

Constitutional Origins and Liberal Democracy in Comparative Perspective

Gabriel Negretto
Instituto de Ciencia Política
PUC

Mariano Sánchez Talanquer
División de Estudios Políticos
CIDE

Paper prepared for delivery at the ICON•S Conference “Public Law in Times of Change?”,
Pontificia Universidad Católica de Chile, Santiago, July 1-3, 2019.

Abstract

Do the political origins of constitutions matter for the establishment and deepening of democracy? In this paper we examine the impact of different modalities of constitution-making on liberal democracy. We argue that while direct citizen involvement in the drafting of constitutions may be desirable on normative grounds or necessary for pragmatic reasons, the liberal dimension of democracy is most likely to improve when new constitutions are adopted through the cooperation of representatives of a plurality of political forces. The dispersion of power in constitution-making bodies favors the creation of legal limits on state action and the adoption of mechanisms to make civil liberties and institutional constraints on executive power effective. Because opposition parties need to maintain sufficient institutional influence and citizen support to keep the original bargain during the implementation stage, we also propose that the salutary effect of inclusive constitutional agreements on liberal democracy should be larger during the early years of life of the new constitution, when the balance of power among the political forces that created it tends to remain stable. Difference-in-differences analyses of an original global dataset on the origins of constitutions adopted or implemented under democracy between 1900 and 2015 provide support for the argument.

Introduction

Constitutions created to be in force under a democratic regime establish the limits of state action and the basic framework to maintain free and fair elections over time. Yet it is unclear what factors make possible the effective implementation of democracy-enhancing constitutional rules. 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 and implementing a constitution that limits the stakes of power during competitive elections. Many philosophers and constitutional theorists, in turn, have argued 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. None of these perspectives, however, has exhaustively analyzed the impact that constitutional origins might have on the establishment and deepening of liberal democracy.

In this paper, we examine the impact of different modalities of constitution making on the prospects for liberal democracy. We argue that while direct citizen involvement in the drafting of constitutions may be desirable on normative grounds or necessary for pragmatic reasons, the liberal dimension of democracy is most likely to improve when new constitutions are adopted through the cooperation of representatives of a plurality of political forces. The dispersion of power in constitution-making bodies favors the creation of legal limits on state action and the adoption of mechanisms that enable opposition parties and citizens alike to make institutional constraints on executive power and civil liberties effective. Because opposition parties need to maintain sufficient institutional influence and citizen support to keep the original bargain during the implementation stage, we also propose that the salutary effect of inclusive constitutional agreements on liberal democracy should be larger during the early years of life of the new

constitution, when the balance of power among the political forces that created it tends to remain stable. We find support for these arguments using an original global dataset on the origins of constitutions adopted or implemented under democracy between 1900 and 2015 and a difference-in-differences design of quantitative analysis.

The paper is organized as follows. The first section offers a critical review of existing theories on the democratizing effects of constitutional origins and proposes some hypotheses about the impact of the modality of constitution making on the liberal dimension of democracy. The second section describes our *Comparative Constitution Making Database* and analyses the different features that promote cooperation among political elites and direct popular participation during the adoption of new constitutions before and after the inauguration of a democratic regime. The third and fourth sections offer statistical evidence that is consistent with the argument that inclusive elite constitutional agreements contribute to improving democracy in its liberal dimension during the early years of life of the new constitution. The last section discusses the factors that may determine the occurrence and durability of inclusive constitutional agreements.

Constitutional origins and liberal democracy

Most political scientists advocate a minimal definition of democracy centered on the notion that in such a regime the head of government and members of the legislature must be selected in free and fair elections.¹ There is a debate, however, about whether for a minimal democracy to exist the power of executives should be limited in practice by legislative and judicial constraints

¹ 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).

and basic civil liberties be effectively protected (see Przeworski 1999, Mainwaring, Brinks, and Perez-Liñan 2007, 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 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 in a political context where institutional constraints over the executive and basic citizen rights, such as freedom of expression and assembly, can easily be violated.

If the electoral and liberal dimensions of democracy are intertwined in practice, one may think that constitutions designed to be in force under free and fair elections 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. Several works in comparative political science have implicitly or explicitly suggested looking at the origins of constitutions for an answer. Classic analyses on transitions to democracy have 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). One central role of this compromise is to create 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). Inspired by this line of reasoning, 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).

The relationship between elite constitutional agreements and liberal democracy is relatively obvious from the point of view of institutions. When none of the political groups and leaders

that participate in constitutional negotiations has the popular support or the institutional resources to make decisions alone or form a coalition with a like-minded partner, they are likely to cooperate in creating institutions that protect the interests of all the parties involved. While these institutions do not need to take a full consociational form, they would 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 Przeworski 1988; Jung and Shapiro 1996; Alberts 2009; Alberts, Warshaw and Weingast 2010). In other words, accommodation and compromise among different fractions of the political elite at the time of writing the constitution is likely to produce a constitutional design that enhances the principles of liberal democracy.² This design, in turn, may improve the quality and stability of democracy. As Przeworski has put it (1991, 36) in a much-cited quotation, “Successful democracies are those in which institutions make it difficult to fortify a temporal advantage. Unless the increasing returns to power are institutionally mitigated, losers must fight the first time they lose, for waiting makes it less likely that they will ever succeed”.

Although these arguments are persuasive, the impact of constitutions on the creation and sustainability of democracy cannot be restricted to their content. Many constitutions in the world contain similar liberal provisions and yet their actual implementation differs radically from country to country (see Ginsburg and Huq 2016). Even if a pluralist negotiation among elites leads to the adoption of appropriate institutions to promote a liberal democracy, the mere making of an agreement does not guarantee compliance with it or enforcement of the institutions that derive from it. Most pacts tend to be opportunistic, in the sense that they are

² The liberal model of democracy is identified with limits on both the power of the executive and the power of electoral and institutional majorities. See Held (1987); Coppedge, Gerring, *et al.* (2011).

not based on a real change of the actors' preferences toward a democratically plural coexistence but on their momentary inability to impose their preferred institutions and policies on others.

Changing preexisting forms of collective interaction, such as shifting from a pattern of polarized conflicts in multiple dimensions to stable cooperative relations would occur not because political actors agree to create rules of mutual security but because they commit to follow actual norms of democratic behavior. This commitment, in turn, may depend on economic or critical events that precede constitution making and transform the preferences of individual agents. Some authors, for instance, argue that democracy cannot emerge as a self-enforcing equilibrium out of elite pacts if previous transformations in the economic structure (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 the previous experience of a protracted and costly elite conflict (see Higley and Burton 2006, 22). What seems clear is that in the absence of a rather exceptional and largely unobservable transformation of preferences, it is likely that political actors would attempt to renegotiate the terms of a constitutional agreement or renege on it ex post if they have the capacity to do so.³

Unfortunately, in spite of the different hypotheses that trace the successful adoption and implementation of liberal institutions to inclusive and pluralistic constitutional agreements, there is no systematic comparative research on the conditions under which some agreements succeed in creating or deepening liberal democracy while others do not. The few works that

³ Some authors have argued that for a constitutional agreement to be successful it has to be genuinely consensual and free from coercion from non-democratic actors (see Bonime-Blanc 1984, 2010; Linz and Stepan 1996). It is unclear, however, what signals genuine consensus and many constitutional negotiations made at the inauguration of relatively successful democratic regimes include still powerful non-democratic elites or authoritarian successor parties.

have analysed this issue are either purely analytic or based on a single case or a restricted sample of cases (see Weingast 1997; Andrea Bonime-Blanc 1986; Özbudun and Gençkaya 2009; Mittal and Weingast 2011; Weingast 2014). An important recent comparative study by Albertus and Menaldo (2018) focuses on the elite origins of constitutions to analyse 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. For these reasons, one of the main goals of this article is to explore whether and for how long the particular modality of constitution making, such as a plural and inclusive process at the elite level, may affect the effective implementation of liberal institutions in a democratic regime.

In contrast to comparative political science, the relationship between constitution making and democracy has been extensively analyzed in constitutional theory and comparative constitutional law. However, the vast majority of works in this literature are predominantly normative. The most widely held view stands in sharp contrast with the idea that elites play an influential role in democratization and emphasizes the positive effect of public participation in constitution making during the foundational moments of a democratic regime.⁴ This theory was born out of the great revolutions of the late eighteenth century and claims that only the people are the legitimate holders of constituent power.⁵ As Thomas Paine summarized it, “a

⁴ A few recent important works within comparative constitutional analysis have contradicted this tradition. In particular, studies 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 Preuss 1995; Holmes and Sunstein 1995; Arato 1995, 2009, 2010, 2016). In this view, direct forms of citizen involvement in constitution making, particularly popular referenda, are not required and may even be counterproductive for the realization of a process that is intended to secure outcomes negotiated among elites through a representative process (Arato 2016, 64). Just like participatory theories, however, this literature is predominantly normative and has not attempted a systematic empirical analysis on the democratic effects of elite constitutional agreements.

⁵ On the historical and conceptual evolution of the constituent power theory, see Loughlin (2003), Kalyvas (2005), and Colon-Ríos (2012).

constitution is not the act of a government but of a people constituting a government” (Paine 1995, 467-468).

Although the idea of the people as a collective author of the constitution was subject to different conceptualizations, revolutionary theories were inspired in a republican view that usually rejected direct forms of citizen participation (see Manin 1997). For this reason, 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 or the ratification of the constitution through elected conventions.⁶ 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 (Banks 2008; Hart 2011; Fishkin 2011; Tierney 2012). Moreover, this view is currently held by several international agencies engaged in constitution-building assistance across the world (see Brandt, Cottrell, Ghai, and Regan 2011, 9).

Due to the normative intent of their work, many scholars advocating participation in constitution writing shy away from discussing observable implications derived from this modality of constitutional change. In this perspective, citizens have a right to participate in the making of the constitution because they must consent to the higher norm that will bind them in the future (Hart 2011). In a similar vein, it has been argued that regardless of its effects on democracy or other outcomes citizen participation in constitution making enhances a collective sense of ownership over the constitution and thus its legitimacy (Miller 2011). A growing

⁶ There were variations, however, within each revolutionary tradition. The proposal of the 1787 Federal Convention needed the consent of a qualified majority of representatives of the people of the states to become the new constitution. Yet in the states some local constitutions, such the 1778 Massachusetts constitution or the 1792 New Hampshire constitution, were submitted to direct popular vote. The constitution adopted by the 1789–91 *Assemblée Constituante* did not require any form of popular ratification to be enacted. Later on, however, a popular referendum was required to ratify the 1793 constitution.

number of works, however, have attempted to make explicit the list of positive effects of participatory constitution making on democracy or the potential mechanisms that link citizen engagement in constitutional change with democratization.

One general argument is that direct citizen involvement in the making of constitutions increases public awareness of accepted behavior under the new constitution, which, in turn, enable citizens to monitor elected officials and prevent transgressions (see Widner 2008, 1516). Similarly, a recent study formulates the hypothesis that public participation during the drafting of a new constitution is likely to improve subsequent levels of democracy because such participation makes it possible for citizens to monitor the process and prevents elites from easily modifying the rules of the game as they play it (see Eisenstadt, LeVan and Maboudi 2016; 2017). Various works have hypothesized that participatory processes, in particular the popular ratification of new constitutions, are likely to lead to the formal expansion of rights and reforms strengthening citizen influence and control over representatives (Samuels 2006; Ginsburg, Blount and Elkins 2008; Voigt 2004; Ginsburg, Elkins, and Blount 2009). Others have proposed that participatory constitution making may lead to more constraints on government authority or generally to limited government and rule of law (see Carey 2009; Voigt 2004).

These proposals have been tested, sometimes with positive results. Yet even in these cases the validity of results is questionable 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. The hypothesis that makes the most sense is that citizen involvement in constitution making may provide reformers with an incentive to expand citizen rights and mechanisms of public participation in future governance. Ratification referendums, for instance, create what Elster calls a “downstream” constraint on

the decisions that reformers can make (Elster 1995). If reformers know or anticipate the preferences of those who have the power to accept or reject their proposals, they have every incentive to satisfy those preferences beforehand. Regardless of whatever else they include in the proposal, the expansion of citizen rights and participatory institutions can be presented and is likely to be regarded by significant segments of the population as an improvement in collective welfare.

Following this logic, it is not surprising that different studies have found a correlation between the use of constitutional ratification referendums, on the one hand, and the formal expansion of constitutional rights and rights of political participation incorporated into the constitution, on the other (see Ginsburg, Elkins, and Blount 2009; Ginsburg, Blount and Elkins 2008; Negretto 2017). However, there is no reason to think that citizen voting or other forms of citizen involvement during constitution making would lead to the creation of a set of rights that protects all major social groups. More importantly, even if reforms were designed in an impartial manner, majority voting or other forms of direct citizen involvement do not guarantee that they will be effectively or fairly implemented after the new constitution is enacted.

The rationale behind the proposal that citizen involvement in constitution drafting may lead to a strengthening of constraints on the executive power is not apparent. One can think of many cases of constitution making against the background of a deep economic or political crisis, where people may be willing to support the strengthening of executive authority and the curtailment of rights.⁷ And, of course, even if there were circumstances under which citizens would demand increasing formal constraints on the executive, there is no reason to suppose that

⁷ In his analysis of recent participatory processes of constitutional change in Latin America, Roberto Gargarella argues that while citizen rights have been expanded, the powers of the executive have increased, in particular the power to stand for consecutive reelection. See Gargarella (2013).

these constraints would in fact be implemented after the constitution is approved. The few existing tests on this issue find no significant association between the use of referenda and other forms of direct citizen involvement in constitution making and the establishment of greater constraints on the executive (see Carey 2009, 172; Negretto 2017).

Finally, and crucially, the argument that citizen involvement during the drafting or approval of new constitutions will increase public awareness about existing rules and rights, facilitate the detection and sanction of transgressions, and thus prevent self-serving behavior by elected authorities, 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. Clearly, these divisions are not likely to disappear just because they participate during the writing of a new constitution. In addition, 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 work, Eisenstadt, LeVan and Maboudi (2016, 2017) have shown statistical support for the proposal that “bottom up” constitution making processes where citizens

genuinely and actively participate are more likely to improve levels of democratization after the adoption of the constitution than “top-down” ones, which are based on elite bargains and pacts. Although they use a relatively large database containing the coding of modalities of constitution making in 190 countries between 1974 and 2014, run various tests controlling for a host of potential confounding variables, and implement several robustness checks, their results are highly debatable. They interpret their quantitative analysis as a demonstration of the “systematic benefits of direct citizen involvement” during constitutional change and as providing “empirical support for emerging international norms of participatory democracy and for participatory models of democracy” (2017, 51-53). However, their analysis makes an indiscriminate use of the term “participation”, without distinguishing, either theoretically or empirically, between indirect, representative channels of citizen influence, and direct mechanisms of citizen input.

The ambiguity of this notion of public participation is visible in their coding rules. According to Eisenstadt *et al*, the convening stage (the most important process variable in their analysis) is coded as “popular” when there is “systematic civil society input or strong transparency or specially elected drafters freely and fairly elected” (Eisenstadt *et al* 2017, 30). Although it is not clear when civil society input is systematic or how strong transparency is measured, these indicators supposedly refer to instances of direct citizen involvement (public consultation processes, for instance) before decisions are made about the content of the new constitution. By contrast, measuring when a constituent assembly is elected in a free and fair electoral contest is relatively straightforward, yet it only implies that the constitution was crafted by representative elites, not that citizens had control over the process. Several constitutions enacted between 1974 and 2014, such as those of Sweden (1974), Finland (2000), Bulgaria (1991), and the Czech

Republic (1993) were drafted by constituent assemblies specially elected in free and fair elections 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.

There is no doubt that in several cases mass mobilization is crucial for promoting a democratic opening or for making possible reforms to a deficient democracy.⁸ It is also likely, particularly in the face of preceding events of mass action, that channels of direct citizen participation may make constitutional changes more legitimate in the eyes of the general public. Yet the drafting of constitutions has historically been (and still is) a predominantly elite affair. Representatives of political parties and leaders from the most important social groups have usually been 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 content constitutions would have. As argued earlier following classic works on democratization, it is likely that inclusive and plural constitutional negotiations among representative elites would lead to the adoption of institutions that strengthen institutional constraints over executive power and citizen rights.

When a plurality of representatives of organized political and social interests has participated in the constitutional agreement, the latter may not only create formal rules that attempt to constrain the power of incumbents but also provide a standard for the detection of constitutional transgressions and legal actions to react against them. Such an agreement may facilitate monitoring and sanctioning arbitrary government actions. It may also be the case that the more representatives of the main political interests in society are included during constitution writing,

⁸ On the role of mass mobilizations in transitions to democracy, see Collier (1999) and Haggard and Kaufman (2017).

the more actors are likely to have the incentives to keep the initial constitutional bargain.⁹ However, the actual enforcement of this bargain in case of transgressions requires that the plurality of political actors that had representation and influence during the constitution-making stage maintain a relatively balanced distribution of institutional, organizational, and political resources after the new constitution is enacted.

Constitutional pacts and the liberal institutions that derive from them are likely to be effectively implemented only as long as those who lose in electoral competition retain the capacity to block government decisions that might violate the initial compromise, or to organize mass actions against constitutional transgressions. This occurs when the dispersion of political forces that made a constitutional agreement possible remains relatively stable. In particular, those groups that were part of the negotiations and are unable to win majority positions under competitive elections should keep sufficient electoral support, institutional influence, and social roots. If one of the participants in the initial constitutional compromise 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 means, however, that most constitutional pacts are likely to be unstable in the long term.¹⁰ As democratic competition unfolds, some of political groups that participated in the original

⁹ Several authors have made the argument that a high level of inclusion in constitution making should facilitate the future enforcement of constitutions (see Voigt 2004; Elkins, Ginsburg, and Melton 2009). However, they use the concept of “inclusion” ambiguously, without distinguishing between inclusion at the elite and citizen level or analyzing the sequence and interaction between these dimensions.

¹⁰ Alberts, Warshaw, and Weingast (2010, 70, 85) argue that the 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 may work when the authoritarian elite is replaced and has no political groups able to represent their interests, as is the case with many cases of constitution making during and after democratic transitions. It is also absent from the analysis the general mechanisms that allow the reproduction of the initial balance of forces in the medium and long term.

constitutional compromise may experience sharp shifts in electoral and social support, decline in their institutional influence, or even disappear.

As regards the role of citizens, it is correct to think that for a liberal democracy to be maintained in a self-enforcing 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.¹¹ After the constitution is enacted, and particularly during its early years of life, it is generally opposition political leaders and their supporting groups who are more inclined to react when those in power renege on the initial constitutional compromise. For this reason, they need to maintain the institutional means to veto decisions that may affect their interests and the political means to mobilize public opinion or organize mass actions in defense of the constitution.

The preceding discussion suggests several hypotheses about the relationship between the modality of constitution making and liberal democracy. These hypotheses are centered on the importance of cooperative agreements among elites for the creation of liberal institutions, the compliance with or enforcement of those agreements over time, and the impact of direct forms of citizen participation during constitution writing. They can be summarized as follows:

H1. The liberal dimension of democracy is likely to improve when a new constitution is adopted by means of a cooperative agreement between representatives of a plurality of political forces.

¹¹ 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.

H2. The positive effects of a plural constitutional agreement are likely to be observed only during the first years after the establishment of a new constitution, when the balance of power among the actors that created it tends to remain stable.

H3. Direct citizen participation during the writing of a constitution is not likely to have a decisive impact, either negative or positive, on the levels of liberal democracy after its implementation.

Constitution making and democracy around the world, 1900-2015

Before exploring the preceding hypotheses empirically, we present a novel dataset, the *Comparative Constitution Making Database*, on which our analysis is based. The 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.

For the purpose of classifying the nature of constitutional change, a constitution is considered as “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 (see Negretto 2012, 2017b).¹² To determine whether a constitution was adopted in a democratic year or was in force under democracy for most of its lifetime, we relied on the minimal definition and coding of democracy of Boix, Miller, and

¹² Conceptually, this definition has a political and positive component that 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.

Rosato (2010). For each country, years are coded as democratic if the majority of the male population is enfranchised and the chief of government and members of the legislature were elected in free and fair elections. An election is free when voters are given multiple options on ballots and fair if electoral fraud is absent and incumbents do not abuse power to effectively eliminate the chance of opposition victory through peaceful contestation.¹³

Following these criteria, we gathered information on the origins of all new constitutions in the world adopted in democratic years between 1900 and 2015, or in force during democratic years for a longer period of time than under non-democratic years. Put differently, the database includes all constitutions enacted in an authoritarian or transition year but retained and implemented during democratic years for the largest part of their lives, in addition to all those enacted in a democratic year.¹⁴ The first type includes cases such as the 1980 Chilean constitution or the 1982 Turkish constitution, and the second cases such as the 1999 Swiss constitution or the 2010 Kenyan constitution. The only new constitutions excluded from the database are purely authoritarian constitutions, that is, those born and implemented mostly during authoritarian years. The total number of observations is 135, of which we have been able to code 131. Table 1 lists these cases by geographic location and conditions of enactment.

<Table 1 about here>

What features of constitution making are likely to capture the level of elite cooperation and direct citizen participation during the process? Characteristics like the existence of legal continuity (the replacement of the constitution following established legal procedures), the

¹³ Different from the dichotomous coding of democracy of Przeworski et al (2000), in this measurement electoral turnover is an important but not an essential indicator that an election is free and fair. See Boix, Miller, and Rosato (2010, 9).

¹⁴ Most but not all constitutions enacted in an authoritarian year and later implemented in democracy were part of a transition to democracy.

involvement of various independent institutions during the process, and most importantly, the existence of a politically plural body responsible for drafting the constitutional text help determine whether the adoption of the new text involved broad elite cooperation or not. These features signal that various political actors have a degree of control over constitution making and must provide each other with basic guarantees that their core interests and values will not be challenged, if they are to support the approval of the constitution. The level of citizen participation, in turn, depends on the number of instances of active and direct involvement by ordinary citizens in the formulation of reform proposals and in voting to approve or reject those proposals. Table 2 illustrates the presence of these features across the set of cases.

<Table 2 about here>

Legal continuity between the old and the new order makes the process more predictable and enables the courts to supervise compliance with the rules. It can be achieved in different ways (Negretto 2016, 2017). The existing constitution itself may provide a procedure through which it can be replaced, as in the making of the 1953 Danish, 1974 Swedish, 1999 Swiss, 2000 Finnish, and the 1952 and 1967 Uruguayan constitutions. But these are exceptional cases because most constitutions do not have a procedure for their own replacement. Another alternative is amendment of the existing amendment procedure to include the possibility of replacement, as was the case during the adoption of the 1918 Uruguayan constitution, the 2010 Kenyan constitution, or the 2009 Bolivian constitution. Finally, a provisional constitutional norm, such as an interim constitution, can be created to regulate the making of a new constitution, as was the case with the creation of the 1997 Polish constitution. In total, 44 of the episodes of constitution making included in the database (34%) preserved legal continuity.

Institutional checks allude to the intervention of various independent collective institutions in the activation and regulation of the process. This feature protects the interests of all participants in the process because it prevents any single state actor from proposing a change while also having direct influence in the drafting and approval of the new constitution. There are several ways in which checks of this type can be established. In some countries such as Denmark, Finland, and Sweden the existing legislature is allowed to activate the process but only a new legislature can approve the new constitution after an intervening election. The legislative assembly may also make the proposal in agreement with the executive and call a special convention to approve the reform, as was the case of Ecuador between 1997 and 1998. By contrast, institutional checks are absent when a unicameral legislature can propose and enact a new constitution without an intervening election, as in the making of the 2011 Hungarian constitution, or when the executive alone convenes a special constituent convention, regulates its election and procedures, and participates in the drafting of the new text, as during the creation of the 1999 Venezuelan constitution. Institutional checks were observed in 43 instances (33%) of constitution making.

The key feature that signals the presence of elite cooperation is whether a single force or a plurality of political forces was required to pass the constitution in the constitution-making body. The approval of the constitution should be considered 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 of at least two of these parties or groups was necessary according to the decision rule established for the enactment of the constitution. This indicator provides a factual, not formal measure of collaboration and compromise among different fractions of the political elite

during the drafting of the constitution. Looking only at formal electoral or decision-making rules can be deceiving. For instance, the approval of the 1997 constitution of Thailand required the cooperation of at least two parties in spite of the fact that its legislative assembly (which had the final power to approve) was elected by plurality rule and could make decisions by absolute majority. In total, a politically-plural constitution-making body existed in 71 processes included in our dataset (54%).

All these indicators of elite cooperation are significantly correlated among each other, suggesting that they are internally consistent and tapping into the same phenomenon.¹⁵ In 52 cases plural representation and decision making was observed along with at least one of the other features, and a total of 22 cases show the joint presence of the three indicators of elite cooperation. In this respect, cases like the adoption of Denmark's 1915 and 1953 constitutions, Finland's 2000 constitution, Sweden's 1974 constitution, Albania's 1998 constitution, Spain's 1978 constitution, South Africa's 1996 constitution, or Thailand's 2010 constitution are archetypical examples of elite cooperation in democratic constitution making.

An additional feature of democratic constitution making, which must be distinguished from representative channels, is the direct involvement of citizens in the process. Broadly speaking, citizens may participate in constitution making either through the election of representatives who will propose or decide on the content of revisions or by proposing or deciding those revisions themselves. However, the distinction between direct and indirect participation is crucial if one wants to analyze the political effects that the actions of representatives have in comparison to those of citizens themselves. As we have previously discussed, using terms such as "participation" or "inclusion" to refer indistinctly to representative channels or mechanisms

¹⁵ The highest correlation is between institutional checks and a plural constitution making body (.51, at $p < .0001$).

of direct citizen involvement has been source of confusion in the literature. 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.¹⁶To be precise, then, and to distinguish popular participation from elite representation, the former should be restricted to instances of direct citizen involvement, which can take place before or during the drafting process, in the form of public consultations and proposal submissions, or 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 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 in order to determine the content of the 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.¹⁷ In some instances, 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 the three forms of non-electoral citizen participation simultaneously present, which occurred, in fact, in only one case, such as the making of Albania's 1998 constitution.

¹⁶ A "citizen" assembly, where all or most of their members are randomly selected citizens, or an assembly whose members are elected on a non-partisan basis, will of course be made of representatives that 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).

¹⁷ We have not counted as public consultation cases in which constitutional drafts are made public without explicitly allowing the public to submit comments or proposals.

Citizen participation through voting takes place in popular referendums on constitutional reform proposals. Constitutional referendums can be implemented before or after the drafting process is completed. In the first case, voting is used to decide a particular matter before a new constitution is actually drafted, such as choosing between a monarchical or republican form of government, as was the case with 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 foreseen 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 we can see from Table 2, citizen participation through different forms of consultation or proposal submission took place in 46 cases (35%) and through voting in referendums in 49 (37%). Citizen consultation and voting are, however, less frequently used together. In only 19 of the 131 episodes of constitution making that we have coded in the database (14%) both forms of citizen involvement are observed. In fact, if we dichotomize any form of electoral and non-electoral form of citizen participation in constitution making, the correlation between them is positive but weak and not statistically significant. This suggests that electoral and non-electoral mechanisms of citizen participation are often seen in practice as different and not necessarily complementary forms of active citizen involvement in constitution making.

One final question is how elite cooperation and direct citizen participation relate to each other. As already argued, there is a 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 between the existence of a politically plural constitution-making body and the implementation of different forms of direct citizen

involvement, either jointly or separately. Moreover, there are several cases, such as Chile 1980, Turkey 1982, Ecuador 2008, France 1958, Hungary 2011, Ireland 1937, Sri Lanka 1972, Trinidad & Tobago 1976, or Venezuela 1999, where there was centralized control by the executive or a single political party over the constitution-making body while some form of citizen consultation or voting was used during the writing or approval of the new constitution.¹⁸

Estimating the effects of constitutional origins on liberal democracy

As argued in the first section of this paper, we hypothesize that the liberal dimension of democracy is most likely to improve when cooperation among representatives of a plurality of political forces is necessary to adopt a new constitution. We also propose that this effect should be larger during the early years of life of the new constitution, when the balance of power among the political forces that created the constitution tends to remain stable. Finally, we conjecture that direct citizen involvement in constitutional change does not have an effect on the liberal dimension of democracy. In what follows we present the main variables, our empirical strategy to test the hypotheses, and the main results.

The liberal dimension of democracy and executive constraints

In order to measure the implementation of liberal principles and the level of liberal democracy after the enactment of the new constitution, we rely on data from the *Varieties of Democracy* (V-DEM) project.¹⁹ Our main indicator for the existence of a democracy with operating constraints to unilateral or arbitrary government action is the liberal democracy index. This

¹⁸ On the potentially negative correlation between some features of representation and direct citizen participation, see also Mendez and Wheatley (2013: 36).

¹⁹ See Varieties of Democracy, Version 7 (October 2017), at <https://www.v-dem.net/en/reference/version-6-mar-2016/>.

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. This index takes values from 0 to 1, with higher scores reflecting the existence of institutional checks and balances and conditions for the effective exercise of civil and political liberties.

By construction, the liberal democracy index of V-DEM reflects the effectiveness of vertical as well as horizontal constraints on rulers. Whereas the former work through the selection of representatives through open, clean, and fair electoral contests, the latter operate by means of binding institutional limits to the power of incumbents. This makes sense because the electoral component is the foundation of any modern conception of democracy. However, 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 in the effectiveness of horizontal constraints. Because our theory is mostly concerned with the latter type of protections, we run additional tests that zoom in on horizontal constraints on the executive. For this purpose, we rely on two additional indexes from V-DEM that specifically measure the effectiveness of legislative and judicial constraints on the executive.

These indicators capture the extent to which the legislature is capable of questioning, investigating, and exercising oversight over the executive, and the extent to which the executive respects the constitution and complies with the rulings of an independent judiciary, respectively. An alternative index on executive constraints is provided by Polity IV (Marshall and Jaggers 2016). This index, which takes values from 1 to 7, captures institutional and political limits to the decision-making power of executives. It is less precise than the referred indexes from V-

DEM because it provides a single aggregate measure of legislative and judicial constraints and includes levels of accountability of the executive to external political groups, such as a political party. In the appendix, however, we show that our results are also robust to using the executive constraints measure from Polity IV.

Elite cooperation and direct citizen participation in constitution making

Following the discussion in Section II of this paper, we measure the impact of elite cooperation during constitutional change using a dummy variable that takes a value of 1 when the collaboration between two or more than two independent political parties or groups was necessary to approve the new constitution according to the decision rule, and 0 otherwise. 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. As already argued, plural approval is highly correlated with other indicators of cooperation among fractions of the political elite, such as legal continuity and institutional checks. Nevertheless, collaboration among a plurality of parties in the constitution making body should be preferred because it is a factual, not formal measure of the degree of elite cooperation.

Also following our discussion in Section II, 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 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 coded as 1 if citizens participated in popular

referendums either at the beginning, in authorizing the process or deciding on a particular issue, or at the end, to ratify the new constitutional text.

Given that our method of analysis will control for the preceding values of the dependent variable as well as for all time-invariant heterogeneity that might jointly affect the nature of constitution-making and the level of liberal democracy, such as ethnic fragmentation or geographic location, the variables we include to control for alternative explanations are all time-varying. Because the deepening of liberal democracy is likely to be explained by its success in the past, we include the age of democracy as a key control variable. In addition, since democratic success in a given country may very well be linked to its level of economic development, we also include GDP per capita.²⁰ Finally, because democracy may be more difficult to realize in large than in small countries, we include the population size of all the countries.²¹

Method

The main challenge in evaluating whether procedural and political features of the constitution-making process—like the existence of plural elite cooperation or direct citizen involvement—deepen liberal democracy is that unobserved factors that spur a constitution-making process (of a certain kind) may also drive patterns of liberal democracy after the enactment of the constitution. To deal with this fundamental inferential challenge, we adopt a difference-in-differences (DiD) design with time and unit fixed effects, which allows us to credibly isolate the *differential* impact of certain features of the constitution-making process on liberal

²⁰ Data on GDP per capita comes from the Maddison Project, available at <https://www.rug.nl/ggdc/historicaldevelopment/maddison/releases/maddison-project-database-2018>.

²¹ Population data was obtained from the World Bank and V-DEM databases.

democracy. We test whether liberal democracy improved differentially in plural constitution-making processes (treatment group) versus non-plural processes (control group), from the pre- to the post-constitution periods.

Our data and design represent a considerable improvement over existing work on the effects of constitution-making processes on democracy. As already argued, most studies are highly normative and case-based. To the extent that statistical tests have been conducted, they have relied on cross-sectional regressions, where reverse causation and other sources of endogeneity in the modality of constitution making are addressed using a lagged-dependent-variable approach. The level of democracy is averaged for some arbitrary number of years before the adoption of the constitution and introduced as a predictor into the models.²² While this is superior to wholly ignoring pre-treatment democracy levels, it fails to adequately account for the *trajectory* of the level of democracy leading into the constitution-making moment. If changes in regime characteristics and democracy levels occur before constitution making and such changes are correlated with the modality of the process (how plural or exclusionary), controlling for some constant, pre-process democracy level will still produce biased estimates. Our DiD approach is more dynamic and better accounts for potentially relevant observed and unobserved factors associated with the nature of constitution making, as it allows us to introduce a whole set of time and constitution-making process fixed effects.

We used the information provided in 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 this process ends. The process was

²² Eisensadt, LeVan, and Maboudi (2015) adopt an instrumental variable approach. However, their use of strikes as an instrument for a “bottom-up” or “popular” constitution-making process hardly satisfies the exclusion restriction. A large literature links labor mobilization to democratic outcomes through numerous paths other than the type of constitution-making (e.g. Collier 1999).

considered to begin with the election or appointment of a constitution-making body and end with the legal promulgation of the new constitution. Before presenting the estimation equation and different models, we start with a basic illustration of our approach.

Table 3 below captures the essence of our empirical strategy. This table shows a simple difference-in-differences in the average liberal democracy index ten years before the beginning of a constitution-making process and ten years after enactment of the new constitution, for cases with and without a politically-plural drafting body. It is worth noting that both types of cases enter the analysis with a very small and not statistically significant difference in the average level of liberal democracy in the period leading up to the adoption of new constitutional text.

<Table 3 about here>

As one can observe, the liberal democracy index tends to improve across both types of cases from the pre-constitution-making-process period to the post-constitution era. This is to be expected because most of the constitutions included in our database went into effect immediately before or few years after the inauguration of democracy. What is crucial for our purposes, however, is to note that cases where two or more distinct political forces were present in the constitution-making body and whose approval was required for the constitution to be adopted—our measure of elite cooperation—are associated with an *extra* increase of 0.164 points per year in the index of liberal democracy after the new constitution was adopted, on average.

We now examine these observed differences more formally, in order to address potential problems of selection and confounding factors. We implement steps to account for observed and unobserved factors that could correlate with the nature of the constitution-making process and simultaneously spawn different democratizing trajectories. The core objective is to test

whether liberal democracy changed *differentially* across constitution-making processes based on the latter's procedural and political features, while removing any confounding factors produced by different preexisting conditions across types of constitution-making, common time effects during processes of constitutional adoption, the world-historical conditions under which the constitution was adopted, or any permanent characteristics of each case. The basic estimation equation is given by:

$$liberal\ democracy_{it} = \gamma_i + \gamma_1 constitution_i + \gamma_2 period_t + \gamma_3 (constitution_i \times period_t) + \beta \mathbf{X}_{it} + \varepsilon_{it}$$

Where $liberal\ democracy_{it}$ is the liberal democracy index observed for a country with a constitution-making process i in year t ; γ_i is a fixed effect for each separate constitution-making process, which accounts for all time-invariant observed and unobserved characteristics of the specific process that could confound the relationship of interest (e.g. the country in which it occurs, the underlying level of ethnic and cultural diversity, geography, etcetera); $constitution_i$ is a binary variable equal to one if a plurality of political forces cooperated to draft and approve the constitution in a given process; 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 control variables that varies across specifications; and ε_{it} is the error term. Notice that our full set of time and unit fixed effects account for any permanent differences between instances of constitution-making and any impacts common to all instances that vary by year in the process. In some specifications, we further add a full set of decade dummies to neutralize any common impacts to constitution-making processes occurring in the same historical period.

The difference-in-differences estimate is given by γ_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 γ_3 should be positive and significant, with a larger effect during the early years after the enactment of the new constitution. We estimate the equation above via OLS and cluster the standard errors at the constitution-making process, i.e., the level of our identifying variation to adjust for serial correlation (Bertrand, Duflo, and Mullainathan 2004).

We therefore compare, for constitutional processes of different characteristics, the levels of liberal democracy in the aftermath of the adoption of the new constitution against the levels before the process started. Based on this comparison of trajectories, the change in trends between plural and non-plural cases after adoption is attributed to the fact of elite cooperation in the constitution-making body. The underlying (untestable) 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 of different political elites to approve the constitution (the unobserved counterfactual).²³

Results

Results for several model specifications based on the equation above are presented in Table 4. The liberal democracy index is here the dependent variable. In column 1, we report baseline results for a specification with the three main features of the constitution-making process that are of interest (elite cooperation, citizen consultation, and citizen voting), case-fixed effects, and a full set of dummy variables for each year in the time-window we consider (ten years

²³ This is the standard “parallel trend” assumption of DiD designs.

before the process and ten years after the constitution). The latter accounts for any time-specific effects in the process of replacing a constitution common to all constitution-making processes.

<Table 4 about here>

In column 2, we further account for possible time-related factors by adding a count variable for the age of democracy and a full set of decade dummies. These decade-fixed effects take into account the world-historical context in which the new constitution entered into force, which may be an important factor driving both the prospects for liberal democracy *and* the standards followed during the drafting and approval process.²⁴ Certain historical eras were more propitious for the consolidation of liberal regimes than others—consider, for instance, the contrast between the inter-world wars periods and the decade following the collapse of the Soviet Union. Changing historical trends in the conception of what counts as a democratic reform process have also affected some modalities of constitution making, such as direct citizen engagement in the process. For instance, popular voting in constitutional referendums has become an increasingly common practice since the 1950s (see Ginsburg, Blount, and Elkins 2008). Citizen involvement in consultations, in turn, is a much more recent phenomenon observed from the 1970s onward. The time-related variables we include starting in column 2 account for such kind of historical effects.

As in the first model, the coefficient on the interaction term between time and our “treatment” group—that is, cases where cooperation among a plurality of political forces was achieved during the adoption of the new constitution—remains substantial and precisely estimated, indicating that this is the only feature of constitutional origins that consistently matters to explain post-promulgation levels of liberal democracy. Neither constitutional

²⁴ Recall that our dataset includes constitution-making processes that took place at different time points since the beginning of the twentieth century.

referendums nor non-electoral forms of direct citizen participation during the process are systematically associated with an improvement in liberal democracy outcomes.

In columns 3 and 4, respectively, we further add population size and real GDP per capita as time-varying factors that might shape both constitution-making processes and levels of liberal democracy. Missing values in these variables cause the number of cases and observations to drop. Nevertheless, the ten-year average DiD estimate of plural constitution making in models 3 and 4 remains statistically significant at the 5% level, thus providing support for H1 about the impact of elite cooperation in constitution making on liberal democracy. Note, however, that the coefficients report the estimated average yearly effect of elite cooperation on liberal democracy 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 pair-wise 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 as in Table 4.

When we decompose the effects per year, we observe that, as expected by H2, in both models 3 and 4 elite cooperation in plural constitution making processes is clearly associated with an extra improvement in liberal democracy only during the first years following the enactment of the constitution. Specifically, the difference relative to non-plural cases is statistically significant at the 5% level up until the seventh year following the enactment of the new constitution for model 3, and up until the fifth year for the specification in model 4. In the latter case, the impact of the treatment during the sixth and seventh years is significant at the 10% level. In both specifications, the effect becomes undistinguishable from 0 at standard

levels of significance from the eighth year onward. We illustrate these temporal effects in Figures 1 and 2.

<Figures 1 and 2 about here>

Figure 1 presents yearly estimates of the *extra* increase in liberal democracy observed in cases of elite cooperation, relative to the improvement observed in cases where elite cooperation did not take place. This figure is based on a fully-specified model equivalent to the one shown in column 3 of Table 4, except that we estimate separate coefficients of our elite cooperation variable for each year after the enactment of the new constitution. The plot shows point estimates with 95% confidence intervals. Each represents the *extra* improvement in liberal democracy attributable to the adoption of the constitution by more than a single political force (i.e., the difference in the differences). Figure 2 does the same for model 4.

As in the two basic models and as expected by H3, models 3 and 4 show that direct citizen participation in constitution making, either through electoral or non-electoral mechanisms, does not have a significant effect on liberal democracy. This finding does not suggest that direct public participation in constitution making is without political significance and it certainly does not support the widely held idea that constitutional referendums should be avoided as a sort of degraded, plebiscitarian form of citizen involvement in important political decisions. Comparing political conditions before and after the adoption of a new constitutional text, cases such as the adoption of Colombia's 1991 constitution show that cooperation among fractions of the political elite and citizen involvement in both consultation and popular referenda during the process can be a fruitful combination for the strengthening of liberal democracy. Other cases, such as Brazil's 1988 constitution or South Africa's 1996 constitution illustrate the benefits of mixing elite cooperation with popular consultation channels. Even pure voting in

referendums may enhance liberal democracy if it follows an inclusive elite agreement, such as the adoption of Italy's 1948 constitution with the support of Christian Democrats, Communists, and Socialists. What the preceding analysis clearly indicates, however, is that no form of direct citizen participation is likely, by itself, to improve levels of liberal democracy after the new constitution is in force.

In Table 5 we reproduce the previous analysis but using specific measures of effective legislative and judicial constraints on the executive as dependent variables. This allows us to test more precisely whether the improvements in liberal democracy associated with plural constitution-making are indeed rooted in the implementation of binding horizontal limitations on the chief executive, as implied by our theory.

<Table 5 about here>

As expected, the DiD estimates show that elite cooperation in a plural constitution-making process is positively and significantly associated with more effective legislative, judicial, and constitutional constraints on executive power. As in the case of liberal democracy more generally, direct popular participation at the constitution-making stage, whether in voting or nonvoting processes, has no effect (either positive or negative), on how effective institutional constraints on the power of the executive are.

Conclusions

Seminal works in comparative democratization have stressed the critical role of elite accommodation during constitution writing for the inauguration and consolidation of democracy. A long tradition in constitutional theory has emphasized the democratizing potential of participatory constitution making. Neither perspective, however, has been

systematically analyzed in theoretical and empirical terms. We have proposed that cooperation among a plurality of political representatives at the constitution-making stage is likely to improve the liberal dimension of democracy and that this effect should be stronger during the early years after the enactment of the new constitution. Direct citizen participation in constitution writing, in turn, was not expected to have a decisive impact on democratization. Analyzing the effects of direct citizen participation and elite cooperation during constitution making among all the cases of constitutions adopted or in force during democratic years between 1900 and 2015, this paper has shown statistical evidence that is consistent with these hypotheses.

The arguments and findings of this paper do not contradict the widely cherished idea that citizen participation is an essential principle of democratic constitution making or that it may be politically convenient when constitutional change is a response to popular demands. Yet they provide reasons to be sceptical about the democratizing effects of direct citizen involvement in constitution making, in isolation from the actions and decisions of political representatives at the elite level. Inclusive constitutional agreements among representative elites and the fragmentation of partisan power that makes them possible are likely to be a necessary condition to make possible not only the formal creation of constraints on executive power and strong citizen rights but also facilitate their effective implementation.

The democratizing effects of inclusive constitutional agreements at the elite level made in a context of distributive, ideological, or ethnic polarization, are likely to be short-lived and last only as long as the balance of forces that prevailed at the constitution-making stage remains stable. This leads to the question of under what conditions elite agreements are genuinely consensual and produce a change in actual behaviour so that regular compliance with the

constitution becomes relatively immune to short-term shifts in the distribution of political power. The answer probably goes beyond the events that surround the relatively short period in which a constitution is drafted and lies in whether precedent transformations in the economy and in society induce the main political actors to prefer cooperation over confrontation in the long run.

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 constitutional experts, political theorists, and international agencies engaged in assisting constitution-building processes across the world should continue promoting it for important political reforms. This advocacy of public participation, however, should not lose sight of the fact the quality and impact of active citizen involvement would ultimately depend on the nature and extent of cooperation achieved among representative elites

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

REGION	CONSTITUTIONS (1)	AUTHORITARIAN (2)	DEMOCRATIC (3)
WESTERN EUROPE	22	0	22
EASTERN EUROPE	22	0	22
AFRICA	26	9	17
ASIA	15	3	12
MIDDLE EAST	3	1	2
LATIN AMERICA	34	18	16
CARIBBEAN	7	1	6
OCEANIA	2	0	2
TOTAL	131	32	99

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 in democratic years

Table 2
Features of Constitution Making, 1900–2015

REGION	LEGAL CONTINUITY	INSTITUTIONAL CHECKS	PLURAL REPRESENTATION	NON-ELECTORAL PARTICIPATION	REFERENDUM PARTICIPATION
WESTERN EUROPE	10	14	17	1	10
EASTERN EUROPE	10	8	17	7	9
AFRICA	4	9	13	14	13
ASIA	7	2	6	9	1
MIDDLE EAST	1	0	1	2	2
LATIN AMERICA	9	9	13	9	13
CARIBBEAN	3	1	2	3	0
OCEANIA	0	0	2	1	1
TOTAL	44 (0.34)	43 (0.33)	71 (0.54)	46 (0.35)	49 (0.37)

Source: Authors, *Comparative Constitution Making Database*

Table 3

Average liberal democracy index, t-10 before process begins and t+10 years after enactment of new constitution

	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)	0.164*** (0.017)

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

Table 4
DiD estimates of the effect of constitution-making on liberal democracy, 1900-2017

	DV: liberal democracy index			
	(1)	(2)	(3)	(4)
Plural process × after constitution	0.17*** (0.041)	0.113** (0.039)	0.098* (0.038)	0.084* (0.038)
Citizen consultation × after constitution	0.015 (0.044)	-0.044 (0.041)	-0.027 (0.041)	-0.062 (0.041)
Citizen voting × after constitution	-0.054 (0.044)	-0.038 (0.041)	-0.04 (0.04)	-0.043 (0.04)
After constitution	0.164*** (0.033)	0.11** (0.034)	0.181*** (0.046)	0.185*** (0.046)
Age of democracy		0.009*** (0.002)	0.009*** (0.002)	0.009*** (0.002)
Total population (log)			-0.209* (0.089)	-0.167* (0.083)
GDP per capita (log)				0.031 (0.043)
Constant	0.203*** (0.012)	0.269** (0.098)	3.536* (1.413)	2.638* (1.333)
Decade fixed effects	No	Yes	Yes	Yes
Year-fixed effects	Yes	Yes	Yes	Yes
Case-fixed effects	Yes	Yes	Yes	Yes
Cases (const-making processes)	128	128	128	122
N (case-years)	2,313	2,313	2,276	2,094
R ²	0.7	0.77	0.78	0.79

Parenteses contain standard errors adjusted for clustering at the constitution-making process level.

* p<0.05, ** p<0.01, *** p<0.001

Figure 1
Model 3. Effects per year, 95% confidence intervals

Estimated effect of plural constitution-making body on liberal democracy index. DiD estimates

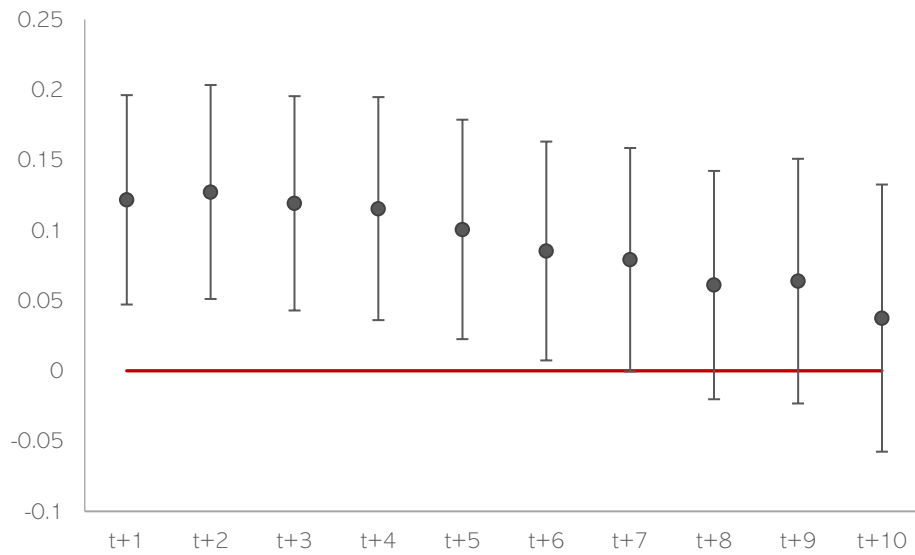


Figure 2
Model 4. Effects per year, 95% confidence intervals

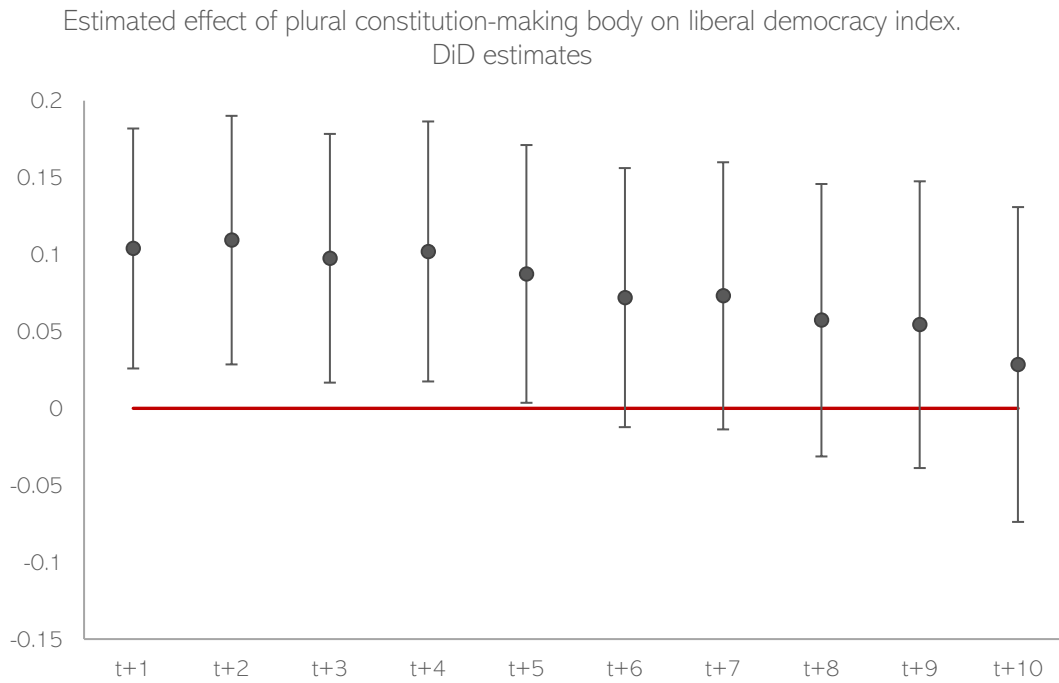


Table 5
DiD estimates of the effect of constitution-making on executive constraints, 1900-2017

	DV: Legislative constraints		DV: Judicial constraints	
	(1)	(2)	(3)	(4)
Plural process x after constitution	0.173** (0.06)	0.116* (0.051)	0.17*** (0.045)	0.079* (0.040)
Citizen consultation x after constitution	0.025 (0.064)	-0.101 (0.061)	0.076 (0.049)	-0.016 (0.045)
Citizen voting x after constitution	-0.047 (0.061)	-0.034 (0.054)	-0.056 (0.048)	-0.065 (0.041)
After constitution	0.209*** (0.051)	0.207*** (0.056)	0.088* (0.039)	0.128* (0.055)
Age of democracy		0.007*** (0.002)		0.007*** (0.001)
Population (log)		-0.122 (0.102)		-0.182 (0.097)
GDP per capita (log)		-0.033 (0.062)		0.028 (0.042)
Constant	0.377*** (0.020)	2.905 (1.505)	0.484*** (0.015)	3.367* (1.537)
Decade fixed effects	NO	YES	NO	YES
Year fixed effects	YES	YES	YES	YES
Case fixed effects	YES	YES	YES	YES
Cases (const-making processes)	128	122	128	122
N (case-years)	2,015	1,824	2,314	2,095
R ²	0.69	0.78	0.7	0.79

Parentheses contain standard errors adjusted for clustering at the constitution-making process level.

* p<0.05, ** p<0.01, *** p<0.001

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Appendix

Table A1. DiD estimates of the effect of constitution-making on executive constraints (Polity IV), 1900-2017

	DV: Executive constraints (Polity IV)
Plural x after constitution	1.461*** (0.436)
Citizen consultation x after constitution	0.324 (0.427)
Citizen voting x after constitution	-0.338 (0.442)
After constitution	1.13** (0.419)
Constant	3.383*** (0.179)
Year fixed effects	YES
Case fixed effects	YES
Cases (const-making processes)	127
N (case-years)	2,045
R2	0.60

Parentheses contain standard errors adjusted for clustering at the constitution-making process level.

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