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Constitutional Specificity, Unwritten Understandings and Constitutional Agreement

1. Introduction

When do constitutional designers specify details and when do they not? This is an important question for understanding what stands behind the written constitution. One might think, as is frequently argued, that the real work in the constitutional order is accomplished by the shared understandings of the subjects of the constitution, who must cooperate to make it effective. These unwritten understandings form the background against which the text is written, and provide the basis for the enforcement of the document thereafter. The relationship between these background understandings and the content of the constitutional text is the subject of this paper. It draws on a large new database to examine constitutional specificity, under the assumption that understanding what constitutional drafters choose to write down can provide some clues as to why they write at all.

Most analysts agree that constitutions are not “magic words” that become effective simply through their pronouncement. Rather, constitutional texts may be effective only to the extent that they embody higher-order understandings that actually operate to constrain power. As Edwin Corwin wrote in 1936 (quoting Judge Cooley), the Constitution “is not the cause, but consequence, of personal and political freedom; it grants no rights to the people but is a

* This paper is based on discussions with Robert Cooter, Zachary Elkins and James Melton. It draws on our large empirical project, the *Comparative Constitutions Project*, at the University of Illinois, that collects and analyzes all constitutions of independent nation-states since 1789. More information is available at <netfiles.uiuc.edu/zelkins/constitutions>. Thanks to Rosalind Dixon for helpful comments.

creature of their power.”¹ Constitutions in this view have no independent causal efficacy.

But this view may overstate the case, as it leads one to question why a written constitution is needed at all. Since most nation states have adopted formal, discrete written constitutions, we can assume that there is some functional rationale for the practice. A certain degree of specificity is needed, regardless of one’s theory of what it is that constitutions actually do. At least three general functions are usually ascribed to constitutions. First of all, they serve to constrain the government and provide substantive and procedural limitations on its actions. Second, constitutions express fundamental values of the polity. This is a definitional function, helping to construct and constitute the nation. Third, constitutions elaborate the institutions of government, defining the structure of power in the state. This is a distinct function from constitutional limitation: even governments that govern without constraint need to define the institutions through which governmental processes will operate. While these various functions may have different relationships with specificity, all benefit from writing with some level of elaboration.

Ultimately, we cannot observe the unwritten social and political agreement that many argue forms the true locus of a country’s constitution. We are forced, it seems, to scour the “big-C” constitution for clues about the “small-c” constitution. It is in this spirit that we proceed here. We begin by reviewing some basic facts on the length and scope of constitutions, and then review the recent literature on why constitutional texts are adopted at all. We then develop a distinction between scope and detail, two different aspects of what we are calling specificity, and present some empirical evidence on the determinants of these concepts. The final section considers the implications for constitutional values, the central topic of this volume.

2. Some Basic Facts

Constitutional documents differ widely in both detail and scope. Bhutan’s 1908 document is the shortest national constitution yet produced, a scant 165 words in length, providing virtually no detail on the operation of government. The United States Constitution of 1789 (7762 words) has been the basis for remarkably stable set of institutions, leading Americans to internalize Madison’s stated preference for short, framework-oriented constitutions.² At

¹ E. Corwin, *The Constitution as Instrument and as Symbol*, 30 Am. Pol. Sci. Rev. 1071, at 1071 (1936).

² J. Madison, *Vices of the Constitutions of the United States* (1787); see also D. J. Elazar, *Constitution-Making: The Preeminently Political Act*, in D. J. Elazar (Ed.), *Constitutionalism: The Israeli and American Experiences*, 3 (1990); C. Hammons, *Was James Madison Right? Rethinking the American Preference for Short Framework Constitutions*, 93 Am. Pol. Sci. Rev. 831 (1999).

the other end of the spectrum, India's Constitution, frequently amended, has swelled to 117,820 words with an extensive set of schedules; Brazil's 1988 document is 59,916 words and constitutionalizes many aspects of political life. Tiny Tuvalu has more words in its constitution (36,641) than residents (11,992).³

Sometimes brevity can be explained as a matter of style. Socialist constitutions, such as China's 1975 document (2923 words) or Cambodia's 1976 Khmer Rouge Constitution (1559), tend to be short and programmatic, though they have tended to become longer since the 1970s. Perhaps this brevity reflects Pashukanis' ideal that the constitution would itself wither away with law as true communism was achieved: Mongolia's 1960 document explicitly provides that the constitution will be abolished when there is no longer a need for the state.⁴ On the other hand, socialist countries tend to devote more attention to the preamble than to the description of government organs or the promulgation of rights: of the fifteen constitutions in our sample that have preambles of more than 1000 words, five are socialist and another (Iran) is a highly ideological constitution. The Yugoslav Constitution of 1974 had a preamble of over 6000 words, longer than roughly one fifth of all national constitutions!

Figure 1 below presents some descriptive statistics on the number of words in a sample of 501 constitutions coded by the Comparative Constitutions Project. As one can see, civil-law countries tend toward more concise constitutions, notwithstanding a Latin American trend toward verbosity. Common law constitutions are long, as a result of parliamentary drafting conventions: many of them were adopted as acts of parliament granting independence, and British statutes are longer than their continental counterparts.⁵

Table 1: Descriptive Statistics: Number of Words in the Constitution

| | Median | Mean | Standard Deviation | Minimum | Maximum | N |
|-------------------|--------|-------|-----------------------|---------|---------|-----|
| All Constitutions | 10038 | 14565 | 13851 | 862 | 146385 | 501 |
| Common Law | 25046 | 27899 | 20033 | 2135 | 146385 | 109 |
| Civil Law | 8505 | 10858 | 8514 | 862 | 64583 | 343 |
| Latin America | 11554 | 16022 | 11471 | 1377 | 64583 | 144 |
| Non-Latin America | 9170 | 13977 | 14677 | 862 | 146385 | 357 |

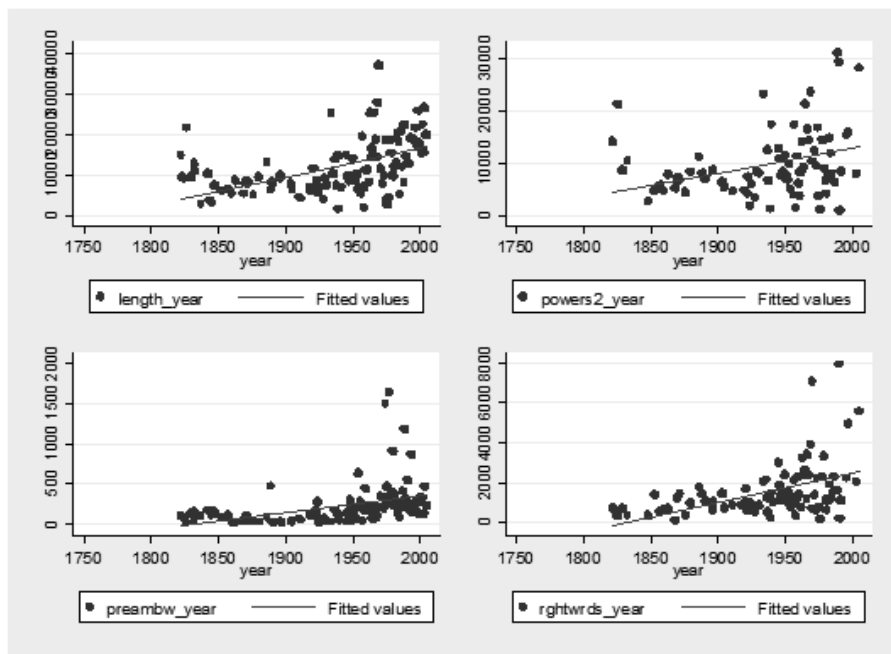
³ As does Nauru (13,000 words for a population of 10,000).

⁴ Constitution of Mongolia, Art. 94 (1960); *see generally* E. Pashukanis, General Theory of Law and Marxism (1924).

⁵ R. Cooter and T. Ginsburg, *Leximetrics: Or Why the Same Laws Are Longer in Some Countries than Others*, Illinois Law and Economics Working Papers Series, No. LE03-012, available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=456520>.

Constitutions seem to be getting longer over time. Figure 2 below presents scatterplots showing the number of words per constitution across time. The figures differentiate between different parts of the constitution. The upper left scatterplot is total length; the lower left is the preamble only; the lower right is the rights section only; and the upper right is all words except the preamble and rights sections (which I interpret as the amount of text devoted to specifying powers). For each scatterplot, the fitted line tracks the trend over time.

Figure 2: Verbosity over Time



One can see the general upward trend in all categories of constitutional text. The slope of the fitted lines provides some clue as to the source of overall growth. Preambles, it seems, are not rising as rapidly as sections on rights and powers, perhaps reflecting the decline of ideological constitutions.⁶ One also sees that the variance in constitutional provisions on rights is much less than in the section on powers. There are some outliers in the rights figure, but fewer of them. These patterns suggest that the form and extent of specificity are worth further inquiry.

⁶ S. Arjomand, *Law, Political Reconstruction and Constitutional Politics*, 18 Int'l Sociology 7 (2003); S. Arjomand, *Constitutions and the Struggle for Political Order: A Study in the Modernization of Political Traditions*, 33 Eur. J. Sociology 39 (1992).

3. Why a Text?

Constitutions are typically, though not always, embodied in a single constitutional text that is authored in a discrete process.⁷ To be sure, there are important exceptions, such as the constitutions of the United Kingdom, Israel, and Canada. But these exceptions serve to prove the rule that documents called constitutions are part of the ordinary way of being a nation-state.

Of course, even in countries that enjoy a discrete constitutional text, there may be many other documents that supplement the text and provide for the actual set of constitutional rules. These might include so-called “super-statutes” that provide for core aspects of governance and are de facto unamendable. Supreme court decisions obviously supplement the formal text. Declarations of independence and other symbolic documents may be seen as playing similar functions of constituting the polity. These documents can unfold over time and give pause to the dominant view of constitution-making as a discrete act of a particular moment.

This leads to the next question: why even bother with a constitutional text at all? Surely, a text is neither necessary nor sufficient for meaningful constitutional constraints on political actors. We all know of constitutions, such as those of contemporary Uzbekistan and Turkmenistan, that have beautiful provisions on paper that are not effective in practice.⁸ We also have examples of countries – Australia comes to mind – that manage to enjoy a high level of protection of rights without any rights provisions in the constitution. If this is true of rights, it might be true of other features of the constitution as well.

One answer to this question is given in a recent line of interdisciplinary scholarship that emphasizes the coordinating function of constitutional text.⁹ Drawing on non-cooperative game theory, a number of political scientists and economists understand constitutions as conventions, in which ultimate effectiveness is determined by the players themselves rather than external actors. The basic insight is that in negotiating over the constitution, any of several outcomes might be stable, but players have different preferences as

⁷ For exceptions see M. Palmer, *What is New Zealand's Constitution and Who Interprets It? Constitutional Realism and the Importance of Public Office-Holders*, 17 Public L. Rev. 133 (2006); M. Palmer, *Using Constitutional Realism to Identify the Complete Constitution: Lessons from an Unwritten Constitution*, 54 Am. J. Comp. L. 587 (2006) (New Zealand); R. Aba-Namay, *The Recent Constitutional Reform in Saudi Arabia*, 42 Int'l and Comp. L. Q. 295 (1993) (Saudi Arabia); A. King, *The British Constitution* (2007).

⁸ One might here invoke the Russian joke: What is the difference between the Soviet and American Constitution? The Soviet Constitution provides for freedom of speech, while the American Constitution provides for freedom after speech.

⁹ J. Carey, *Parchment, Equilibria, and Institutions*, 33 Comp. Polit. Stud. 735 (2000); R. Hardin, *Why a Constitution?*, in B. Grofman & D. Wittman (Eds.), *The Federalist Papers and the New Institutionalism* 100 (1989).

to which outcome would be their first choice. The important thing for players is to coordinate their behavior, notwithstanding different distributional consequences: everyone is better off with some agreement than with none, even if they might prefer a different set of institutions than that which obtains.

In the constitutional context, parties to a bargain might differ over the details but agree on the general outline of their institutions. Citizens may agree on broad principles of their society, such as that political power be organized in a democratic fashion, without agreeing on the type of electoral system or particular federal design. Should we organize our democratic institutions along the lines of a parliamentary system or a presidential one? Should minorities be given special territorial accommodations? Or to take a more obscure example, should the rights of reindeer herders be given special protection?¹⁰ These questions are likely to have immediate distributive consequences for important political actors. They may be bargained over with intensity and passion. Once a choice has been made, however, all may have an interest in maintaining the bargain to avoid the conflict and costs associated with producing a new bargain.

Many other types of constitutional problems are relatively low-stakes issues for which many possible answers would be more or less equally acceptable. The important thing for these kinds of questions is that we have some agreement in society regarding which of the many possible answers we will utilize. For example, it may make little difference whether a constitution stipulates a minimum age for legislators of 24, 25 or 26 years, or what the national anthem ought to be. But it is important that a constitution give some answer, and whatever answer is chosen is likely to generate relatively little controversy thereafter. As David Strauss has noted, it is sometimes more important that matters be settled than that they be settled right.¹¹

Such constitutional provisions clearly do matter in a counterfactual sense: in the absence of a provision, much social and political energy will be wasted in debating what may in fact be fairly trivial matters. In this sense, constitutions matter not only by restraining power but by preventing endless conflict over relatively minor issues.¹² They do so in both cases by coordinating behavior and creating common knowledge.

The problem is that the parties to a constitutional bargain, be they citizens or a sub-group of the elite, have disparate interests and will be unlikely to reach agreement on their own as to what the constitution requires in any particular case, whether a particular action constitutes a violation of the constitution, and on when and how to enforce the bargain. It is important that the subjects

¹⁰ Constitution of Sweden, Art. 2(20).

¹¹ D. Strauss, *Common Law, Common Ground, and Jefferson's Principle*, 112 Yale L. J. 1717, at 1719 (2003); the quote is also attributed to Justice Brandeis, *Burnet v. Coronado Oil and Gas Co.*, 285 U.S. 383, at 496 (1932) (dissenting).

¹² Strauss, *id.*

of the constitution coordinate their expectations among themselves to make the constitution effective. But coordination is very difficult among a large and diverse group of subjects.

Writing can assist subjects to overcome the coordination problem by providing a definition of what the constitution requires and thus providing a focal point for political and enforcement activity.¹³ By stipulating the rules and defining violations, writings increase everyone's perceived likelihood that others will join them in enforcing the rules against violators. Hence "parchment barriers" may matter, not because of any magical power contained in their words but because their role in facilitating coordination on the part of potential enforcers, who may otherwise be unable to agree.

This framework helps us understand why written constitutions may be important components of constitutional democracy: they provide the focal point for coordination and enforcement. The written text serves as a focal point for coordinating, thereby eliminating potential disagreements and providing a structure for future interaction.¹⁴ Although it is ultimately the collective understanding of the citizenry that does the work in enforcing the constitution, the text helps make this possible.

It bears repeating that the coordinating function need not be played by a written text. It is perfectly possible that common understandings of the constitution will focus on unwritten norms as opposed to the written text. It may also be that understandings of the text deviate significantly from the clear meaning of the words. In such situations, the written constitution may stand in an ambiguous semiotic relationship with the "real" or unwritten constitution. The important thing is that coordination does in fact occur, whatever its origin. But all else being equal, writing will help citizens to agree on what constitutes a violation, memorializing the unwritten understandings that are what in fact sustain political society.

Let us take a brief detour to consider unwritten constitutional rules, which are of continuing fascination to scholars. A crucial variable for understanding the reasons for constitutional specificity is the relationship between written and unwritten norms that have constitutional impact, meaning they provide limits and enforcement mechanisms that empower and constrain state actors. Unwritten constitutional norms may be precedents or understandings that are relatively enduring over time.¹⁵ For example, the French people seem to periodically take to the streets to demonstrate against their government when constitutional norms are transgressed. In Thailand, there are unwritten understandings on the role of the monarchy and the manner of carrying out

¹³ Carey, *supra* note 9, at 757.

¹⁴ Strauss, *supra* note 11, at 1731-1735.

¹⁵ E. Posner & A. Vermeule, *Constitutional Showdowns*, 156 U. Penn. L. Rev. 991, at 999 (2008).

military coups.¹⁶ In the United States, unwritten understandings include the long-standing practice, eventually undermined by Franklin Roosevelt, that no President would stand for a third term.¹⁷ Roosevelt's violation of this norm, though of course endorsed by a majority of the American public, led to a subsequent codification of the previous unwritten understanding, in the 22nd Amendment.¹⁸

If unwritten constitutional understandings are universally known and understood, there may be no need to formalize the constraints in writing. This is the frequent justification for the British "unwritten" constitution (though there is much more writing to the British constitution than Americans generally appreciate).¹⁹ It may, for example, go without saying that the American President cannot fire the Vice-President in the middle of the term, so there is no need to write down a rule proscribing the practice.

Sometimes unwritten constitutional norms can explicitly conflict with the written text. In Australia for example, the Governor General has the nominal power to dismiss the Prime Minister, but this power has not been used for the most part. However, in 1975, the Governor General dismissed the Labor Prime Minister and called new elections because the Senate, controlled by the opposition, refused to ratify the budget. This modified the constitutional understanding, bringing it in line with the written text.²⁰ Another example occurred in France in 1962, when President Charles De Gaulle proposed a successful amendment of the Constitution by referendum, achieved even though the Constitution of 1958 does not explicitly allow for amendment in this fashion. This amendment thus changed the constitution in a formal sense (by shifting to direct election of the President) and in an informal sense (by setting a precedent for amendment through referendum). These types of unwritten rules modify and supplement the formal text, often rendering the original text a very poor guide to present understandings.²¹

The problem with relying on unwritten constitutional rules is the same as that which bedevils scholars who are trying to describe them: what is the rule of recognition that determines the content of the unwritten rules? It is not obvious how one distinguishes unwritten constitutional rules from non-

¹⁶ T. Ginsburg, *Constitutional Afterlife: The Continuing Impact of Thailand's Post-political Constitution*, 7 I-CON 83 (2009).

¹⁷ Posner, *supra* note 15, at 999.

¹⁸ US Constitution, Amendment 22.

¹⁹ W. B. Gwyn, *Political Culture and Constitutionalism in Britain*, in D. Franklin & M. Baun (Eds.), *Political Culture and Constitutionalism* 13 (1995); King, *supra* note 7.

²⁰ The Labor Party was also punished in the polls, confirming for some the modification of the constitutional convention. J. Elster, *Unwritten Constitutional Conventions*, at 17 (manuscript).

²¹ E. Young, *The Constitution Outside the Constitution*, 117 Yale L. J. 100 (2008); *see also* B. Ackerman, *The Living Constitution*, 120 Harv. L. Rev. 1737 (2007). An early version of this argument is found in C. G. Tiedeman, *The Unwritten Constitution of the United States* (1890); *see also* W. B. Munro, *Makers of the Unwritten Constitution* (1928).

constitutional “legal” or social norms. Thus it seems that there are certain advantages to writing, if only to bound the scope of the constitution clearly. It bears repeating, however, that the text itself is important only for its role in coordinating the conduct of those who are subjects of the constitution. A constitutional rule saying that voting must take place on the weekend might, over time, come to represent an intersubjective understanding that voting must always take place on Sunday, or even Tuesday. So long as the subjects think the text marks their constitutional understanding, it need not bear any relation to reality.

Over time, the text of the constitution is likely to matter less and less as a formal matter. As successful constitutional communities of interpretation develop, there will be drift from the four corners of the text.²² But this does not mean that the text is unimportant, so long as it embodies some shared understanding, and serves to constitute the interpretive community in the first place. Thus the content of the text is of central importance at the moment of promulgation; over time it may be the fact of the text, rather than its objective content, that matters.

4. How Much to Write Down?

Once the decision has been made to write a constitution, a new issue arises as to how specific to make the constitution, given the scarcity of time and energy for negotiation.²³ Conceptually, this involves two different issues. First is the issue of scope: what topics are deemed to be of sufficient importance to be included in the constitution? Second is the issue of detail: for any particular topic, how much should be regulated by the constitution as opposed to left for ordinary law? We examine both of these dimensions.

4.1. The Distinction between Detail and Scope

We begin with an assumption. Negotiating textual detail is costly. It requires careful drafting and hard bargaining, both of which take time. While it is true that certain language can be borrowed from other sources, it is still the case that borrowing takes research and energy, and, *ceteris paribus*, these factors increase in the amount of text being borrowed. Thus longer documents are more costly to produce even if they are not drafted from scratch.

²² Strauss, *supra* note 11.

²³ We know of only one other study on the topic: S. Voigt, *Explaining Constitutional Garrulity* (manuscript). Voigt ties constitutional length to some of the same factors we identify, as well as ‘uncertainty avoidance’ and post-colonial status, because of the need to define state structures and symbols. He hypothesizes that older states will have less-detailed constitutions because shared background norms will be greater.

Time is not something that constitutional designers have an abundance of. Constitutional design typically takes place in periods of crisis, when there are great social and political pressures to produce a document in a discrete amount of time. Time pressures, of course, can be helpful for producing agreement. But when combined with the costliness of negotiation, time pressure results in a scarcity of attention for drafting texts.

This means that designers must make hard choices as to what to include and what to omit, and for any given issue area, how specific to make the constitutional text. The first issue is that of scope; the second of detail. Scope involves the range of topics that are constitutionalized, while detail concerns the refinement of the provisions of the constitution in any given area. Conceptually, we can think of these two dimensions as providing for a tradeoff: given scarce time, designers can deal with fewer issue areas in greater detail, or a greater number of issues in less detail. Of course, as time available for negotiation expands, the tradeoff becomes less acute.

4.2. Scope

What issues are to be included in the Constitution and what left out is a topic of great normative debate. There is a long tradition of viewing constitutions as properly regulating only a small subset of political behavior. In debates over the US Constitution, Edmund Randolph asserted that “[T]he draught of a fundamental constitution,” should include “essential principles only; lest the operations of government should be clogged by rendering those provisions permanent and unalterable, which ought to be accommodated to times and events.”²⁴ Randolph might be unhappy to read current mega-constitutions, which have swelled upwards of ten times the size of the document he worked on in Philadelphia.

Scope is a dimension which of course will depend greatly on local context. Germany’s 1871 Constitution devoted a quarter of its space to provisions on the telegraph and railroad, which 21st-century constitutions would hardly consider. Sweden’s Constitution might mention reindeer herding, but we would not expect a similar provision in Singapore. Nauru’s Constitution provides for extensive regulation of phosphate extraction, hardly a central issue in The Netherlands.²⁵ Demand for constitutionalization will depend on the particular time and place in which the constitution is being written.

That being said, there do seem to be some secular trends in constitution drafting. As has often been remarked, the scope of constitutional rights has expanded from the 18th-century conception of negative rights to include a

²⁴ See J. H. Hutson (Ed.), *Supplement to Max Farrand’s The Records of the Federal Convention of 1787*, at 183 (1987).

²⁵ Constitution of Nauru (1968), Arts. 63, 83, 93. See also Constitution of Kiribati (1995) Art. 119(2.a).

panoply of positive rights and “third generation rights” belonging to groups. As these new rights have been “discovered” and instantiated in international human rights instruments, they have extended to national constitutions. We thus would expect an expansion in the scope of rights provisions over time.

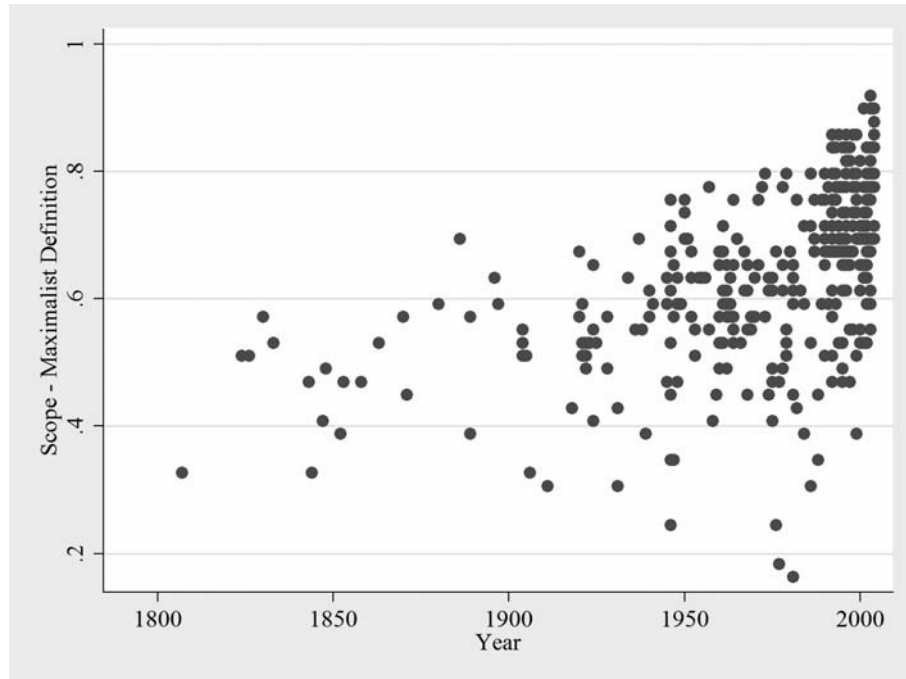
There are also new technologies of government that have emerged over time. The idea of constitutional review seems to have been so obvious to the American founders that they neglected to include any provision for it in the constitutional text; but with the emergence of designated constitutional courts in the 20th century, the amount of constitutional text devoted to describing constitutional review has expanded accordingly. Typically a constitutional court will be given its own chapter in a constitution, distinct from the ordinary judiciary. Even more important from the perspective of constitutional design has been an increase in the number of independent regulatory and watchdog bodies that are now considered standard. One can hardly find a new constitution without distinct commissions for judicial appointments, electoral oversight, human rights and counter-corruption. New constitutional offices and the independent central bank such as the ombudsman expand the scope of constitutions.

Finally, a host of new issues have arisen that are addressed in constitutions. Environmental protection, for example, did not warrant its first mention in a national constitution until the very end of the 19th century – as preservation of national property²⁶ – and of course is now regularly mentioned. These types of issues have led to a spectacular expansion in the scope of constitutions.

The expansion in the scope of constitutions over time is captured in Figure 3. The Figure takes 49 of the 667 questions from the Comparative Constitutions Project and measures the percentage for which a substantive provision is given in the constitution. (A complete list of questions on which the measure is based is given in the Appendix.) Issues that the constitution explicitly leaves to ordinary law are not considered constitutionalized. Each point in the Figure represents a different constitutional text.

As one can see, the general trend is increasing over time and the median value in the year 2000 is higher than any constitution written before around 1885. While there are some postwar constitutions of very narrow scope (the 1977 Khmer Rouge Constitution has 21 articles, many of which involved political exhortation), the vast majority seem to address a relatively discrete set of topics, notwithstanding great internal variety in their design details.

²⁶ Constitution of Dominican Republic (1896), Art. 25(10) (preservation of national property).

Figure 3: Scope over Time

No theory of what constitutions ought to do can account for their observed scope. If constitutions are designed to regulate relations between citizen and state, and provide some inter-temporal limits on government action, surely they would more frequently include such crucial issues as election law, which generate great incentives for temporal majorities to manipulate the rules. Instead, most constitutions leave the management of elections and the drawing of districts to a political process. Thirty-five percent of constitutions in our sample do not even mention political parties, which are surely essential to constitutional governance in both democracies and many autocracies. Only 20 percent of constitutions in our sample mention central banks, whose constitutional independence is increasingly considered essential to macroeconomic stability.

On the other hand, constitutions frequently include terms for relatively minor matters. Take an issue as trivial as age limits for holding public office. In 1789, the United States Constitution established a minimum age to serve in the legislature and executive branches.²⁷ This seems at one level an odd thing on which to spend constitutional space. If the people wish to elect an 18-year-

²⁷ Constitution of the United States of America (1789).

old to the legislature, or a 34-year-old to the presidency, why should they not be able to do so? Yet 72 percent of constitutions in our sample have provided for a minimum age for head of state, and 78 percent of constitutions have done so for legislators. The modal age for heads of state is 35 (22 percent of all constitutions), while that for legislators is 25 (28 percent of all constitutions). In short, the provisions from the United States Constitution appear to have been widely copied, notwithstanding the great divergence in life expectancy around the world, the vast increases in lifespan since the American founding, and the relatively trivial nature of the regulatory issue in question.²⁸

This suggests that the observed levels of specificity and detail in constitutions may in fact reflect shared drafting conventions about what ought to go into constitutions, and what ought to be left out. This would imply that particular national circumstances may matter less than issues such as legal tradition or international relationships.

4.3. Detail

Detail refers to the depth in which the constitution treats the topics within its scope. We assume that specificity is costly, and that designers wish to be economical with the operative provisions of the constitution. What might then lead designers to draft in a more or less detailed manner?

As with all legal language, we expect that decisions on detail respond loosely to cost-benefit considerations. There is little need to specify detail for contingencies that are quite unlikely. Thus a constitution need not specify, for example, the complete line of presidential succession, but may content itself with simply providing that a vice-president or deputy executive succeeds the president in the event of death. This of course leaves open the question of what happens if both the chief executive and deputy chief are killed in the same incident, but if we think such an eventuality is sufficiently unlikely, it can be left to ordinary legal processes or ignored completely. The constitutional text is reserved, in principle if not always in practice, for matters whose combined probability and significance are such that the highest legal document ought to address them.

A related consideration is whether or not we think the polity can work out an ad hoc solution at the time a significant but low-probability event materializes. Much of what constitutions do is to control behavior inter-temporally.²⁹ We should thus restrict constitutional regulation to those issues in which we think

²⁸ Perhaps an extreme case illustrating the trivial nature of the issue was the Constitution of Syria, which stipulated a minimum age of 40 to serve as President. Constitution of Syria, Art. 83. When Hafez-Al-Assad passed away, his 34-year old son was the heir apparent, and the Constitution was modified to allow him to serve. A. H. Al-Fahad, *Ornamental Constitutionalism*, 30 Yale J. Int'l L. 375, at 376 (2005).

²⁹ C. Sunstein, *Designing Democracy: What Constitutions Do* (2001).

ordinary processes are likely to produce poor outcomes. If we are confident in our ability to resolve contingencies in a flexible manner, we should simply leave the issue in question out of the constitution, and have a more general constitution.

4.4. The Interaction of Scope and Detail

Scope and detail are separate dimensions of a single overall concept of specificity. One can have a constitution that regulates many dimensions of public life in a very abstract manner; conversely one can have a constitution that has a narrow scope but much detail. Poland's 1992 Constitution intentionally dealt only with the structure of government and said nothing about rights and duties of citizens. It had a moderate level of detail, but left many crucial issues to be resolved by ordinary law. Estonia's 1992 document had a broader scope but also left much to future law, including seemingly crucial things, such as how the members of the parliament would be elected and how the military would be governed.³⁰ On the other hand, Thailand's 1997 document combined a wide scope, covering many types of institutions, with excruciating detail, describing complex selection committees to be set up to appoint every one of the many independent watchdog agencies.³¹ India's mega-constitution has tremendous detail, but not a lot of scope relative to Thailand or Brazil's 1988 document. Conceptually one can think of these dimensions as a two by two box:

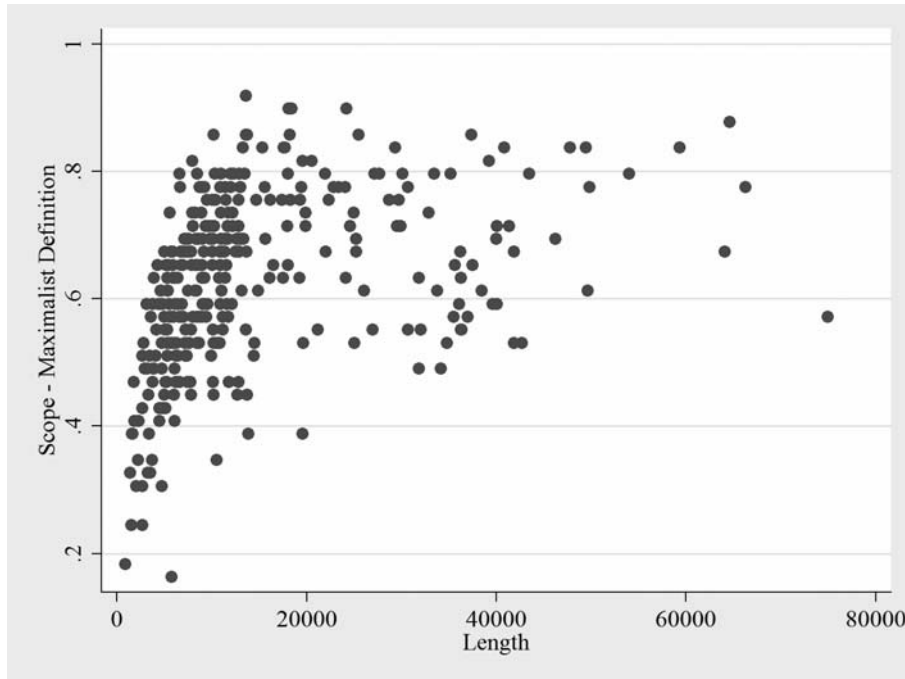
Table 4: Specificity and Scope

| | | Specificity | |
|-------|------|------------------------------|-------------------|
| | | High | Low |
| Scope | High | Thailand 1997 Brazil 1988 | Japan 1946 |
| | Low | Poland 1992 | Saudi Arabia 1992 |

The following scatterplot shows the bivariate relations. It demonstrates that scope is distinct from the length in words, our proxy for detail. Some constitutions with high scope are very verbose while others are relatively short.

³⁰ Constitution of Estonia (1992) provides specific articles: Art. 60 [The election of the Riigikogu (Parliament of Estonia)], Arts. 126-127 [Governing of national defence].

³¹ Ginsburg, *supra* note 16.

Figure 5: Scope and Detail

5. Considerations of Specificity

We do not know at this stage whether longer constitutions have more words because they have broader scope or more detail. For present purposes we shall collapse these issues and treat the two dimensions together, under the single rubric of “specificity.” We next consider three types of factors which might be relevant in considering the level of detail to be included: audience quality, bargaining problems, and boilerplate.

5.1. Audience Quality

We begin with Smith’s distinction between intensive and extensive forms of delineating rights.³² Any particular communicative act, be it ordinary speech or legal commands, is specific to the speaker and to the audience, and thus must be

³² H. Smith, *The Language of Property: Form, Context and Audience*, 55 Stan. L. Rev. 1105 (2003).

tailored to the particular common knowledge between them. When a speech-act takes an expected form, relying on background understandings common to the speaker and the audience, it can be fairly concise and economical. On the other hand, if there are no such background understandings, speech-acts require more elaboration and precision to accomplish their communicative task. One can then distinguish between intensive communication that relies on shared understandings, and extensive communication that is more explicit.

As the audience for legal speech becomes more “extensive,” more specific forms of legal delineation may be required as processing costs increase. Extensivity is related to such factors as audience size, degree of shared background knowledge, heterogeneity, and definiteness of the membership. Larger, more plural groups, with fewer common understandings, and those whose membership is not well known in advance, require more elaboration of the rules. More intimate, smaller groups with shared understandings and background knowledge can rely on intensive forms of communication, and require less reliance on definite terms.

Ordinary language occurs in an environment of reciprocal communication in which conventions are easy to develop and sustain. As Smith notes, “speakers will have an incentive to strike right balance in spoken communication – most people are both speakers and hearer and a speaker who consistently imposes costs on hearers will find himself without conversational partners.”³³ Legal commands, however, can not always rely on conventional reciprocal enforcement, and typically address diverse audiences that may lack shared understandings.

Still, even legal texts rely on certain commonalities that minimize the need to specify detail. Consider the legal command “Thou shalt not kill.” This simple categorical command in fact hides numerous complexities. A more complete statement of the rule would be “Thou shalt not kill, unless thou art acting in self-defense, are a soldier in wartime, or are a state executioner carrying out the sentence of a duly constituted court of law.” For most purposes, the simple rule of thumb holds, and the exceptions are either generally understood or specialized enough (so as to be unusual) that it is not worth stipulating the rule more fully.

This perspective has several implications for constitutional studies. First, we should expect demand for specificity to vary with the quality of the constitutional audience. *Ceteris paribus*, larger, more inclusive, open-ended political communities may require more detailed texts than more discrete, smaller groups. There is, however, a corresponding constraint. Precisely because the polity is larger and more diffuse, it may be more difficult to actually achieve agreement on any constitution. As demand for specificity increases, the ability to achieve it decreases.

³³ Smith, *id.*, at 1135-1136.

There is a further implication here. We can think of the identity formation function of constitutions as attempting to create intensive communities. A successful constitution quite literally *constitutes* the polity, giving the people a common language and set of tools to resolve political questions, even if no such common language existed previously. This should result in increasing intensity of communication. Thus we ought to think of the symbolic functions of constitutions as striving to increase cohesion on the part of the constitutional audience, and hence be responsive to some of the same considerations as the operative provisions of the constitutions.

Smith's distinction is relevant not only to the *extent* of specificity but also the content of constitutional language. We might expect in information-extensive environments that constitutions will contain more explicit limits on state actors, and use a more imperative tone with regard to decision-makers. In contrast, in higher trust-intensive environments drafters will be less concerned with limitation and may be more interested in facilitating political action.

5.2. Bargaining Problems

The relation between speaker and audience is not the only consideration in specificity. Besides being legal commands of a sort, constitutions are political bargains among elites. They may reflect the interests of a few or many, and participation in their production can be narrow or broad. But whoever is involved, the process of negotiation is likely to introduce some relevant considerations that will affect the ultimate specificity of the constitution.

The issue of uncertainty is a crucial one. In the last section, we suggested that if a group is confident in its ability to make good policies in the future, it might adopt a very general constitution and leave the details to ordinary political processes. There are two kinds of uncertainty that are relevant: political uncertainty and uncertainty introduced by exogenous change and unanticipated circumstances. The first concerns whether or not a particular party will be able to govern in the future, or has confidence that its interests will be protected; the second concerns external events, such as technological change or new international configurations, that may put pressure on the constitutional bargain or introduce new information that would have been helpful at the time of drafting.

These two forms of uncertainty produce different incentives in terms of drafting specificity. If a party believes it will not be in government in the future, and does not trust those who are likely to be running the show, a standard response is to seek to write a more complete contract, specifying contingencies. One might also expect that there will be greater demand

for constitutional rights, and for institutions to enforce them, in bargaining environments with this kind of uncertainty.³⁴

On the other hand, if one is worried about exogenous change, a typical response in the contract setting is to write loosely-defined agreements that allow for flexible adjustment over time as new information is revealed. If the constitutional bargain might prove subject to external pressures and forces that cannot be anticipated at the time of the bargain, this might argue for a more abstract constitutional text. The parties will be able to specify performance within general parameters in light of changing circumstances. Furthermore, the parties will require the flexibility to adjust the bargain to reflect the division of power down the road.

To summarize, political uncertainty should produce longer documents that are more entrenched, while environmental uncertainty will produce shorter documents with more flexibility. When the external environment is stable, there is unlikely to be significant information on the costs and benefits of alternative policies revealed in future periods, and there is relatively less cost to specifying. Of these two effects, we think it likely that political uncertainty dominates. A party uncertain of its future will prefer detail, whether or not it thinks the environment will be stable. But a party that is confident in its political future will likely prefer flexibility, even if it believes the environment is stable.

We are now in position to say something about the optimal level of constitutional specificity. Leaving issues vague is a way of postponing issues to the future; specifying detail is a way of controlling the future. The optimal level of specificity in any particular situation will be a function of

- 1) the current costs of specificity, chiefly the transaction costs of negotiation;
- 2) the intensity of the audience for the constitution, which determines how much can be left unsaid;
- 3) the benefits of specificity, which increase in political uncertainty; and
- 4) the future costs of rigidity (the risks of mis-specifying what ought to have been left flexible) which increase amid environmental uncertainty.

5.3. Empirical Implications

This argument has some empirical implications. We do not make any claims that actual constitutional drafters achieve the proper calibration between

³⁴ T. Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (2003).

specificity and generality. Nevertheless, it is of interest to see if the theory presented here corresponds with what we observe in practice.

First, we should expect that audience quality and size are relevant. As the number and diversity of subjects of the constitution increases, the audience becomes more “extensive” and hence less liable to rely on background understandings as to constitutional constraints. The implication is that larger and more diverse countries will have longer constitutions.

We would also expect that the relevant audience for the constitutional text tends to be larger in democracies than autocracies, which by definition involve minority dominance over the majority. This means that the democratic audience is more extensive and hence more demanding of detail. Furthermore, the process of negotiating democratic constitutions involves a wider range of interest groups, even in instances where democracy is achieved through an elite pact. In democracies, no party to the constitutional negotiation can be assured of governing in future periods, because of the uncertainty associated with elections; thus political uncertainty is higher. All this suggests that there will be greater demand for specificity in democratic constitutions. (A countervailing consideration is that as political uncertainty increases, bargaining will also be more costly, reducing the ability to deliver specific language.)

Democratic constitutions may also be longer because of issues of scope. Constitutionalization involves removing issues from ordinary politics. When there is likely to be electoral turnover, ordinary politics forms a threat to status quo policies; by contrast, authoritarians may prefer a regime in which they can change policies more flexibly, since they will assume they will remain in control. We expect that constitutional scope, *ceteris paribus*, will be greater in democracies than in autocracies, as more topics will be constitutionalized so as to remove them from the ambit of ordinary politics. In addition, democracies increasingly are accompanied by complex sets of regulatory bodies that are defined in the constitution, such as counter-corruption commissions, courts of audit, electoral commissions, and human rights commissions. Each of these bodies requires specification in the constitution, and can be considered to expand scope.

To examine whether these conjectures have any explanatory power, we present a simple empirical test using ordinary least-squares regression on a sample of 325 national constitutions, representing a majority of texts in our database. (The sample is limited because some of the independent variables are not available for every case). We use the widely utilized POLITY index, normalized, to capture democracy. We also employ Fearon’s measure for ethnic fractionalization, capturing the extent of ethnic diversity in a country.³⁵ We include dummy variables for various colonial traditions. As control variables, we include year, wealth as measured by GDP and total population (the latter two variables interpolated to cover missing observations).

³⁵ J. O. Fearon, *Ethnic and Cultural Diversity by Country*, 8 J. Econ. Growth 195 (2003).

For dependent variables, we include three separate indicators. First, we include the simple length in words as a crude measure of specificity. We next examine a measure of scope (scaled to an interval between 0 and 1), as described above, capturing the percentage of the 49 major categories of constitutional topics addressed in the constitution. Finally, we utilize an experimental measure of specificity that we call “detail,” capturing the extent to which the constitution treats the issues it covers. This is measured by the percentage of available sub-questions addressed in the constitution, given an affirmative answer for the relevant categorical “scope” question. For example, a constitution that provides for a human rights commission would be coded 1 for that element of the “scope” index, and the “detail” measure would describe the extent to which the constitution provides information on the number of commissioners, their terms, and their powers. A constitution that both provided for such a commission and answered all the sub-questions would score 1 for scope and 1 for detail for this section of the constitution. A constitution that provided for a human rights commission with all detail to be provided by ordinary statute would score 1 for scope and 0 detail in this section of the constitution.

Table 6: Determinants of Constitution Length, Scope and Specificity

| | Length in Words | Scope | Detail |
|--------------------------|-----------------|-----------|--------------|
| Constant | 12581*** | -4.16*** | -1.11*** |
| Year | 72.57*** | .01*** | .0001*** |
| Polity | 676*** | .004*** | .003*** |
| Population | 0.01 | -3.05e-08 | -1.58e-07*** |
| GNP | -.29*** | 1.35E-06 | 1.24E-06 |
| Ethnic fractionalization | 5424** | 0.35 | 0.006 |
| UK colony | 13316*** | -.04** | -.03** |
| Spanish colony | 4339*** | .05*** | .05*** |
| French colony | -4360*** | -0.02 | -.006 |
| R-squared | 0.48 | 0.37 | 0.21 |
| n | 322 | 325 | 325 |

*** significant at 1 per cent

** significant at 5 per cent

* significant at 10 per cent

The regression analysis confirms that constitutions are getting longer, covering more issues in greater detail. The democracy results are quite strong, confirming our intuition that democracies need more detail in their constitutional texts. This result is consistent with the idea that audience extensivity and political

uncertainty increase demand for detail. However, we observe no consistent effects correlated to population size, wealth or ethnic fractionalization. There do appear to be significant effects for legal origin, controlling for the time and democracy variables. Common law constitutions are longer, but are filled with language that does little work in terms of scope or detail. Spanish colonies (chiefly found in Latin America) are also longer, notwithstanding a general civil law tendency toward brevity. The Spanish colonies are long in a different way from the British: they provide more scope and detail in their document. Finally, we observe that French colonial constitutions are shorter, but just as efficient as others in terms of the scope and level of detail. In short, there appear to be major differences of legal origin that affect the form of written constitutions.

5.4. A Potential Objection: Conventional Texts and Boilerplates

Should we expect that drafters actually achieve optimal levels of specificity? It is not clear that they will, for there is a good deal of copying that goes on in constitutional drafting. We know that models are often adopted from abroad, but even particular language is often copied.³⁶ It is perhaps not surprising that the paradigmatic phrase “We the People” appears in 38 constitutions in our sample; but the idiosyncratic phrase “cruel and unusual” punishment appears in 10, and “due process” appears in 67, ranging from Afghanistan to Yugoslavia. This latter phrase has a specific historical meaning in common law countries, and yet has been adopted widely in countries with a different legal tradition.

This suggests that there is a phenomenon we might call “constitutional boilerplate.” Drafters may settle on language that has been used in other constitutions as a basis for their own negotiations. This approach has the virtue of not reinventing the wheel, and need not be viewed pejoratively. If one believes that constitutional provisions have been adopted by other countries based on an independent assessment of their benefits, borrowing can represent a form of social learning, by which states learn from others’ experience. Further, some provisions of a constitution may be directed externally, such as rights provisions that might be designed to act as signals to international audiences.³⁷ It might make sense for drafters to use conventional forms of rights language to achieve this signaling purpose.

Boilerplate has the advantage of saving on transaction costs of negotiation. Furthermore, in the constitutional context, the usual objections to “boilerplate” in contracts between buyers and sellers – namely that they involve a power

³⁶ S. Choudry (Ed.), *Migration of Constitutional Ideas* (2007); *Symposium on Constitutional Borrowing*, 1 I-CON 177-324 (2003); *Symposium: Comparative Avenues in Constitutional Law Borrowing*, 82 Texas L. Rev. 1737 (2004).

³⁷ D. Farber, *Rights as Signals*, 31 J. Leg. Stud. 83 (2002).

imbalance in favor of drafters – are less salient.³⁸ On the other hand, in the constitutional context, there are few of the mechanisms of market discipline that some believe restrain the use of “inefficient” boilerplate in the contractual setting.³⁹ We cannot be confident that the phrases that are being borrowed are in fact the best provisions.

There is to our knowledge no empirical study systematically studying the existence of boilerplate terms in constitutions. We do not seek to explore this issue in depth here, but simply note that the borrowing of terms may in fact mean that there is less local understanding of what they entail, and hence less likelihood of effective enforcement in practice.⁴⁰ Our general theory of specificity is tied to unwritten understandings that sustain constitutional life. If specificity is driven by boilerplate, it will be less tightly coupled with these understandings. And one would expect that it will be less able to serve a coordination function facilitating effective constitutional restraint.

Some preliminary evidence on this issue can be drawn by examining similarity across constitutional attributes. The Comparative Constitutions Project has developed a preliminary measure of similarity of constitutional provisions on rights, drawing from a 92-question section of our survey. For any particular constitution in our 642-text sample, we measure the percentage of attributes that match with each of the existing constitutions then in force. This produces a total of 62,846 dyads. Across all observations, we observe a mean level of similarity of about .35. This suggests that there is some convergence but that there is also a good deal of tailoring in terms of the scope of constitutions. Constitutional texts are not copied wholesale but constructed in a process that has been characterized as exemplifying Lévi-Strauss’ idea of *bricolage*.⁴¹

6. Conclusion

Constitutions work when their subjects have a shared understanding of the contents of the terms of the bargain. Even if we assume that the written documents are merely reflective of higher-order norms, the question of the relationship between the written and unwritten constitutions is a complex one. What subset of the universe of constitutional norms is written down? Why are some norms and understandings left uncoded? And why do drafters vary so systematically in terms of the level of detail they provide?

³⁸ O. Ben-Shachar (Ed.), *Boilerplate: The Foundation of Market Contracts* (2007).

³⁹ O. Ben-Shachar & J. White, *Boilerplate and Economic Power in Auto-Manufacturing Contracts*, in O. Ben-Shachar (Ed.), *id.*, at 29.

⁴⁰ B. Weingast, *The Political Foundations of Democracy and the Rule of Law*, 91 Am. Pol. Sci. Rev. 245 (1997).

⁴¹ M. Tushnet, *The Possibilities of Comparative Constitutional Law*, 108 Yale L. J. 1225 (1999).

This paper has suggested some considerations. Writing can help to provide a coordinated understanding of the contents of constitutions for a diverse group of subjects. Demand for detail will increase with the extensiveness of the audience and the political uncertainty among those who are drafting the constitution; environmental uncertainty will tend to mediate these concerns somewhat. And the existence of boilerplate and conventions about the scope of constitutions provide somewhat of a wild card. Because terms may be borrowed from abroad without significant local input, they may not serve to coordinate among the subjects of the constitution.

Real-world constitutions may not approach an optimal level of constitutional specificity, but analysis of that question would require a theory of what outcomes we expect specificity to produce. One metric of constitutional quality is endurance, the subject of relatively little comparative research. In a separate paper, we have found that specificity is associated with constitutional endurance: longer constitutions survive longer, controlling for a host of other factors.⁴² The framework presented here suggests at least two reasons why this might be the case: first, more detailed constitutions reflect more investment in time and bargaining costs on the part of the drafters; and second, more detailed constitutions help extensive audiences of constitutional subjects to coordinate their behavior, thus ensuring that the constitution can actually be enforced.

7. Appendix: Definition of Scope

Our measure of scope consists of the following questions, drawn from the Comparative Constitutions Project dataset.

EXECUTIVE

- v84. [EXECNUM]-How many executives are specified in the constitution?
- v157. [DEPEXEC]-Does the constitution specify a deputy executive of any kind (e.g., deputy prime minister, vice president)?
- v163. [CABINET]-Does the constitution mention the executive cabinet/ministers?
- v174. [ATGEN]-Does the constitution provide for an attorney general or public prosecutor responsible for representing the government in criminal or civil cases?
- v182. [EM]-Does the constitution have provisions for calling a state of emergency?

LEGISLATURE

- v191. [HOUSENUM]-How many chambers or houses does the Legislature contain?
(Asked only if LEGISL is answered 1)

⁴² Z. Elkins, T. Ginsburg & J. Melton, *The Lifespan of Written Constitutions* (manuscript).

- v263. Whom does the constitution specify as empowered to initiate general legislation?
(Asked only if LEGISL is answered 1)
98. Not Specified-[LEG_IN98]
99. Not Applicable-[LEG_IN99]
- v276. Does the constitution provide for any of the following special legislative processes? (Asked only if LEGISL is answered 1)
98. Not Specified-[SPECLEG98]
99. Not Applicable-[SPECLEG99]
- v307. [COMMIT]-Are legislative committees mentioned in the constitution? (Asked only if LEGISL is answered 1)

JUDICIARY

- v308. [LEVJUD]-Does the court system provide for any of the following?
- v309. For which of the following specialized courts does the constitution contain provisions?
98. Not Specified-[JUDCRTS98]
99. Not Applicable-[JUDCRTS99]
- v362. To whom does the constitution assign the responsibility for the interpretation of the constitution?
98. Not Specified-[INTERP98]
99. Not Applicable-[INTERP99]

MISCELLANEOUS

- v70. [AMEND]-Does the constitution provide for at least one procedure for amending the constitution?
- v384. [FEDUNIT]-Is the state described as either federal, confederal, or unitary?
- v457. [BANK]-Does the constitution contain provisions for a central bank?
- v487. [HEADFORN]-Who is the representative of the state for foreign affairs?
- v490. [TREAT]-Does the constitution mention international treaties?
- v538. [NAT]-Does the constitution refer to nationals, subjects, or citizens?
- v640. [COMCHIEF]-Who is the commander-in-chief of the armed forces? (Asked only if MILITARY is answered 1)
- v655. [LANG]-Does the constitution specify either an official or national language?
- v17. [TRANPROV]-Does the constitution contain any transitional provisions?
- v29. [PREAMBLE]-Does the constitution have an introduction or preamble?
- v49. [TRUTHCOM]-Does the Constitution provide for a commission for truth and reconciliation?
- v53. [OATH]-Does the constitution stipulate that some public office holders take an oath to support or abide by the constitution?
- v66. [CAPITAL]-Does the constitution contain provisions specifying the location of the capital (if so, please specify the location in the comments section)?
- v68. [FLAG]-Does the constitution contain provisions concerning the national flag?
- v89. [HOSELECT]-How is the Head of State selected? (Asked only if EXECNUM is answered 3, or if HOSHOG is answered 1, or if HOSHOG is answered 3, or if HOSHOG is answered 4, or if HOSHOG is answered 90, or if HOSHOG is answered 97)

- v192. [STDCOM]-Does the Constitution specify a “standing committee”? (Asked only if LEGISL is answered 1)
- v202. How are members of the first (or only) chamber of the Legislature selected? (Asked only if HOUSENUM is answered 2, or if HOUSENUM is answered 3)
- v255. [LEGDISS]-Who, if anybody, can dismiss the legislature? (Asked only if LEGISL is answered 1)
- v317. [HOCCJ]-Is the selection process specified for the chief justice or the other justices of the Highest Ordinary Court? (Asked only if LEVJUD is answered 5, or if LEVJUD is answered 6, or if LEVJUD is answered 7)
- v371. [JREM]-Are there provisions for dismissing judges?
- v413. [PART]-Does the constitution refer to political parties?
- v423. [REFEREN]-Does the constitution provide for the ability to propose a referendum (or plebiscite)?
- v431. [OVERSGHT]-Does the constitution provide for an electoral commission or electoral court to oversee the election process?
- v451. [OMBUDS]-Does the constitution provide for an Ombudsman?
- v466. [MEDCOM]-Does the constitution mention a special regulatory body/institution to oversee the media market?
- v469. [JC]-Does the constitution contain provisions for a Judicial Council/Commission?
- v472. [CC]-Does the constitution contain provisions for a counter corruption commission?
- v476. [HR]-Does the constitution contain provisions for a human rights commission?
- v479. [EXINST]-Does the constitution contain provisions with regard to any additional central independent regulatory agencies (not including a counter corruption commission, human rights commission, central bank commission, or central election commission)?
- v483. [INTLAW]-Does the constitution contain provisions concerning the relationship between the constitution and international law?
- v519. [CAPPUN]-How does the constitution treat the use of capital punishment?
- v562. [OFFREL]-Does the constitution contain provisions concerning a national or official religion or a national or official church?
- v569. [EXPROP]-Can the government expropriate private property under at least some conditions?
- v626. [ENV]-Does the constitution refer to protection or preservation of the environment?
- v631. [ARTISTS]-Does the constitution refer to artists or the arts?
- v637. [GOVMED]-How does the constitution address the state operation of print or electronic media?
- v659. [EDUCATE]-Does the constitution contain provisions concerning education?

