is consistent with this intermediate part of our broader argument, we used data from the *Comparative Constitutions Project* (CCP) on the *de jure* power of legislatures and executives.<sup>18</sup> In the online appendix (Table A5) we show that elite cooperation in constitution making does indeed correlate with stronger legislatures and more institutionally constrained executives.

#### *Elite cooperation and direct citizen participation*

As anticipated in the previous section, we measure the impact of elite cooperation in constitution making using an indicator variable that takes the value of 1 when, as per the composition of the constitution-making body and the decision rule, the collaboration between representatives of two or more than two independent political parties or groups was necessary to approve the new text.

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<sup>17</sup> We prefer the V-DEM measures for our main results because they are more conceptually precise. In addition to institutional limits on executive power, Polity IV's index of executive constraints includes levels of accountability of the executive to external political groups, such as a political party.

<sup>18</sup> Complete database provided by Zachary Elkins and Tom Ginsburg. See <http://comparativeconstitutionsproject.org/ccp-rankings/> (June 2017) for the coding of the variables.

A value of 0 in this variable indicates that an elected dominant party, the executive, or a single political force was able to pass the constitution unilaterally in the constitution-making body.

Also following our discussion above, direct popular participation in constitution making is measured taking into account that citizens might be involved in constitutional change through electoral and non-electoral mechanisms. The latter are captured using a dummy variable (*CITIZEN CONSULTATION*) that takes the value of 1 if ordinary citizens were involved in the formulation, discussion, or submission of reform proposals at any stage in the process. The voting alternative is measured through a dummy variable (*CITIZEN VOTING*) coded as 1 if citizens participated in popular referendums either at the beginning or at the end of the process.

### *Empirical strategy*

The main challenge in evaluating whether different modalities of constitution making – such as the existence of plural elite cooperation or direct citizen involvement – deepen liberal democracy is that relevant unobserved factors may drive cases into processes of a certain kind (selection), while certain variables that are jointly associated with the constitution-making type and patterns of liberal democracy after enactment may confound the relationship. To deal with this inferential challenge, we adopt a difference-in-differences (DiD) design, with constitution-level and year-in-the-process fixed effects. We examine changes in liberal democracy within a 20-year window around the 131 constitution-making processes coded in our dataset, which allows us to credibly isolate the *differential* impact of certain features of the constitution-making process. Specifically, we test whether liberal democracy improved more substantially in plural (treatment group) versus non-plural (control group) constitution-making processes from the pre- to the post-

constitution periods, as well as for the effect of incorporating mechanisms of direct citizen participation into the process.

Our data and design represent a considerable improvement over existing work. As already noted, most studies on constitution making and democracy are highly normative and country-based. To the extent that statistical tests have been conducted, they have relied on small samples, specific democratization waves, and cross-sectional regressions potentially plagued by endogeneity. Some tests adopt a lagged–dependent-variable approach, which is superior to wholly ignoring pre-treatment democracy levels.<sup>19</sup> Yet they fail to account for the *trajectory* of the level of democracy leading into the constitution-making moment (as opposed to average levels), which may anticipate the features of the process and thus lead to biased estimates.

We used information from the *Comparative Constitution Making Database* to build a longitudinal database of the evolution of liberal democracy 10 years before the initiation of a constitution-making process and 10 years after it ended.<sup>20</sup> Conservatively, the process was considered to begin with the election or appointment of a constitution-making body and end with the legal promulgation of the new constitution. Although informal agreements and negotiations between political actors usually take place before the convocation of the constitution-making body formally inaugurates the process, we prefer to err on the side of caution and delimit processes by their official start date.

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<sup>19</sup> See Eisenstadt, LeVan, and Maboudi (2015). This study also adopts an instrumental variable approach as a check for endogeneity in a sample covering from the third wave of democratization onward. However, their use of strikes as an instrument for a “bottom-up” constitution-making process hardly satisfies the exclusion restriction on which instrumental-variable analysis depends. A large body of literature links labor mobilization to democratic outcomes through numerous paths other than the type of constitution-making (e.g., Collier 1999).

<sup>20</sup> When this time window overlapped with that of another constitutional process in the same country (for example, the Uruguayan constitutions of 1942 and 1952), we coded years such that we consider at least five years before the beginning of the process for every constitutional replacement. Detailed coding rules for overlapping processes within the same country are available in Table A1 in the online Appendix.

The core objective is to test whether liberal democracy changed *differentially* after constitution making depending on the procedural and political features of the adoption process, while accounting for the trajectory of democracy beforehand, any permanent characteristics of the country process, time effects common to all processes of constitutional replacement, and other potential sources of confounding.<sup>21</sup> The basic estimation equation is given by:

$$liberal\ democracy_{it} = \lambda_i + \delta_t + \gamma_1 elite\ cooperation_i + \gamma_2 period_t + \gamma_3 (elite\ cooperation_i \times period_t) + \beta \mathbf{X}'_{it} + \varepsilon_{it} ,$$

where  $liberal\ democracy_{it}$  is the liberal democracy index in a country with constitution-making process  $i$  in year  $t$ ;  $\lambda_i$  is a fixed effect for each separate constitution-making process, which accounts for all time-invariant, process-specific observed and unobserved characteristics that could confound the relationship of interest (e.g., the country in which it occurs, the underlying level of ethnic and cultural diversity, geography, and other factors);  $\delta_t$  is a fixed effect for each year in the constitution-making process (ten years pre- and ten years post-treatment) that accounts for any time effects common to all processes of constitution-making;  $elite\ cooperation_i$  is a binary variable equal to one if a plurality of political forces cooperated to draft and approve the constitution; and  $period_t$  is an indicator variable for the post-constitution period (starting with the year following its adoption).  $\mathbf{X}'_{it}$  is a vector of time-varying control variables included in some specifications; and  $\varepsilon_{it}$  is the error term. In some specifications, we further add a full set of decade dummies to account for the world historical conditions under which the constitution was adopted.

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<sup>21</sup> For an intuitive illustration of our approach, see Table A2 in the online Appendix.

The difference-in-differences estimate is given by  $\gamma_3$ , which reflects the *differential* increase in liberal democracy in cases with elite cooperation during constitution making relative to those where a single political force dominated the process. Our theoretical argument predicts that  $\gamma_3$  should be positive and significant, with effects concentrated during the early years after the enactment of the new constitution when we decompose the average treatment effect in the observed post-enactment period. We estimate the equation above via OLS and cluster the standard errors at the constitution-making process level; i.e., the level of our identifying variation to adjust for serial correlation (Bertrand, Duflo, and Mullainathan 2004).

With this approach, we compare the levels of liberal democracy in the aftermath of the adoption of a new constitution against the levels before the process started, for constitutional processes requiring plural cooperation vis-à-vis those dominated by a single political force. Based on this comparison, the divergence in trends between plural and non-plural cases after adoption is attributed to the presence or not of elite cooperation in the constitution-making body. The underlying identification assumption is that conditional on the unit and time fixed effects and the covariates, cases of plural constitution-making (observed) would have mirrored the trajectory of non-plural cases had they not involved cooperation by different political elites to approve the constitution (the unobserved counterfactual).<sup>22</sup> In addition, to examine whether direct popular participation mechanisms during constitution-making strengthen liberal democracy, we estimate models based on the same difference-in-differences equation where we interact our citizen consultation and voting variables with the post-constitution indicator variable.

### *Results*

The results for several model specifications using the liberal democracy index as the dependent

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<sup>22</sup> This is the standard “parallel trends” assumption of DiD designs.

variable are presented in Table 3. The core finding is that politically diverse constitutional agreements, where none of the negotiating actors by itself controlled the constitution-making body, are systematically associated with larger improvements in liberal democracy after enactment, compared to constitutional replacements in which a single political force, be it an unelected executive, a government commission, or a majoritarian party, dominated the process. This is the only feature of constitutional origins that consistently explains post-promulgation differential improvements in the liberal democracy index.

By contrast, neither citizen consultation nor direct popular participation through referenda has a discernible impact on the trajectory of liberal democracy post-enactment, on average. In none of our specifications are the interactions between these variables and the post-constitution indicator statistically significant, and in fact, contrary to the expectations of participatory constitution-making theories, the estimates are generally negative. Also at odds with the arguments of several advocates of deliberative participation, we find no evidence that non-electoral channels of citizen engagement in constitution writing are better for democracy than plebiscitarian mechanisms such as referenda.<sup>23</sup>

As discussed in Section II, our database contains information on the presence or absence of elite cooperation and of different forms of direct citizen participation during the making of constitutions enacted in a democratic year or created in an authoritarian year, but retained and implemented during democratic years for the largest part of their lives. A potential concern in the interpretation of results using the full sample is that whereas both plural and non-plural constitution-making bodies can take place under authoritarian or democratic conditions, citizen participation is less likely to be genuine when civil liberties and competitive elections have not been fully re-established. To show that our results hold under different political conditions, we

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<sup>23</sup> See Fishkin (2011) and Eisenstadt et al. (2015, 2017).

replicate the analysis of the full sample (models 1 to 3) in a subsample of constitutions enacted exclusively under democracy (models 4 to 6).

Column 1 reports the baseline model with our main variable of interest. Model 2 shows results for a specification with the main features of the constitution-making process that are of interest (elite cooperation, citizen consultation, and citizen voting), constitution fixed effects, and dummy variables for each year in the time window we consider (ten years before the process and ten years after the constitution). Model 3, the full model, adds a set of controls to address potential confounding factors and variables relevant to assessing the plausibility of our argument about the factors that affect the sustainability of plural constitutional agreements. Before detailing this specification, notice that the difference-in-differences estimate is substantive, ranging between 0.07 and 0.17 extra points in the liberal democracy index during the decade after the introduction of the constitution. For reference, 0.1 is approximately the difference in the index between current Tunisia and the USA or between Peru and Spain.

One legitimate concern is that our estimates on the influence of elite cooperation on liberal democracy post-enactment might be driven by other time-varying factors associated with the features of constitution making. One obvious control in this respect is the age of democracy. Another is the international and historical context in which the constitutional replacement process took place, which may be an important factor behind both the prospects for liberal democracy *and* the standards followed during constitution making.<sup>24</sup> We account for this possibility by adding an indicator variable for each decade from 1900 to 2015. We also test for

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<sup>24</sup> Certain historical eras were more propitious for the consolidation of liberal regimes than others – consider, for instance, the contrast between the interwar period and the decade following the collapse of the Soviet Union. Changing historical trends have also affected modalities of constitution making. Popular voting in constitutional referendums has become an increasingly common practice since the 1950s (see Ginsburg, Blount, and Elkins 2008). Popular consultations or proposal submissions during constitution writing rarely took place before the 1970s.

the possibility that our results are driven by changes in country population size or wealth (recall that constant characteristics are accounted for by constitution-level fixed effects).<sup>25</sup>

Model 3 also examines whether there is support for our argument that plural constitutional agreements are likely to hold up and bolster liberal democracy while social support for the distinct political actors that negotiated the constitution remains relatively stable, and therefore opposition forces retain the capacity to mobilize should those in power renege on the agreed rules. We run a specification analogous to the equation above where  $\mathbf{X}'_{it}$  includes a time-varying measure of the underlying distribution of partisan power in the polity before and after the constitution-making stage. This measure comes from Vanhanen (2016) and is calculated by subtracting from 100 the percentage of votes won by the most-voted party in the most recent parliamentary election or by the winning candidate in presidential elections. As such, it is a good proxy for the balance of forces between contending political camps.<sup>26</sup>

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<sup>25</sup> The number of observations drops due to missing values. GDP per capita figures are from the Madison project. Population data come from Clio Infra, V-Dem, and the World Bank. Missing population data within years were linearly interpolated.

<sup>26</sup> The results reported in the text do not change significantly if instead of this variable we use the parliamentary representation of opposition parties.

**Table 3. DiD Estimates of the Effect of Constitution-Making Modalities on Liberal Democracy, 1900–2015**

	DV: Liberal democracy (All constitutions)			DV: Liberal democracy (Constitutions enacted in democratic years)		
	(1)	(2)	(3)	(4)	(5)	(6)
Elite cooperation × after constitution	0.168*** (0.040)	0.169*** (0.040)	0.071** (0.024)	0.152** (0.054)	0.151** (0.054)	0.091** (0.029)
Citizen consultation × after constitution		0.016 (0.044)	-0.033 (0.025)		0.024 (0.060)	-0.028 (0.029)
Citizen voting × after constitution		-0.055 (0.045)	-0.016 (0.023)		-0.065 (0.055)	-0.040 (0.027)
After constitution	0.146*** (0.030)	0.160*** (0.033)	0.008 (0.030)	0.155** (0.046)	0.174*** (0.049)	0.001 (0.036)
Age of democracy			0.002+ (0.001)			0.002 (0.001)
Population (log)			-0.091 (0.059)			-0.080 (0.064)
GDP per capita (log)			0.060* (0.025)			0.044 (0.029)
Plural competition			0.094*** (0.022)			0.064* (0.027)
Civil society strength			0.505*** (0.039)			0.571*** (0.043)
Constant	0.202*** (0.012)	0.203*** (0.012)	0.854 (0.928)	0.218*** (0.015)	0.219*** (0.015)	0.828 (1.003)
Decade fixed effects	NO	NO	YES	NO	NO	YES
Year fixed effects	YES	YES	YES	YES	YES	YES
Constitution fixed effects	YES	YES	YES	YES	YES	YES
Constitution-making processes	128	128	127	91	91	91
N	2,317	2,317	1,972	1,648	1,648	1,375
R <sup>2</sup>	0.41	0.42	0.81	0.45	0.46	0.85

\* p<0.05, \*\* p<0.01; \*\*\* p<0.001. Robust standard errors clustered at the constitution-making process level in parentheses.

The results shown are consistent with the notion that the maintenance of a relative balance between government and opposition forces facilitates the enforcement of an inclusive constitutional agreement. The coefficient on the plural competition variable is positive and precisely estimated, suggesting that political actors are more likely to abide by the rules and honor citizen rights if electoral support remains stably dispersed among the relevant political forces. In contrast, when one party or movement grows dominant or the political arena remains highly volatile, the constitutional pact is more likely to break down or be weakly and unevenly enforced. More precisely, these effects hold in tests where we interact the plural competition variable with our after-constitution indicator, suggesting that plural competition has a larger effect on liberal democracy after the constitution is enacted.<sup>27</sup>

Reassuringly, the interaction between elite cooperation during constitution making and the post-enactment indicator remains positive and significant after including the measure of plural competition. This alleviates the potential concern that a constitutional compromise and the observed improvements in liberal democracy post-enactment may be jointly determined by the underlying distribution of partisan power. While the results support that the latter is indeed important for a new constitution to be enforced, they also indicate that the features of the constitution-making process itself – in particular the collaboration between political elites representing two or more independent political camps – significantly affects liberal democracy independently from the distribution of electoral support.

The specification in Model 3 adds another important variable to our understanding of the role of citizens in the enforceability of constitutional agreements, as well as addressing the potential concern that our results might be driven by omitted time-varying variables that correlate with

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<sup>27</sup> See Table A3 and Figures A1 and A2 in our online Appendix.

elite cooperation during constitution-making and explain improvements in liberal democracy post-enactment. Although we do not expect direct citizen participation in constitution writing to have a discernible impact, our theory implied that citizens play a key role in sustaining inter-elite pacts after promulgation both through their support for different political forces and by organizing to monitor potential transgressions to the constitutional order. This suggests that the relative strength of civil society organizations (CSOs) such as labor unions, social movements, interest groups, professional associations, and other non-governmental organizations may explain cooperation during constitution making and the trajectory of the liberal dimension of democracy. We therefore include the “core civil society index” from V-DEM, which is coded from 0 to 1 and captures the number of CSOs, the level of participation of citizens in them, and the extent of government control or repression of these organizations.<sup>28</sup>

Consistent with our argument about the social roots of enforceable constitutional agreements, the results show a strong positive association between the strength of civil society organizations and the liberal democracy index. Elite cooperation during constitution making, however, remains robustly associated with deeper improvements in liberal democracy in the decade after enactment. Liberal democracy is thus unlikely to flourish in political and social environments where electoral competition is heavily skewed and civil society organizations are weak. Yet even after considering changes in these relevant factors, our results indicate that elite cooperation at the time of adopting a new constitution enhances liberal democracy.

Finally, we examine another observable implication of our argument that constitutional rules adopted by agreement between contending groups are more likely to be effectively implemented when the balance of power remains stable and distinct political camps retain the capacity to

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<sup>28</sup> In additional tests (results not shown) we used measures from Banks (2017) to capture the impact of actual social mobilization in the form of general strikes, riots, or antigovernment demonstrations. These variables have no systematic effect on liberal democracy and our conclusions remain unchanged.

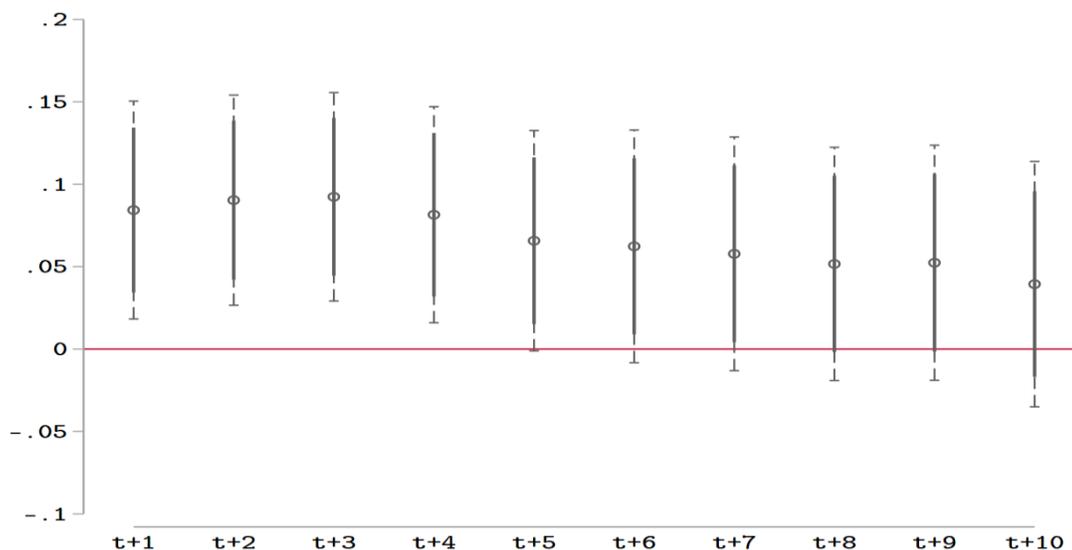
mobilize against transgressions. Because this balance is more likely to hold in the short term, we should observe the positive effects of cooperation in constitution-making bodies occurring especially in the early years after enactment. The DiD coefficients in Table 3 report the estimated average yearly effect of elite cooperation in the ten years following the adoption of a new constitution. To more precisely analyze the duration and intensity of effects over time, we ran alternative specifications, performing pairwise comparisons for all post-constitution years. This allows us to estimate a DiD effect of elite cooperation for every single post-treatment year, rather than an aggregate estimate.

When we decompose the effects per year, we observe that, consistent with our argument, the extra improvements in liberal democracy that result from elite cooperation are most visible during the first years following the enactment of the new constitution. Specifically, the positive effect becomes indistinguishable from 0 after the fourth year at the 99% confidence level, and after the seventh year at the 95% level. We illustrate these temporal effects in Figure 1, which is based on the fully-specified model in column 3 of Table 3.<sup>29</sup> Each point in the graph represents the estimate for the *extra* improvement in liberal democracy attributable to adoption of the constitution by more than a single political force (i.e., the difference in the differences).

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<sup>29</sup> See Figure A3 in the online Appendix for yearly effects in the subsample of democratic constitutions.

**Figure 1**  
**Model 3: Effects per year, at 99% and 95% confidence intervals. Diff-in-Diff estimates.**



To assess the robustness of our results to alternative measures of the dependent variable, we replicated models 3 and 6 of Table 3 using the measures of *effective* legislative and judicial constraints on the executive obtained from V-DEM as well as a more general measure of executive constraints from the Polity IV database.<sup>30</sup> The results appear in Table 4. As expected, the DiD estimates show that elite cooperation in a plural constitution-making process is positively and significantly associated with more effective legislative and judicial constraints on executive power. The results are largely consistent when we use the executive constraints variable from Polity IV. As when using liberal democracy as the outcome variable, direct popular participation at the constitution-making stage, whether in voting or nonvoting processes, has no systematic association with how effective institutional constraints on the power of the executive become, except for the negative impact of referenda on judicial constraints.

<sup>30</sup> For the baseline models, see Table A4 in the online Appendix.

### **Additional robustness and falsification tests**

The assumption that cases of plural constitution-making would move in parallel with non-plural cases in the absence of an elite agreement in the approval body cannot be tested directly, as in any DiD application. We nevertheless conducted complementary robustness and falsification tests to assess the validity of our empirical approach.

First, we evaluate the presence of preexisting trends by introducing leading terms in our baseline specification (no controls). To do so, we grouped the twenty-year window around each constitution-making event by quinquennia. This results in four quinquennium indicators (two before and two after treatment), which we interact with our elite cooperation variable. Significant interactions between our elite cooperation variable and the pre-treatment indicators would imply that cases of constitution making through a plural constitution-making body were already trending differently before the constituent moment (thus violating parallel trends).

**Table 4. DiD Estimates of the Effect of Constitution-Making Modalities on Executive Constraints, 1900–2015**

	DV: De facto legislative constraints (VDEM)		DV: De facto judicial constraints (VDEM)		DV: De facto executive constraints (Polity IV)	
	All constitutions	Democratic constitutions	All constitutions	Democratic constitutions	All constitutions	Democratic constitutions
Elite cooperation × after constitution	0.099**	0.119**	0.066*	0.062+	0.501+	0.651*
	−0.031	(0.035)	−0.03	(0.035)	−0.276	(0.301)
Citizen consultation × after constitution	−0.056	−0.056	0.007	−0.006	0.005	0.121
	−0.037	(0.037)	−0.036	(0.036)	−0.303	(0.287)
Citizen voting × after constitution	0.014	0.001	−0.057*	−0.065+	0.003	0.320
	−0.03	(0.035)	−0.029	(0.034)	−0.289	(0.269)
After constitution	−0.081	−0.146**	−0.024	−0.018	−1.370**	−1.959***
	−0.043	(0.048)	−0.043	(0.045)	−0.449	(0.527)
Age of democracy	0.001	0.003**	0	0.002	0.012	0.013
	−0.001	(0.001)	−0.001	(0.001)	−0.011	(0.011)
Population (log)	−0.001	−0.004	0.055	−0.116	0.471	1.552*
	−0.032	(0.077)	−0.029	(0.082)	−0.382	(0.769)
GDP per capita (log)	0.019	−0.004	−0.099	0.017	1.298	−0.093
	−0.063	(0.033)	−0.072	(0.038)	−0.724	(0.432)
Plural competition	0.136***	0.173**	0.055	0.000	2.836***	2.953***
	−0.036	(0.052)	−0.031	(0.034)	−0.325	(0.423)
Civil society strength	0.692***	0.763***	0.527***	0.590***	2.762***	3.187***
	−0.067	(0.069)	−0.052	(0.054)	−0.424	(0.514)
Constant	−0.306	0.003	1.374	1.899	−23.953*	−25.018+
	−0.975	(1.164)	−1.108	(1.247)	−11.495	(12.718)
Decade fixed effects	YES	YES	YES	YES	YES	YES
Year fixed effects	YES	YES	YES	YES	YES	YES
Case fixed effects	YES	YES	YES	YES	YES	YES
Cases (constitution-making process)	121	91	121	91	120	90
N (case-years)	1,646	1,212	1,901	1,375	1,819	1,312
R <sup>2</sup>	0.82	0.87	0.7	0.77	0.68	0.72

+ p<0.10; \* p<0.05, \*\* p<0.01; \*\*\* p<0.001. Robust standard errors clustered at the constitution-making process level in parentheses.

The results generally support the validity of our identification assumption.<sup>31</sup> The interaction coefficients in the pre-period are small and statistically indistinguishable from each other at the 5% level, suggesting that liberal democracy trends together in plural and non-plural cases before constitutional replacement.<sup>32</sup> By contrast, the interaction coefficients become positive, large, and significant after the adoption of the constitution, consistent with our theoretical argument.

Second, we conduct a placebo test dropping all the post-treatment years (after the adoption of a new constitution) and using the five years before the process starts as a placebo post-treatment period – i.e., the analysis window is reduced from twenty to ten years. Years –10 to –6 and years –5 to –1 in the actual process are artificially taken, respectively, as the five years before and after the constitution. When we run this hard test, we obtain a very small, albeit statistically significant coefficient on the interaction term of the placebo post-constitution indicator with our elite cooperation variable ( $\hat{\beta} = 0.036$ , std. err. 0.014). This suggests that the trend for plural and non-plural cases starts diverging – minimally – just before the beginning of the constitution-making process, and thus that our baseline estimate (before covariates) of the causal effect of elite cooperation could be slightly biased. However, this is not a major challenge to our theoretical conclusions, for two main reasons.

The first is that some indication of different behavior between plural and non-plural cases immediately before the official start of the constitution-making process is to be expected under our own theoretical framework. Constitution-making bodies are elected or appointed through certain procedures that are adopted shortly before the formal start date, though often not at a clearly identifiable point in time. These procedures may themselves be defined more or less

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<sup>31</sup> See Figure A4 in the online Appendix, which plots the resulting coefficients for the interactions, with the second quinquennium as the excluded category (years –5 to –1).

<sup>32</sup> The estimate on the interaction between the first quinquennium (years –10 to –6) and the plural indicator, however, is negative, if small, and significant at the 10% level, suggesting the possibility of some slight pre-trending shortly before the beginning of constitution-making processes. We discuss this below.

cooperatively and thus start defining the character of constitution-making processes and shaping levels of liberal democracy. Yet recall that to avoid any arbitrary coding decisions, we coded the constitution-making process as beginning when the drafting and approval body was officially elected or appointed. As a consequence, it is reasonable to expect a small trend divergence in liberal democracy levels shortly before treatment, as a result of levels of elite cooperation that we can only start capturing when the constitution-making body is formally inaugurated.

Consistently, when we decompose the placebo analysis by year, we find that our elite cooperation variable starts predicting higher levels of liberal democracy only two years before the beginning of the constitution-making process (years +4 and +5 in the placebo test).<sup>33</sup> This is precisely the time period when, if elite cooperation in constitution making indeed matters, we would expect it to start producing initial differences between cases, an effect that we cannot capture in our coding. The leading effects are also very small relative to the post-treatment effect estimates, the second reason why our conclusions remain strong. The estimate for the effect of plural constitution-making bodies on liberal democracy is almost 5 times larger than the coefficient in the placebo test (0.17 versus 0.036), indicating a sharp jump in liberal democracy after enactment in cases of elite cooperation. Overall, these tests provide strong validation of our argument and research design.

## **Conclusions**

We have proposed, inspired by seminal works on democratization, that constitutional replacements are more likely to result in significant improvements in liberal democracy when they involve cooperation among a plurality of political representatives at the constitution-making stage. This effect should be stronger during the early years of life of the new constitution, when

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<sup>33</sup> See Figure A5 in the online Appendix.

the balance of power among contending political forces tends to remain stable, thus enabling the political and social opposition to monitor and mobilize against potential constitutional transgressions by incumbents. Analyzing the effects of direct citizen participation and elite cooperation during the making of all constitutions adopted or in force during democratic years between 1900 and 2015, this paper has shown statistical evidence consistent with these theoretical arguments about the rise and stability of a liberal-democratic political order.

Although we do not find discernible democratizing effects of participatory constitution making, the arguments and findings of this paper are compatible with the idea that the actions and resources of ordinary citizens and civil society organizations, and not just of political elites, account for the success or failure of liberal democracies. In particular, we showed evidence in support of the idea that a plural distribution of voter support across parties and the existence of strong civil society organizations contribute to the emergence and consolidation of the liberal dimension of democracy. Our analysis provides reasons to be skeptical, however, about the democratizing impact of direct citizen involvement in constitution making, regardless of the actions and decisions of political representatives at the elite level.

Inclusive constitutional agreements provide representative elites with the opportunity to commit to norms of democratic behavior, which over time may also create a citizen consensus about the limits of state power. A sober analysis of these agreements, however, should lead us to expect temporally limited effects. Most constitutional agreements at the elite level are opportunistic and induced by exogenous factors. For this reason, their democratizing effects are likely to last only as long as the plural distribution of institutional and societal power that prevailed at the constitution-making stage remains stable.

Even if most inclusive constitutional elite agreements produce beneficial effects on democracy only in the short term, the political and policy implications of the findings presented in this paper are clear. Direct citizen participation is consistent with our current understanding of democratic practices and social movements, political theorists, and international agencies engaged in assisting constitution-building processes around the world should continue promoting it for important political reforms. This advocacy of public participation should not, however, lose sight of the fact that mechanisms that induce larger and more inclusive reform coalitions, such as pluralistic electoral rules or appointment methods and qualified majority decision rules in the constituent body, should be at least as important and desirable in the design of a democratic constitution-making process as participatory channels.

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**Online Appendix.**  
**Constitutional Origins and Liberal Democracy: A Global Analysis.**

**Table A1. Coding rules for constitutions with overlapping analysis periods (ten years before beginning of constitution-making process and ten years after enactment)**

Constitution 1	Constitution 2	Rule
Years +1 to +5	Years -10 to -6	Coded as const 1
Year +6	Year -10, -9, -8, -7, -6	Coded as const 1
Year +7	Year -10, -9, -8, -7	Coded as const 1
	Year -6	Coded as const 2
Year +8	Year -10, -9, -8	Coded as const 1
	Year -7, -6	Coded as const 2
Year +9	Year -10, -9	Coded as const 1
	Year -8, -7, -6	Coded as const 2
Year +10	Year -10	Coded as const 1
	Year -9, -8, -7, -6	Coded as const 2

**Table A2. Average liberal democracy index ten years before beginning of constitution-making process and ten years after enactment**

	Before (1,171 country-years)	After (1,148 country-years)	Difference
Plural constitution-making body (71 cases; 1,305 country-years)	0.234	0.504	0.27*** (0.011)
Non-plural constitution-making body (57 cases; 1,014 country-years)	0.213	0.319	0.106*** (0.013)
Difference	0.021 (0.012)	0.185*** (0.012)	<b>0.164***</b> <b>(0.017)</b>

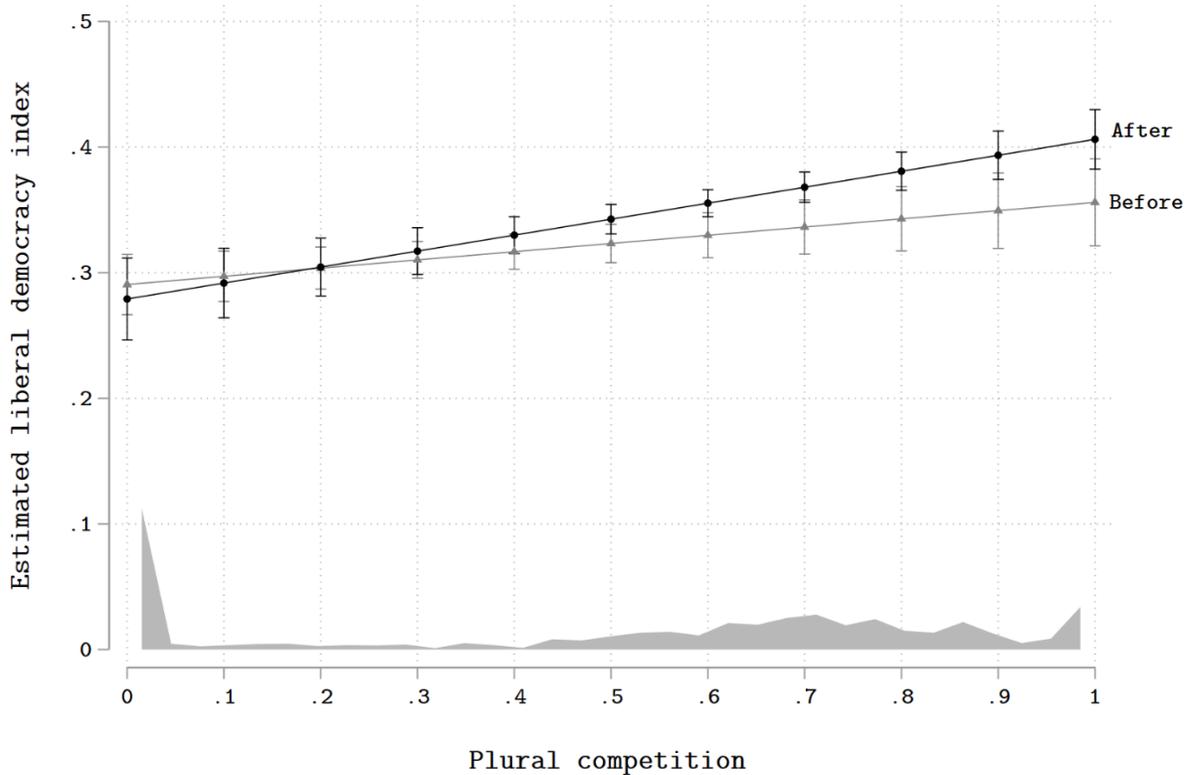
\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

**Table A3. Interacting plural competition with post-enactment period. DiD Estimates of the Effect of Constitution-Making Modalities on Liberal Democracy, 1900 - 2015.**

	DV: Liberal democracy	
	(1)	(2)
	All constitutions	Democratic constitutions
Elite cooperation x after constitution	0.065** (0.024)	0.088** (0.029)
Citizen consultation x after constitution	-0.034 (0.025)	-0.031 (0.030)
Citizen voting x after constitution	-0.021 (0.023)	-0.044 (0.028)
After constitution	-0.020 (0.032)	-0.020 (0.037)
Age of democracy	0.001 (0.001)	0.001 (0.001)
Population (log)	-0.075 (0.058)	-0.066 (0.064)
GDP per capita (log)	0.055* (0.024)	0.037 (0.029)
Plural competition	0.064* (0.026)	0.037 (0.035)
<b>Plural competition x after constitution</b>	<b>0.064*</b> <b>(0.029)</b>	<b>0.054</b> <b>(0.038)</b>
Civil society strength	0.512*** (0.039)	0.579*** (0.044)
Constant	0.667 (0.916)	0.673 (0.991)
Decade fixed effects	YES	YES
Year fixed effects	YES	YES
Constitution fixed effects	YES	YES
Constitution-making processes	127	91
N	1,972	1,375
R <sup>2</sup>	0.81	0.85

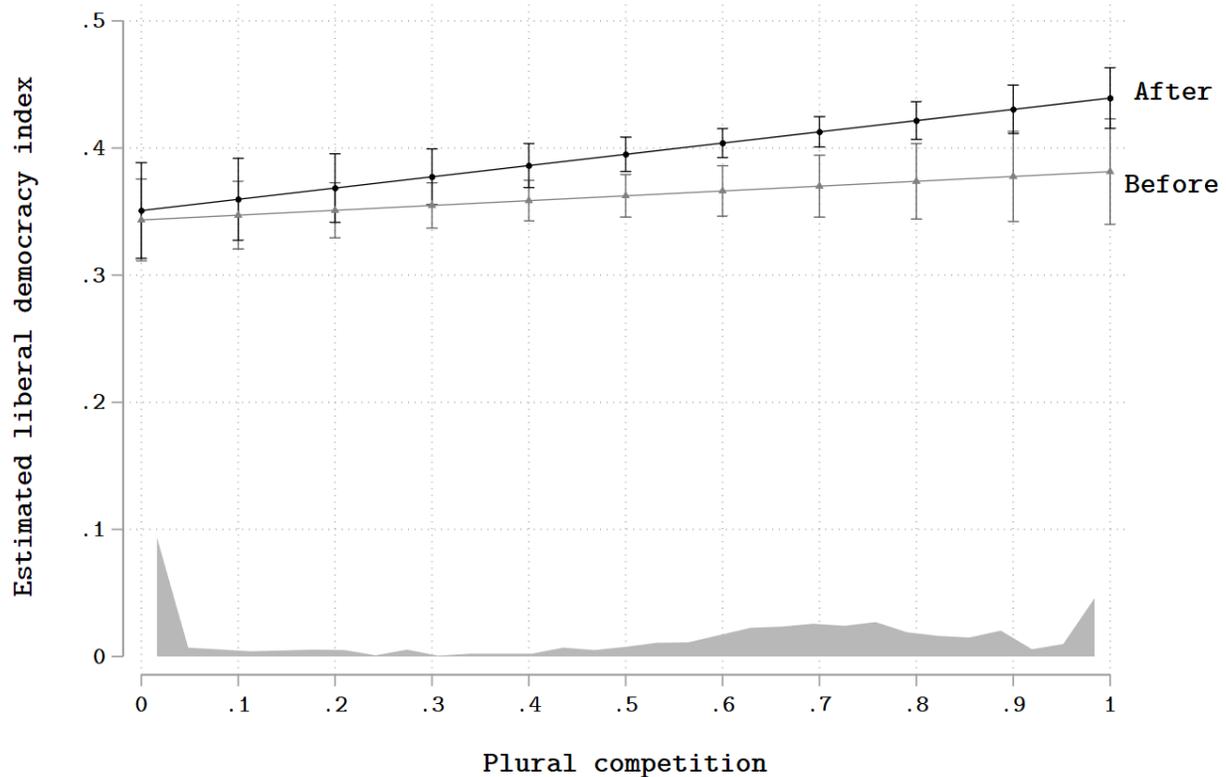
\* p<0.05, \*\* p<0.01; \*\*\* p<0.001. Robust standard errors clustered at the constitution-making process level in parentheses.

**Figure A1. Estimated effect of plural competition on liberal democracy before and after constitution-making. Full sample (all constitutions). 95% CIs.**



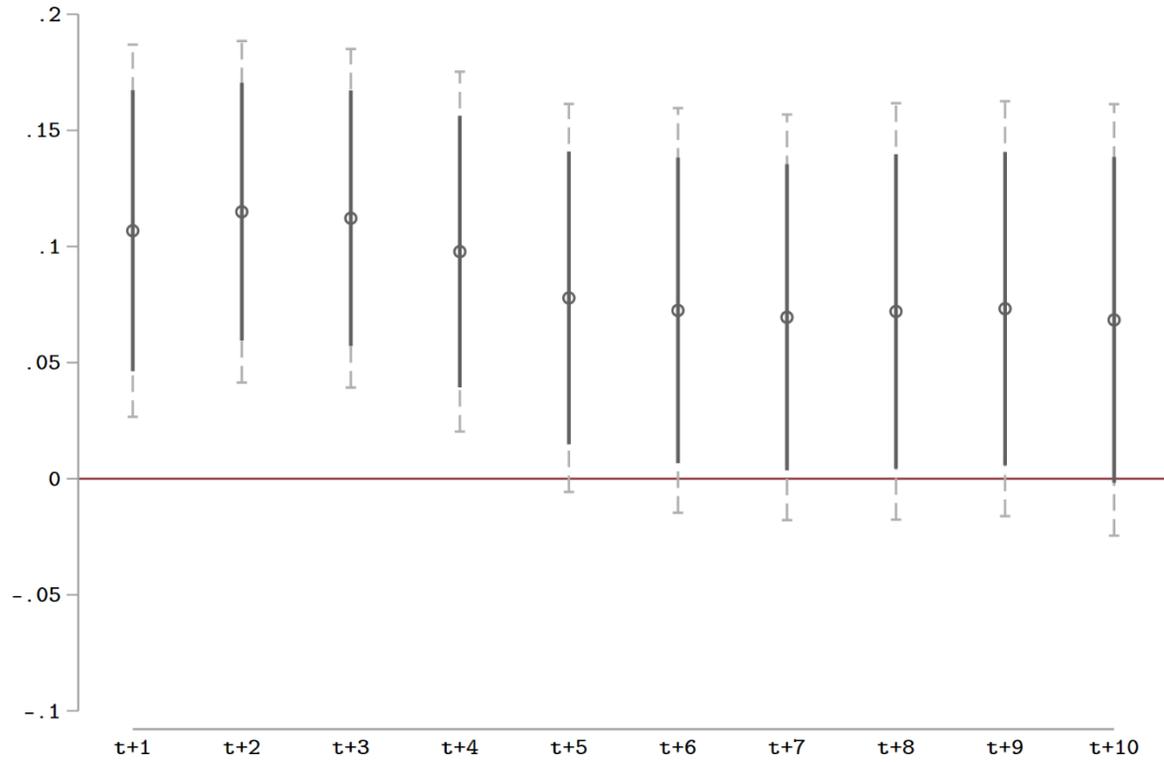
Note: The density histogram at the bottom of the graph shows the distribution of the data along the plural competition variable, for all cases of constitution-making. The graph is based on a specification identical to column 1 in Table A3, except that fixed effects for each year in the constitution-making process (ten before and ten after) were dropped to make the adjusted predictions estimable, due to high collinearity with the plural competition variable.

**Figure A2. Estimated effect of plural competition on liberal democracy before and after constitution-making. Restricted sample (constitutions enacted under democracy). 95% CIs.**



Note: The density histogram at the bottom of the graph shows the distribution of the data along the plural competition variable, for all cases of constitution-making. The graph is based on a specification identical to column 2 in Table A3, except that fixed effects for each year in the constitution-making process (ten before and ten after) were dropped to make the adjusted predictions estimable, due to high collinearity with the plural competition variable.

**Figure A3. Estimated yearly effects of elite cooperation during constitution-making on liberal democracy, with 99% and 95% confidence intervals. Restricted sample (constitutions enacted under democracy). Diff-in-Diff estimates from Table 3, column 6 in the main text.**



**Table A4. Baseline DiD Estimates of the Effect of Constitution-Making Modalities on Executive Constraints, 1900 - 2015.**

	DV: De facto legislative constraints (VDEM)		DV: De facto judicial constraints (VDEM)		DV: De facto executive constraints (Polity IV)	
	(1)	(2)	(1)	(2)	(1)	(2)
	All constitution s	Democratic constitution s	All constitution s	Democratic constitution s	All constitution s	Democratic constitutions
Elite cooperation x after constitution	0.173** (0.060)	0.151** (0.054)	0.170*** (0.045)	0.132* (0.059)	0.170*** (0.045)	0.132* (0.059)
Citizen consultation x after constitution	0.026 (0.064)	0.024 (0.060)	0.076 (0.049)	0.063 (0.069)	0.076 (0.049)	0.063 (0.069)
Citizen voting x after constitution	-0.046 (0.061)	-0.065 (0.055)	-0.058 (0.048)	-0.049 (0.061)	-0.058 (0.048)	-0.049 (0.061)
After constitution	0.209*** (0.051)	0.174*** (0.049)	0.089* (0.039)	0.113* (0.055)	0.089* (0.039)	0.113* (0.055)
Constant	0.376*** (0.020)	0.219*** (0.015)	0.484*** (0.015)	0.479*** (0.019)	0.484*** (0.015)	0.479*** (0.019)
Decade fixed effects	NO	NO	NO	NO	NO	NO
Year fixed effects	YES	YES	YES	YES	YES	YES
Constitution fixed effects	YES	YES	YES	YES	YES	YES
Constitution-making processes	128	91	128	91	128	91
N (Constitution-years)	2,016	1,648	2,316	1,648	2,316	1,648
R <sup>2</sup>	0.40	0.46	0.29	0.31	0.29	0.31

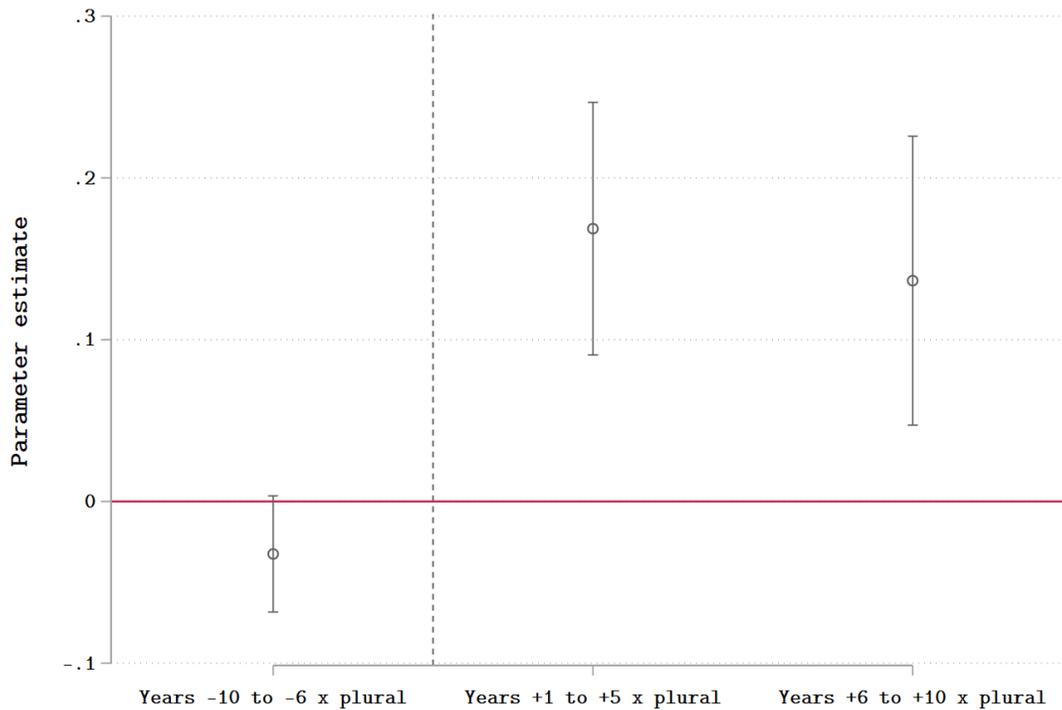
\* p<0.05, \*\* p<0.01; \*\*\* p<0.001. Robust standard errors clustered at the constitution-making process level in parentheses.

**Table A5. DiD Estimates of the Effect of Constitution-Making Modalities on Constitutional Design, 1900 - 2015.**

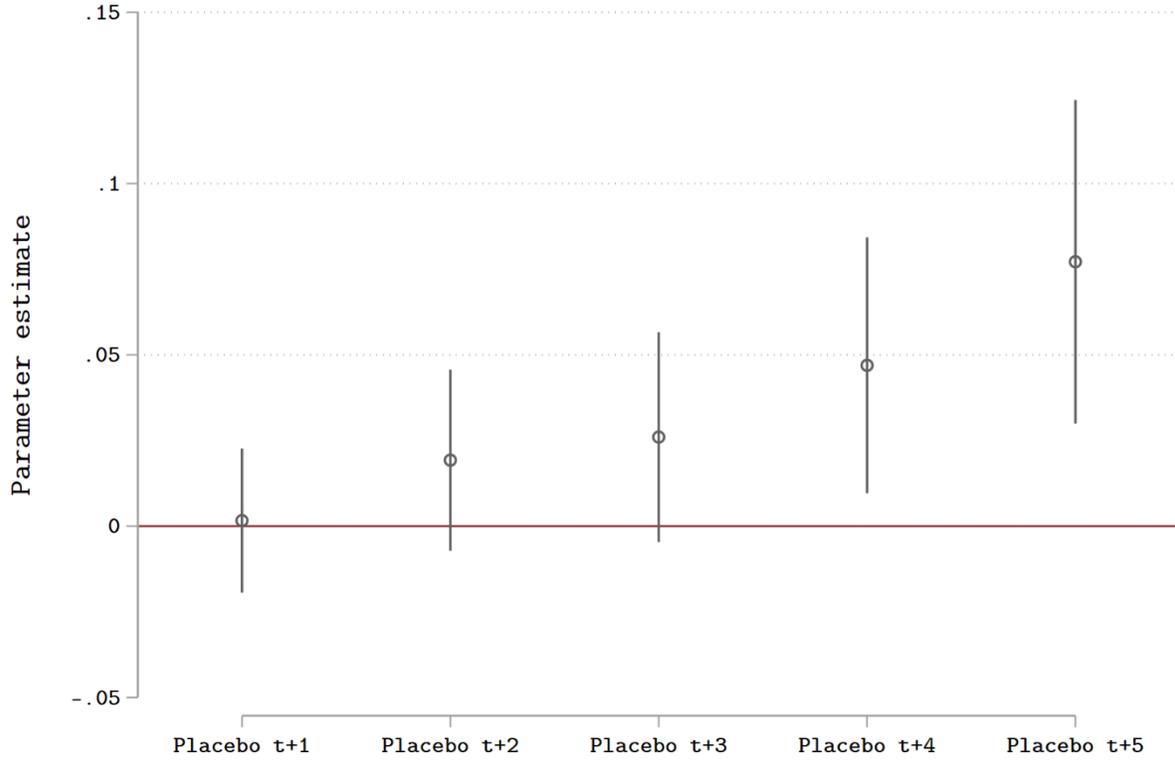
	DV: De jure legislative power		DV: De jure executive power	
	(1) All constitutions	(2) Democratic constitutions	(3) All constitutions	(4) Democratic constitutions
Elite cooperation x after constitution	0.079** (0.026)	0.074* (0.031)	-0.593+ (0.347)	-0.748+ (0.402)
Citizen consultation x after constitution	-0.039 (0.027)	-0.040 (0.035)	0.613 (0.380)	0.124 (0.423)
Citizen voting x after constitution	-0.047+ (0.025)	-0.053+ (0.031)	0.142 (0.333)	0.406 (0.387)
After constitution	0.005 (0.041)	0.020 (0.047)	1.971*** (0.416)	2.286*** (0.532)
Age of democracy	0.001 (0.001)	0.001 (0.001)	-0.007 (0.011)	0.003 (0.008)
Population (log)	-0.006 (0.027)	0.008 (0.031)	-0.410 (0.515)	-0.991+ (0.584)
GDP per capita (log)	-0.015 (0.068)	0.004 (0.067)	-2.507*** (0.693)	-2.299** (0.739)
Plural competition	0.016 (0.019)	0.024 (0.029)	0.070 (0.208)	-0.113 (0.297)
Civil society strength	-0.006 (0.033)	-0.023 (0.046)	0.168 (0.414)	0.307 (0.462)
Constant	0.563 (1.094)	0.169 (1.053)	47.338*** (10.876)	48.994*** (11.900)
Decade fixed effects	YES	YES	YES	YES
Year fixed effects	YES	YES	YES	YES
Constitution fixed effects	YES	YES	YES	YES
Constitution-making processes	125	90	125	90
N (Constitution-years)	1,784	1,260	1,784	1,260
R <sup>2</sup>	0.25	0.29	0.32	0.42

+ p<0.10; \* p<0.05, \*\* p<0.01; \*\*\* p<0.001. Robust standard errors clustered at the constitution-making process level in parentheses.

**Figure A4. Feasibility of the Parallel Trends Assumption. 95% CI**



Note: Figure reports coefficients of the interaction quinquennium x elite cooperation in constitution-making. The second quinquennium (years -5 to -1) is the omitted category. Elite cooperation is an indicator variable. Standard errors are clustered at the constitution level.

**Figure A5. Placebo test.**

Note: Figure reports coefficients of the interaction between elite cooperation and a placebo post-treatment period. Years -5 to -1 before the beginning of the constitution-making period are artificially taken as years +1 to +5 post-enactment. See main text.