When Talk Trumps Text:

How Participatory Deliberation on New Constitutions Advances Democratization

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Abstract: We explore how the level of citizen participation in making new constitutions impacts subsequent levels of democracy. Using data covering all 132 new constitutions in 118 countries between 1974 and 2011, we show that while democracy levels did increase in 62 countries following the promulgation of a new constitution, they decreased or stayed the same in 70 others. We explain this divergence through empirical tests showing that increased participation positively impacts levels of post-promulgation democracy. However, after disaggregating constitution making into three stages (drafting, debate, and ratification), we find compelling evidence through robust statistical tests that the degree of citizen participation in the drafting stage has a much greater impact on the resulting regime. This leads to the conclusion that constitutional reformers should focus more on generating public "buy in" at the front end of the constitution-making process, rather than concentrating on ratification, pleibiscites, and referenda at the "back end."

Over the last four decades, at least 118 countries adopted new constitutions, often accompanied by popular expectations that political and civil rights would improve. Constitutions have actually had inconsistent effects on democratization though, which raises doubts about their function as founding documents that remolding social contracts. Out of the 132 new constitutions adopted in these countries between 1974 and 2011, the level of democracy increased in 62 countries but it actually decreased or stayed the same in 70 others. Even among the 65 countries following a democratic trajectory over this period, with Freedom House documenting improvements in their scores as "partly free" or scoring them as "free," the empirical record is mixed: following the promulgation of new constitutions, political rights improved in 27 cases, stayed constant in 21, and actually declined in 17.

What explains the inconsistent effects of constitutional change on democracy? Third Wave transitions in Latin America, Africa and Eurasia generated presumptions about the positive effects of constitutions on broader political conditions. Constitutions dominated these discussions about how the rules of the game affect democratic stability or breakdown (Hale 2011, 581). Such emphases have also emerged as a major theme in comparative authoritarian research (Art 2012), as well as the literature on informal institutions (Azari and Smith 2012). Largely missing from analyses of authoritarian retrenchment, institutional failure, and the social basis of informal institutions is an important characteristic of constitution-making that offers clear conceptual grounds for comparison: the role of ordinary citizens. Despite "very strong recommendations for extensive popular participation," in constitution-making, Horowitz recently asserted "there is not even a scintilla of evidence that it improves the durability or the democratic content of constitutions" (Diamond et al. 2014, 100).

In this article, we offer that "scintilla." We demonstrate how the level of participation in the constitution-making process systematically explains the observed disjuncture between constitutional change and democratization since 1974. Using an original variable to measure participation, our cross-national time-series analysis offers strong statistical evidence that constitutions crafted with meaningful and transparent public involvement are more likely to contribute to democratization. However, after disaggregating the constitution-making process into three stages, our tests show that the degree of citizen participation during drafting has much more important consequences for democratization than the subsequent "debate" and "ratification" stages. This surprising finding is important because democracy promotion since the 1990s has focused on the latter stages (ratification and implementation of constitutions, rather than the preliminary moments when they are first drafted), and a citizens' right to participate in crafting the rules that will bind them – but at the later stages rather than the earlier ones - has emerged as a norm of transition politics. Referenda in particular constitute the *sine qua non* for constitutional ratification, but we suggest they offer more symbol than substance by embracing a democratic model that is more delegative than participatory. Since citizen participation at the earliest stages of the process appears to offer the best guarantee of post-promulgation democracy, we conclude that "buy in" at the front end needs to compliment legitimation at the "back end." After seven consecutive years of a global decline in freedom, this is an important lesson for political reformers who seek political insurance against illiberal reversals and authoritarian backsliding.

We proceed first with a brief discussion of several intersecting literatures that inform our understanding of the consequences of constitutional change. Democratization research advanced plausible theories about the benefits of participatory constitution-making, but they have not been subject to rigorous cross-national testing. Comparative constitutionalism, for its part, has focused

on constitutional endurance, compliance or content, and generally arrived at conflicting conclusions about the effects of constitutional change on democracy.

Second, we outline how and why the modalities of making a constitution should theoretically have a lasting impact on democracy. A brief discussion about what constitutes constitutional change draws on classic philosophical debates, informs the subsequent task of operationalizing change, and also identifies the right to participate as an emerging global norm. If norms of participation are empirically justified by recent constitution-making experiences, then this speaks to democratic theory more broadly by offering evidence that deliberation (Pateman 2012, 1970) better ensures democratic rights than Burkean notions of trusteeship or delegative democracy. Drawing on these insights, we then formulate two hypotheses about the effects of participation during constitution-making: a "participation" hypothesis posits that high levels of participation throughout the process will positively impact democracy, while a "deliberative" hypothesis predicts that citizen involvement in the early stages has a larger impact on democratic outcomes.

Third, we describe extant data sets, our data collection strategy, and the research design for testing the impact of participatory constitution-making on democracy. We detail the construction and coding of our *process* variable for measuring the level of participation, including the rationale for breaking constitution-making down into three broad stages. We identify factors such as colonial legacy, level of economic development, ethnic diversity, world region, and post-conflict environment that could interfere with the predicted relationships and adopt standard proxies to control for those conditions.

Fourth, we test for the effects of participatory constitution-making on democracy, as measured by the Freedom House and Polity IV scores that include three years after constitutional

promulgation. In the first stage, tests of the *process* variable confirm the participation hypothesis and withstand robustness checks. A further probe for potential endogeneity validates our claim that *process* is indeed distinctly measuring participatory constitution-making. Next, we test the deliberative hypothesis using the three stages of constitution-making as separate independent variables. We then introduce controls for the content of constitutions in order to test the notion, following aMadisonian logic, that the consequences of constitutions are contingent on the text itself. Both sets of tests support the deliberative hypothesis.

We conclude that the results offer an important corrective to the democratization literature since the modality of constitution-making matters. By conducting one of the first large-scale empirical analyses of participatory constitution making, we show that transparent, meaningful input during "constitutional moments" generates vital path dependent benefits for "back end" democracy. Limitations on such participation at these early moments of constitutional drafting amount to an "original sin" that is statistically shown to be difficult to overcome through subsequent citizen participation, even in the very next phase (deliberation by a constitutional assembly or legislative body). In other words, there is no offset possible for participation forgone early in the process. Further, by specifying that citizen participation during drafting is the most important, we raise doubts about the lasting benefits of referenda—the hallmark of the ratification stage during the Third Wave and a preferred device for democracy promoters. Thus while policy makers have been wise to push Burke aside, voting via referenda and Madisonian faith in constitutional text provide poor substitutes for democratic deliberation, and inadequate insurance against authoritarian retrenchment.

LITERATURE REVIEW

How do citizen participation and the modalities of citizen input impact nations' levels of democracy? To date, comparative constitutionalism and several significant, related literatures have addressed this fundamental question indirectly, incompletely, or through case studies that offer little basis for generalization. The limited treatment by the democratization research is even more surprising, given the boom in transition studies in the 1990s. At the time, constitutional change and democratization were often mistakenly conflated, when in fact constitutional replacement occurred within a year of only 19 percent of transitions to democracy and in 27 percent of transitions to authoritarianism (Elkins et al. 2009, 59). Various studies developed sound theoretical propositions regarding the broader political impact of participatory constitution-making, but as democratization research shifted, these ideas were not fully tested. This literature review discusses these issues and research on constitutional endurance, content and compliance, to inform how we might expect modalities of constitutional change to impact democracy.

In the most rigorous and systematic exploration of the political effects of new constitutions, an ongoing project by Elkins, Ginsberg, and Melton focuses on the question constitutional survival. Their study, testing 935 cases spanning two centuries, concludes that more participatory processes enable the integration of new social forces conducive to constitutional survival because they "can promote a unifying identity and invite participants to invest in the bargain" (Elkins et al. 2009, 211). A related study reports that inclusive drafting increases the likelihood of constitutional endurance, and is associated with constitutional rights and democratic institutions such as universal suffrage, the secret ballot, and a guaranteed role for

public input into amending constitutions (Ginsburg 2012, 54-7). These are important findings regarding endurance and content, but they leave unanswered important questions about the impact of processes on levels of democracy and the *de facto* protection of rights – as opposed to the *de jure* protections mentioned in the text itself.

Widner's data-rich research advances our ability to measure participatory constitution-making, but like Elkins et al., it lacks a direct test of participation on level of democracy. Her "Constitution Writing and Conflict Resolution" data set covers 195 constitutions between 1975 and 2002. It measures levels of participation and representation in constitution drafting by coding five process characteristics: the type of deliberative body, the method of selecting delegates to that body, the method of choosing delegates who draft initial texts, the level of public consultation, and the existence of a public referendum (Widner 2004). Each of these five variables is coded in relation to participation and representativeness. Her results show that public consultation does not correlate with improved political rights protection (Widner 2008). This finding conflicts with an influential analysis of twelve countries by the International Institute for Democracy and Electoral Assistance (Samuels 2006), as well as eighteen case studies constitutional change in transitional states (Miller and Aucoin 2010). However, neither study systematically examines democratization or political rights as a dependent variable.

One study that does conduct direct statistical tests of constitution-making on democracy is Carey (2009). He finds that more "inclusive" constitutional drafting increases the level of democracy over the subsequent three years, as measured using Polity IV data on democracy and executive constraints. To operationalize the inclusiveness of "constitutional moments," he uses variables counting the number of veto players in a constitutional process and indicating whether citizens ratified the constitution via referendum. However he concedes that his bivariate analysis

based on a limited number of cases is bound by data constraints, including the use of proportional representation as a proxy for the inclusiveness of institutional actors. These limitations deter him from testing his hypothesis using standard statistical models that would provide a stronger basis for inference and making broader generalizations (Carey 2009). In sum, to our knowledge, no large-scale study tackles the relationship between constitution-making processes and democratization using robust cross-national quantitative analysis.

The dearth of empirical studies on this relationship is also surprising because numerous theories of democratization expect participatory politics to have important benefits. Lindberg et al. (2009) argue that elections improve levels of democracy over time as the civic ritual of voting is repeated: going to the ballot box places expectations on politicians and educates citizens on a practical level and, therefore, becomes a means of developing democratic political culture. Hyden argues that constitution-making is even more important than elections as an agent of cultural change: it leaves a deeper imprint on the polity as it is more empowering than elections. Founding documents allow citizens to consciously and collectively consider what democracy is all about, giving them a say at critical historical junctures. He predicted that broad-based and participatory processes would give African countries "better prospects of succeeding with their regime transition than countries where such an exercise has not been carried out" (Hyden 2001, 216). Another recent study argues that participatory constitution-writing helps nations avoid violent conflict and build democracy, concluding "it is this participatory inclusiveness that fosters legitimacy among a state's populace and, ultimately, constructs democracy" (Wing 2008, 2). Though they do not test for it, Elkins et al. similarly observe that, "sometimes, we suspect, the process of re-writing higher law can be therapeutic and empowering for citizens and leaders" (Elkins et al. 2009, 209). Finally, many scholars argue that a legal norm guaranteeing a right to

participation in international law has emerged (Fox 2000; Miller and Aucoin 2010), and yet we still have a weak empirical basis for whether this is justified.

In sum, after two decades of democratization, the broad effects of constitutional change on democracy remains a surprisingly open field of research, and clear theoretical expectations about the benefit of participatory constitution-making remain underspecified and untested.

MODALITIES OF CONSTITUTIONAL CHANGE AND THEIR CONSEQUENCES

We take a view of constitutionalism grounded in civil society, invoking ideas about popular pressure (Bunce and Wolchik 2011; Bratton and Van de Walle 1997) in order to appreciate constitution-making as social re-contracting during rare "sovereign" moments. By arguing that civil society precedes the state, Locke and Tocqueville took the social contract as the pre-constituting of government. Law comes from somewhere, and its cosmopolitan, comparative, and civil society sources today are an important part of analyzing the effects of constitutional change. This view differs from some comparative constitutionalists who distance themselves from social contract theory by taking the law as a necessary prior for political pluralism (Hatchard et al. 2004; Levitt 2012). This can lead to a rather orthodox institutionalist perspective that leaves a constitutional text to "speak for itself," blaming weak compliance on stochastic factors such as quality of leadership, and significantly understating the possibilities for stable – but illegitimate – institutions. However, a better understanding of the procedural aspects of constitutional change would complement this largely substantive or textual view of constitutions.

A classic representation of the social context of constitutional change is the debate between Madison and Jefferson over whether the "living generation" is bound by the rules of its

predecessors. For them, the issue was literal: should the ideas of the American Revolution necessarily survive the death of those who articulated and codified them into a new constitution? As in classical Greece, a conservative streak permeated 18th century thinking about democracy, and too much change at the hands of popular passions was deemed dangerous. Scholars like Holmes side with Jefferson and those who defend the right of the living generation to re-write the rules (Holmes 1988). For us, Holmes' position is important because it claims that constitutions can serve as an agents of change (or democratization), a transformative political process that entails expressions of consent. Constitutionalists from the developing world often defend popular sovereignty as a basis for change (Mutunga 2001). How has direct participation in constitution-making actually shaped democratization though? And are the peoples' passions to blame for authoritarian retrenchment?

Participation and Deliberation Hypotheses

To address these issues, we formulate two broad hypotheses about the effects of participation in constitution-making. First, a "**participation**" hypothesis posits that high levels of participation throughout the process will positively impact democracy. Should tests reveal no significant correlation between participatory constitution-making and post-promulgation political rights, this would confirm skepticism about the inherent long term benefits of such processes. Madison for example worried that such broad participation might lead to tyranny of the majority, which he therefore sought to limit through checks and balances and the formation of competing factions. For our purposes, this would suggest that the content of constitutions – rather than the modalities by which they are crafted – matters. If popular participation has adverse effects on democracy,

this would defend elitist notions of governance through trusteeship. Edmund Burke's "true principles of government" asserted that government is not made from natural rights. He argued that liberty requires surrender to the state, and only a power above the people can subdue their "passions" and wield experience for their benefit (Burke 1999). Either outcome would establish general patterns about how participatory processes need to be sacrificed for the sake of future democratic generations, or perhaps show how they serve as legitimation for illiberal regimes.

Confirmation of this hypothesis would support the democratization literature's broad contention that constitution-making prevents authoritarianism backsliding when it entails a plural national dialogue including major social groups who possess the tools to successfully assert their preferences. This would support Pateman's (1970) concept of "participatory" democracy as a necessary means of extending representation and remedying the defects of interest group pluralism. Such ideas have motivated practical democratic innovations, such as Brazil's Porto Alegre experiment in participatory budgeting that integrated the poor and redistributed resources (Pateman 2012). "The direct incorporation of citizens into complex policy-making processes is the most significant innovation of the third wave," claims Wampler (2012, 667).

Second, a "**deliberation"** hypothesis builds on deliberative democracy's core principles, that both voting and discussion are necessary for democratic life, and that citizens' effective interest articulation benefits from the modern structure of civil society (Held 1996). Pateman identifies deliberative democracy's central claim as the idea that "individuals should always be prepared to defend their moral and political arguments with reasons, and be prepared to deliberate with others" (Pateman 2012, 8). This begins from the direct democracy inherent in participatory democracy and extends Habermas's ideas of "communicative action," by which rational citizens deepen democracy by generating intersubjective meaning (Habermas 1984).

Confirmation of this hypothesis would validate claims by Hyden, Dahl (2002) and others about the benefits of direct participation in crafting constitutions. If there is more to public participation than voting on a constitution, this would also raise questions about referenda as a mechanism for ratification. As studies of referenda note, voters are easily misled, elites easily dominate popular initiatives with money, and information asymmetries create barriers for citizen input (Catt 1999). The deliberative hypothesis therefore predicts that citizen involvement in the early stages of constitution-making has a larger impact on democratic outcomes than ratification.

DESIGNING A CONSTITUTIONALISM AND DEMOCRACY DATABASE

To generate our independent variable and include relevant controls, we constructed a "Constitutionalism and Democracy Database" (CDD) covering 190 countries between 1974 and 2011. The CDD builds on three extant data sets by Elkins et al. on the survival and legal scope of constitutions from the beginning of the 20th Century, by Widner on the political processes yielding new constitutions and constitutional reforms since the 1970s, and by Hartlyn, which evaluates the evolving autonomy of Latin American governments from chief executives since the 19th Century. In this section we describe different approaches for measuring constitutional change. We justify our operational criteria, describe the procedure for researching and coding the *process* variable to measure the level of participation at each of the three stages of the constitution-making process, and provide descriptive statistics.

What Counts as Constitutional Change?

Deciding what constitutes a new constitution is not entirely straightforward. For example, Zambia's shift from one party rule to multi-party competition in 1991, President Paul Biya's successful modification of Cameroon's constitution in 2008 to allow himself another term, or Peruvian President Alberto Fujimori's *autogolpe* in 1992, all present practical challenges for defining constitutional change.

One approach relating to the parchment changes – and their political manifestations – we seek to understand, is to literally focus on the content of constitutional changes themselves. These reforms have broad impacts on political space and the structure of competition, even if they do not provoke wholesale rewriting of constitutions. Widner codes these cases as "regime-changing amendments," due to the significant impact the changes had on civil and political liberties, ethnic or regional autonomy, or property rights. This approach is similar to Banks and Wilson (2005), who identify the number of basic alterations in a state's constitutional structure, with the extreme case being the adoption of a new constitution that significantly alters the prerogatives of the various branches of government. Examples of the latter might be the substitution of presidential for parliamentary government or the replacement of monarchical by republican rule. Constitutional amendments which do not have significant impact on the political system are not counted. Cheibub et al. (2011) present a third approach. They consider whether reforms tilted the executive-legislative balance of power toward presidents. For them, the key issue in operationalization is whether constitutional change took place outside of the procedure specified in the existing constitution. This builds on Elkins *et al.*'s operational definition, specifying that constitutional change adhering to existing amending procedures is coded as an

amendment. They then combine this with extensive content analysis, reporting that replacements match their predecessors in 81 percent of the topics (Elkins et al. 2009, 55-9).[1]

To reduce subjectivity in classification, the CDD applies a narrow definition of change that only counts constitutions resulting from explicit promulgations. We identify these discrete political moments from the above datasets, the current edition of *Countries of the World and their Leaders Yearbook* (Ellicott 2011), and when necessary, the promulgation date mentioned in the constitutional text itself. This is meant to minimize the risks of biasing stability through definitions of change based on disequilibrium, while distinguishing between incremental (or overlapping) institutional change and the more significant historical junctures that cumulatively result.

Applying these criteria between 1974 and 2011 the CDD identified 118 countries that implemented at least one new constitution[2] and approximately 72 countries that did not implement a new constitution at all. We start the data set in 1974 in order to include the entire Third Wave (38 years in our data set), as it encompasses the transitions in the era of modern rights and constitutionalism, and because most needed data is available for this period (but not earlier).

Operationalizing Citizen Participation in Constitution-Making

Widner (2004) presents one sensible approach to operationalizing citizen participation. She measures the level of participation and representation in constitution drafting by coding five

[1] The Widner dataset also includes data on content though little analysis with it has been published.

[2] Insufficient information was available on another three cases, and at least three countries implemented new constitutions fewer than three years ago. The CDD also does not include nations of fewer than 500,000 people.

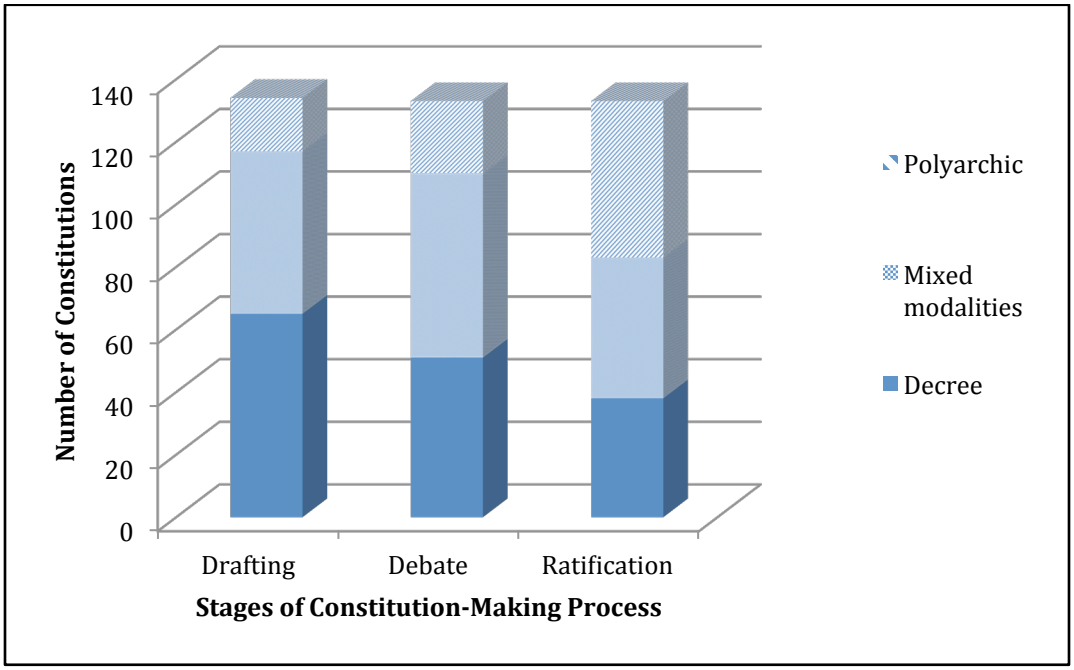
process characteristics: the type of deliberative body, the method of selecting delegates to that body, the method of choosing delegates who draft initial texts, the level of public consultation, and the existence of a public referendum. Each of these five variables is coded in relation to participation and representativeness. Unfortunately this ambitious study – which included batteries of dozens of research questions for each variable – could not gather this information for a comprehensive set of cases. Carey (2009) takes a second approach to measuring inclusiveness of "constitutional moments," using one variable counting veto players and another indicating whether citizens voted on the constitution via referendum. Because existing data on veto players exclude significant portions of the developing world though,[3] this would eliminate far too many countries that adopted new constitutions from the sample. Elkins et al.'s strategy represents a third option. They focus on inclusiveness, using two proxies: a variable for whether constitutions were drafted during foreign occupations, and another for whether a country was democratizing at the time. They break the constitution-making process into stages of writing, deliberation, and approval, and then reduce the deliberation stage to whether an elected body publicly debated the draft, and whether a public referendum approved the document (Elkins et al. 2009, 97-9).

We share Elkins et al.'s broad outlines for the stages of constitution-making, describing them as drafting, debating, and ratification. However our *process* variable is meant to directly measure the level of participation, rather than relying on proxies and instrumental variables. In addition, since level of democracy is our dependent variable, using their proxy variable would generate obvious autocorrelation. We also appreciate Carey's and Widner's rationales for conceptually distinguishing between participation and inclusion. We understand inclusion in terms of a range of distinct interests necessary to legitimate the exercise of aggregate political authority (LeVan 2011). In this regard, our *process* variable neither attempts to separately

[3] See Konig, Tsebelis, and Debus (2010).

estimate the level of inclusion, nor to capture participation intensity (riots versus candlelight vigils). Instead, we consider the breadth of participation and public signals of exclusion, and explained in the coding below. The resulting distribution is displayed in Figure 1.

Figure 1: Process Variable



After identifying all constitutions formally promulgated since 1974, researchers gathered information about the level and modalities of citizen input or elite discretion during drafting, debating, and ratification.[4] A separate group of researchers then used this data to construct the *process* variable by coding each stage of constitution-making with one of three ordered values:

[4] Sources consulted, in order, include: Ellicott (2011), Hein Online (2012), Widner (2004),Institute for Democracy and Electoral Assistance's ConstitutionNet.org (accessed August 2013), Economist Intelligence Unit country reports, and the CIA *World Fact Book*. Cases such as The Gambia, Switzerland, and Afghanistan required additional research from peer reviewed area studies journals.

"Decreed" indicates elite control of a non-transparent process through a strong executive, a committee appointed by the executive with no meaningful external consultation, or a party acting as a central committee. China's 1978 and 1982 constitutions, as well as Lesotho (1993) and Nicaragua (1974) fall into this category. The Dominican Republic's 2010 constitution presents a less straightforward example since the ruling party drafted the constitution and the parliament approved it. However, this case too qualifies as decreed as there were no meaningful opportunities for public input, even during ratification. "Mixed modalities" captures cases with overlap or tension between elite and bottom-up influence, but we sought to avoid generating a residual category. This includes constitutions such as Burundi (2005) and Peru (1993), where an elected body played a role in the process but elites exercised undue control over their selection. Debate was at least partially public but there were no readily identifiable divergences from elite preferences. If a referendum took place, it was generally flawed but accepted, as in Hungary (2011). The hallmark of the "polyarchy" value is strong, bottom-up citizen influence as in Ecuador (2008) or Benin, which held a Sovereign National Conference in 1990. Very few cases met this standard at each stage. For example, Spain and South Africa both had a "mixed" drafting stage, due to elite pacts that shaped the new constitutions in 1978 and 1996, respectively. Table 1 summarizes the coding criteria and the logical conditionalities. The CDD includes 134 cases at the drafting stage (with 4 missing values) and 133 at the debate and ratification stages (with 5 missing values in each).

Table 1: Coding Criteria

	STAGE OF PROCESS		
	Drafting	**Debating**	**Ratification**

Decreed	strong executive OR exec appointed committee OR party as central committee	Strong executive OR exec appointed committee OR party as central committee. Debated in camera.	No referendum OR decree by executive body
Mixed modalities	strong elite influence AND (existing legislature OR specially elected body, but elites exercised some control over candidates / electoral process)	Strong elite influence AND (existing legislature OR specially elected body) a debate at least partially open but that failed to overrule any elite preferences	strong elite influence AND ratification by elected body OR ratification by a referendum with notable irregularities
Polyarchic	systematic civil society input OR strong transparency OR specially-elected drafters elected in "free and fair"	Public debate, with civil society, that visibly influenced draft content	Generally "free and fair" referendum

EMPRICAL TESTS OF PARTICIPATORY CONSTITUTION-MAKING ON DEMOCRACY

So does participatory constitution-making matter? And does it matter more during some sovereign moments than others? In this section we answer yes to each these questions. Statistical tests of the participation hypothesis regress the *process* variable on level of democracy, which we measure with the Freedom House and Polity IV scores that the three years after constitutional promulgation. A probe for potential endogeneity through additional tests with an instrumental variable validates our claim that *process* does indeed measure participatory constitution-making specifically. Next we subject the deliberative democracy hypothesis to two different tests to determine whether the earlier stages, such as drafting or debating, have a greater impact on democratization than the modalities of ratification. All of our results hold across a broad range of controls and robustness checks.

First Stage: *Process* Does Drive Democracy

In the first stage, we test the participation hypothesis, which states that high overall levels of participation throughout the process of constitution-making positively impact levels of

democracy. To measure levels of democracy, we use the combined Polity IV score, which is a unified scale ranging from -10 (strongly autocratic) to +10 (strongly democratic). In a separate test, we also use Freedom House's (FH) separate measures of political rights and civil liberties. FH scores range from 1 (highest) to 7 (lowest). FH has been criticized for lacking transparency and being politically biased (Coppedge 2012; Giannone 2010). But it remains the best option for time series evaluation of levels of democracy, since its variables cover every year continuously since 1973. Polity has been published in waves every five years, but with annual time series data (Marshall and Jaggers 2008). All three dependent variables are measured as averages of the three years after the year of constitution promulgation. To make the direction of our coefficients consistent for different dependent variables, we recoded FH scores so that 1 would represent the lowest score (full autocracy) and 7 the highest score (full democracy). This means that positive coefficients would support the participation hypothesis, stated as:

> **H1:** Higher overall levels of participatory constitution-making increase levels of democracy.

The statistical models also include variables measuring a variety of social, economic, and historical conditions that could account for the hypothesized relationship. First, the *ELF* ratio variable controls for ethno-linguistic diversity using Alesina et. al.'s (2003) data, with zero indicating ethnic homogeneity and to 1 signaling significant fractionalization. This is important because ethnicity could impede democratization by breeding parochialism (Horowitz 1985), advance democracy by enabling civil society mobilization (Bessinger 2008), or consistent with Widner (2008), not affect impacts of constitutional change on political rights. Second, the

conflict variable controls for recent major civil conflict since constitutions are often part of postwar peace building, and this can influence the impetus for inclusiveness as well as the political stakes of public deliberation (Miller and Aucoin 2010; Roeder and Rothchild 2005). Third, we include *major constitutional change* because if the constitution is amended significantly, for example by creating a one-party system, this would influence the ability of groups to have their voices heard. More importantly, it would change the status quo condition that the larger drafting process seeks to alter. We use Banks and Wilson (2005) for both *conflict* and *major constitutional change*.[5] By not using our own data for this variable, we generate an internal check against our own count of constitutional changes; they define major constitutional changes in terms of the number of basic alterations in a state's constitutional structure. Each of our variables averages the three years before constitutional promulgation. Fourth, because modernization theory remains perhaps the most influential theory of democratization (Teorell 2010; Coppedge 2012), we control for level of development with *GDP per capita*. Fifth, larger countries may be less likely to democratize due to population density or other factors (Teorell 2010); we therefore include the natural log of *population*. These last two variables come from the World Bank's World Development Indicators (2013). Finally, we control for regions and colonial heritage using data from Norris (2008), who notes the long debate about whether and how colonialism impacted democratization.

[5] For our purposes, this is preferable to the commonly used PRIO dataset for two reasons: (1) it is an aggregated conflict index, whereas PRIO dataset provides information on different episodes of conflict rather than an aggregate measure, and (2) it is a weighted measure of all types of conflict, including strikes, protests, and other forms of non-armed conflicts, whereas PRIO dataset only includes armed conflicts.

The results in Table 2 show that *process* has a positive and significant impact on the Polity score, FH Political Rights and Civil Liberties three-year post-constitution averages, and the model explains a good deal of variance. Socio-economic modernization (indicated by *GDP per capita*) and major constitutional changes both also correlate significantly with the dependent variables results of the correlation between the aggregate constitutional participation independent variable and the three-year average of Polity and FH scores. In our OLS statistical tests, the coefficients do not change significantly. Consistent with Barro (1999) and Teorell (2010), none of the dummies for colonial heritage are significant, and only the Middle East has a negative and significant (at .1 level) correlation with the Polity and FH Civil Liberties scores. This confirms what Middle East scholars have concluded: over the past decades the Arab states of the region have grown rich in constitutions without necessarily growing richer in constitutionalism (Brown 2002). This is not surprising; in our dataset between 1974 and 2011, only one constitution was drafted in the Middle East and North Africa with mixed or polyarchic process in all three phases: Iraq (2005), whose constitution was drafted under foreign military occupation.

Table 2: Participation Hypothesis and Level of Democracy

VARIABLES	Polity	FH Political Rights	FH Civil Liberties
Process	1.60***	0.50***	0.43***
	(0.41)	(0.12)	(0.09)
ELF	-2.36	-0.47	-0.38
	(4.05)	(0.99)	(0.70)
Conflict	0.00	0.00	-0.00
	(0.00)	(0.00)	(0.00)
GDP per capita	0.00***	0.00**	0.00**
	(0.00)	(0.00)	(0.00)
Population (log)	0.21	0.10	-0.03
	(0.49)	(0.12)	(0.09)
Constitutional change	7.88**	1.08*	0.69
	(3.25)	(0.57)	(0.42)
Africa	-1.86	-0.56	-0.51

	(2.42)	(0.42)	(0.45)
Asia	-0.83	-0.44	-0.19
	(3.15)	(0.84)	(0.67)
Central Europe	-5.32	-0.59	-0.84*
	(3.96)	(0.68)	(0.46)
Middle East	-5.62*	-1.07	-1.16*
	(2.97)	(0.68)	(0.63)
Western Euro	-2.79	0.11	0.58
	(3.57)	(0.93)	(0.77)
British colony	-1.90	0.43	-0.02
	(3.26)	(0.70)	(0.43)
French colony	-3.08	0.08	-0.50
	(3.39)	(0.68)	(0.39)
Spanish colony	-4.88	-0.23	-0.74
	(3.54)	(0.64)	(0.49)
Portuguese colony	-3.92		
	(3.44)		
Other colony	-1.68	0.20	-0.29
	(3.75)	(0.64)	(0.36)
No colony		1.19	0.29
		(1.01)	(0.63)
Constant	-3.64	0.90	3.60**
	(9.81)	(1.99)	(1.48)
Observations	81	83	83
R-squared	0.41	0.36	0.48

Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Three caveats are in order. First, our case selection is nonrandom. The OLS regression for the above estimate of the effect of constitution-making process on change in democracy score is

$$y_i = x_i\beta + \varepsilon_i \quad (1)$$

where y_i is the change in level of democracy of a country and x_i is the nature of its constitution making process. The problem is that information is available about the nature of constitution-making process only for countries choosing to write a new constitution. In other words, rather than forecasting outcomes in the whole pool of countries in our dataset, we are forced to rely

solely on experience with a non-random subset of them. The 'selection equation' for writing a new constitution might be:

$$U_i = \omega_i \gamma + u_i \quad (2)$$

where U_i represents the utility to country *i* of writing a new constitution and ω_i is a set of factors that affect a country's decision to adopt a new constitution, such as independence. For example, democratizing countries might be more likely to adopt a new constitution than old democracies. To test whether the selection bias affects our results significantly, we run a Heckman selection model. Table 6 in the appendix compares the OLS coefficients with the Heckman corrections, which shows that there is no statistically significant difference between the coefficients of the two models. This is consistent with Elkins et al., who as we noted above find that constitutional replacement associated with regime change much less frequently than expected.

Next, we test for potential collinearity between the *process* and *major constitutional change* variables. The collinearity could stem from the fact that the "constitutional change" variable (whether prior changes had occurred in the constitution in the last three years before the new constitution) might have impacted whether the particular constitutional process in consideration involved citizen participation. Tests for multicollinearity indicate that the correlation between the *process* and *major constitutional change* variables is only 0.05 (0=no correlation and 1=perfect correlation) and not statistically significant.

Finally, we address the endogeneity problem since democratic, open societies are more likely to use polyarchic means of creating constitutions. Tests for the correlation between democracy before and after promulgation show a significant correlation of 0.60 in the Polity score (0.74 and 0.73 in FH political rights and civil liberties, respectively). We address this issue

by using the sum of major strikes at national level in the three years prior to promulgation as an instrumental estimator for the *process* variable. More strikes before constitution drafting indicates higher levels of citizen mobilization and a greater chance of polyarchic constitution-making. In other words, the number of strikes affects the type drafting process and it affects democracy score only through impacting the drafting process. We construct a *strikes* variable from Banks and Wilson's (2005) "general strikes" and run two-stage least squares (2SLS) model. The s*trikes* variable does not impact the democracy score, and strikes are as frequent in democracies as they are in non-democracies. In the first stage, we incorporated this as an estimate for the instrumental variable (IV), regressing it on *process* as the dependent variable. The results (reported in Appendix Table 7**)** shows that the *strikes* independent variable estimate of process variable for Polity model has a coefficient of 0.39 (and 0.38 for FH models) and is significant at .01 level. *Strikes* has a positive correlation with *process*, indicating that the higher the number of strikes before constitution promulgation, the more polyarchical the process. We then substitute our *process* variable for the fitted value of *strikes*, now as the independent variable, regressing it on the Polity IV, and FH Political Rights and Civil Liberties variables. The results are similar to our initial OLS coefficients and ordered probit coefficients (see Appendix Table 8), indicating that endogeneity of the *process* variable variants is not determinant.[6]

Second Stage: Democratic Drafting Matters for Democracy

[6] Some scholars suggest that if the values of the dependent variable are irrelevant except for having a hierarchical order, we should treat them as ordered categories rather than continuous (Lederman et al. 2005).

We then test the deliberative hypothesis by using the stages of constitution-making as three separate independent variables (*drafting*, *debate*, and *ratification*). This is important because it explores whether the original sin of a non-democratic drafting stage can be corrected by more participatory debate and ratification stages, and therefore improve the post-promulgation level of democracy. The basic hypothesis is stated as:

> **H2:** Citizen involvement in the early stages of constitution-making has a larger impact on democratic outcomes.

In our first set of tests of the importance of the drafting stage, we run linear regression models showing that moving from decretive drafting process to polyarchical process increases the combined Polity IV by 19 percent (an average of 3.8 scores, holding other values constant, on the -10 to +10 continuum). Each country also experiences a nearly 14 percent increase in its both its FH Political Rights and Civil Liberties scores (an average of 0.8 units, holding other values constant, on the 1 to 7 index). Recall from **Error! Reference source not found.** that only 17 cases used polyarchic processes in the drafting stage, while 23 and 50 cases had polyarchic processes in deliberation and ratification stages, respectively. Even given the fact that fewer cases had polyarchic drafting than polyarchic deliberation and ratification, the results from Table 3 show that only in the first stage of drafting, the move from decretive to polyarchic process is statistically significant. This is the central finding of our study. Polyarchy matters in the drafting stage much more than in the deliberation or ratification stages.

With regard to our controls, *GDP per capita* also has a positively significant correlation with each of these measures of democracy. This is somewhat surprising since Hogstrom (2013)

finds that GDP per capita has a stronger association with FH as a dependent variable, compared to Polity. The natural log of population and the *conflict* variable show a positive but insignificant correlation with all three measures of democracy. Ethno-linguistic fractionalization (*ELF*) has a negative and insignificant correlation with both FH Civil Liberties and Polity democracy, but positive and insignificant correlation with FH Political Rights. *Major constitutional changes* are positively and significantly correlation with democracy score, but its correlation with political rights and civil liberties is insignificant.

Table 3: Significance of Drafting, Relative to Debating and Ratification

VARIABLES	Polity	FH Political Rights	FH Civil Liberties
Drafting	2.50**	0.90***	0.88***
	(1.11)	(0.32)	(0.20)
Debate	1.08	0.32	0.19
	(1.20)	(0.37)	(0.23)
Ratification	1.03	0.19	0.20
	(0.85)	(0.24)	(0.17)
ELF	-1.28	0.01	-0.16
	(2.52)	(0.76)	(0.56)
Conflict	0.00	0.00	0.00
	(0.00)	(0.00)	(0.00)
GDP per capita	0.00***	0.00***	0.00***
	(0.00)	(0.00)	(0.00)
Population (log)	0.52	0.18	0.03
	(0.46)	(0.11)	(0.09)
Major constitutional change	7.02**	0.74	0.53
	(3.02)	(0.50)	(0.36)
Constant	-12.91*	-0.63	1.91
	(7.68)	(1.86)	(1.51)
Observations	82	84	84
R-squared	0.38	0.38	0.49

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

A rival explanation suggests the content of the constitution, rather the process that made it, has a greater impact on a country's level of democracy. Such ideas are evident in Madison's case for checks and balances, as well as recent research exploring the "congruity" of constitutional content (Galston 2011), the impact of particular provisions on broader democratic accountability (Fombad 2010), or on constitutional endurance (Ginsburg 2012). We control for democratic content of constitutions using three proxies from the Comparative Constitutions Project dataset (Elkins et al. 2009): whether the head of state has decree power (*HOS decree*), whether the constitution places any restriction on the right to vote (*Voter restriction*), and whether the constitution contains provisions for a human rights commission (*HR provision*). Table 4 shows the results with controls for the content of the constitution included as independent variables. While the results for the process and other variables do not change significantly from Table 3 when these "democratic content" variables are added, only the provision of human rights in the constitution has a significant impact on FH Political Rights score, but contrary to the conventional wisdom the correlation is negative. Overall, the results indicate that the process has more significant and positive impact on democracy than the content of the constitution. This further proves our broader point, namely that strong empirical evidence exists that the process of constitution-making has serious implications for improving a country's level of democracy.

Table 4: Impact of Process and Content of Constitutions on Democracy

VARIABLES	Polity	FH Political Rights	FH Civil Liberties
Drafting	2.70**	0.95**	0.92***

	(1.25)	(0.38)	(0.22)
Debate	0.13	0.07	-0.08
	(1.35)	(0.43)	(0.24)
Ratification	0.97	0.21	0.32
	(1.02)	(0.33)	(0.23)
ELF	-0.77	0.06	-0.33
	(3.78)	(1.01)	(0.70)
Conflict	0.00	-0.00	-0.00
	(0.00)	(0.00)	(0.00)
GDP per capita	0.00***	0.00***	0.00***
	(0.00)	(0.00)	(0.00)
Population (log)	1.04	0.27*	0.09
	(0.63)	(0.15)	(0.11)
Constitutional change	6.01*	0.76	0.50
	(3.23)	(0.63)	(0.45)
HOS decree	0.00	0.00	0.00
	(0.02)	(0.01)	(0.00)
Voter restriction	-3.38	-0.73	-0.35
	(3.12)	(0.76)	(0.58)
HR provision	-0.04	-0.01*	-0.00
	(0.03)	(0.01)	(0.01)
Constant	-16.34	-1.04	1.53
	(11.09)	(2.60)	(1.81)
Observations	67	69	69
R-squared	0.37	0.35	0.46

Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

As with the findings regarding the *process* variable in general in the earlier statistical findings, the *drafting* variable is robust in all cases when the *process* variable is disaggregated into three partials, while *debate* and *ratification* are not statistically significant. The pattern in Table 3**Error! Reference source not found.** above also holds for ordered probit analysis displayed in Table 9 in the Appendix.

IMPLICATIONS AND CONCLUSIONS

By demonstrating the central importance of the drafting stage, our results refute elitist Burkean notions of constitutional transitions by trusteeship. Our statistical results demonstrate first, that constitutional change contributes to improvements in democracy in only half of all cases of constitutional promulgation during the Third Wave. This is important because policymakers and scholars alike have noted democracy's backsliding worldwide over the last several years (Eaton 2012; Levitsky and Roberts 2011). But they have not drawn generalized, explicit connections to the conditions under which new constitutions effectively deepen democratic principles through procedure, rather than the codification of particular language. In other words, process matters. Second, we show that increased public participation throughout the constitution-making significantly contributes to subsequent levels of democracy. This offers empirical support for emerging international norms of participatory governance, thereby generating a new rational for the revival of participatory models from democratic theory (Pateman 2012).

Third, we then generated the unexpected finding that drafting, which occurs in the early stage of constitution-making, has the greatest impact on subsequent levels of democracy. This is significant because democracy promotion has often emphasized – even romanticized – referenda, which take place in the final stages of ratification. Indeed, democracy levels improved only in 45 percent of cases that incorporated broad consultation at debate and ratification stages, but not at the initial, drafting stage. Contrarily, 82 percent of the cases in our data which used polyarchic drafting, regardless of popular participation in later stages, show such improvement. Without participation in the drafting stage, this "sin of omission" is difficult to overcome through popular participation in the deliberation and ratification stages, despite the best intentions of plebiscite-organizing NGOs and international donors. The few nations which do integrate polyarchic "bottom up" participation from the inception of the constitutional process (only 17 in our

sample), tend to be serious democrats, combining the best of Madisonian institutionalism and participatory democratic theory rooted in Pateman, Habermas, and Dahl (not to mention Jefferson). Late entrants to polyarchic participation (73 in our sample), constitution-makers who seek to compensate for their "original sin" of neglecting popular participation early on, seem doomed to fail. Future research should strive to assess whether the polyarchic deliberators are sincere democrats, while later stage integrators of such participation are more cynical or selective in their integration of plural voices into the constitutional process.

Extant single-country studies, and our own pilot studies in Bolivia and Uganda, have exposed the vulnerability of constitutional processes to elite manipulation. While we have made important strides by identifying the overwhelming importance of participatory drafting, constitutional processes in specific cases at particular moments need to be further examined both cross-sectionally and longitudinally. It is surprising how little such work in this area has been undertaken, given the passage of over 25 years since the fall of authoritarians with the Berlin Wall. If the citizen engagement that brought down dictators has a mixed effect on the quality of constitutions and their enduring effects on political culture and rule compliance, this could influence both donor priorities and the processes of constitution-making deemed most effective.

Our findings offer conclusions useful to scholars and analysts seeking to understand the political effects of constitutions. They may also be used to improve levels of democracy using statistical analysis of the CDD in nations implementing new constitutions, as well as in carefully selected case study ethnographies of constitution-founding moments. We argue that the degree of participation by citizens is crucial in understanding whether constitutional change improves levels of democracy. The next round of research in this area should merge procedural and substantive concerns by addressing not only whether and how citizens participate in the drafting,

debate, and ratification stages, but also how substantial this participation is in terms of proposing concrete language which otherwise would not have made the draft. The strong call for greater participation emerging from this article should be joined by a call to for "quality participation" rather than just populism. Here we join Elkins et. al. (2009), Widner (2008), Hartlyn (2011) and others in seeking to understand whether greater levels of participation actually produce greater democratic rights. We have used the blunt instruments of Polity and FH to show that participatory constitution-building improves levels of democracy, but we still need to know what components of democracies are actually improved.

Contemporary constitution-making has differed in important ways from earlier eras, through involvement of competing donors, assumptions about the virtues of participation, and beliefs that human agency can prevail over adverse historical or geographical conditions. It is clear from the empirical record that recent constitutions offer a mixed record in terms of political rights, and this may be true of other areas of democratic performance. Until now, normative democratic and legal theories have been subjected to little empirical testing with regard to levels of citizen participation the process of constitution-making. We have shown the centrality of citizen involvement in improving post-promulgation democratic outcomes. New knowledge on the relationship between constitution-making and democracy will help scholars, analysts, and policymakers focus attention on both process and substantive content, and to reconsider those elements of the process most conducive to democratic aspirations.

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Appendices for Additional Statistical Analyses as Checks on Robustness of Models

Table 5: Ordered Probit Coefficients for Process on Freedom House Variables†

VARIABLES	Ordered probit Political Rights	Ordered probit Civil Liberties
Process	0.34***	0.41***
	(0.07)	(0.07)
Ethno-linguistic	-0.09	-0.40
	(0.53)	(0.51)
Conflict	-0.00	-0.00
	(0.00)	(0.00)
GDP per capita	0.00**	0.00***
	(0.00)	(0.00)
Population (log)	0.14*	0.03
	(0.07)	(0.08)
Constitutional change	0.74**	0.78**
	(0.31)	(0.37)
Observations	84	84

Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

† For sensitivity analysis, we also used ordered probit models only for Freedom House Political Rights and Civil Liberties, as Polity IV is continuous (ranging from -10 to +10) and we could not use ordered probit model for it. The results from ordered probit models for political rights and civil liberties do not change significantly from those of OLS models.

Table 6: Comparison of Heckman Selection and OLS Coefficients[†]

	Heckman Selection	OLS
VARIABLES	Polity	Polity
process	1.56**	1.68***
	(0.76)	(0.36)
Conflict	0.00	0.00
	(0.00)	(0.00)
ELF	-3.08	-4.77
	(6.85)	(2.95)
GDP per capita	0.00	0.00***
	(0.00)	(0.00)
Constitutional change	7.86	7.80***
	(5.75)	(2.87)
HOS decree	0.01	0.02
	(0.03)	(0.02)
HR provision	-0.03	-0.03
	(0.11)	(0.02)
New state[††]	-2.30	-2.05
	(3.51)	(1.69)
Constant	-3.73	-3.69
	(4.33)	(2.25)
Observations	63	61
R-squared		0.45

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

† The unit of analysis in this comparison is country rather than constitution. We included all countries in our dataset regardless of constitution adoption. For countries that adopted more than constitution during 1974-2011 time period we included only the latest constitution. We could not reject the null hypothesis that there is no statistically significant difference between the coefficient of the two models at a conventional level (ρ*: 0.26*).

†† Binary variable for whether the country is a new a state born since 1974.

Table 7: Stage One of the 2SLS Models

VARIABLES	Process (Polity)	Process (FH Political Rights)	Process (FH Civil Liberties)
Strike	0.39***	0.38***	0.38***
	(0.14)	(0.14)	(0.14)
ELF	0.76	0.68	0.68
	(0.99)	(.099)	(.099)
Conflict	0.00	0.00	0.00
	(0.00)	(0.00)	(0.00)
GDP per capita	0.00	0.00	0.00
	(0.00)	(0.00)	(0.00)
Population (log)	-0.17	-0.16	-0.16
	(0.13)	(0.13)	(0.13)
Constitutional change	0.84	-0.11	-0.11
	(0.76)	(0.81)	(0.81)
Constant	4.44*	4.42*	4.42*
	(2.30)	(2.28)	(2.28)
Observations	80	80	80
R-squared	0.12	0.12	0.05

Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

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Table 8 shows the results from the second-stage regressions. The results show that the instrumented process variable has a positive correlation with level of democracy, political rights, and civil liberties and these correlations are statistically significant at .01 confidence level.

Table 8: Stage Two of the 2SLS Models

VARIABLES	Polity	FH Political Rights	FH Civil Liberties
Fitted value of Process	3.87***	1.14***	0.89***
	(1.29)	(0.42)	(0.34)
ELF	-4.66	-0.98	-0.90
	(3.35)	(0.88)	(0.66)
Conflict	-0.00	-0.00	-0.00
	(0.00)	(0.00)	(0.00)
GDP per capita	0.00***	0.00***	0.00***
	(0.00)	(0.00)	(0.00)
Population (log)	0.61	0.21	0.06
	(0.49)	(0.14)	(0.12)
Constitutional change	7.15**	1.34***	1.03***
	(2.95)	(0.50)	(0.38)
Constant	-18.53*	-2.48	0.51
	(9.87)	(3.01)	(2.51)
Observations	78	80	80
R-squared	0.15	0.12	0.25

Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table 9: Ordered Probit Coefficients for Drafting, Debating, Ratifying on FH

VARIABLES	Ordered Probit FH Political Rights	Ordered Probit FH Civil Liberties
Drafting	0.61***	0.90***
	(0.24)	(0.22)
Debate	0.23	0.19
	(0.27)	(0.20)
Ratification	0.17	0.18
	(0.16)	(0.16)
ELF	0.07	-0.17
	(0.55)	(0.53)
Conflict	0.00	0.00
	(0.00)	(0.00)
GDP per capita	0.00**	0.00***
	(0.00)	(0.00)
Population (log)	0.14*	0.03
	(0.07)	(0.08)
Major constitutional change	0.57*	0.51
	(0.34)	(0.35)
Observations	84	84

Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1