**CONSTITUTIONAL RIGIDITY MATTERS: A VETO PLAYERS APPROACH**

**By**

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Recent empirical analyses dispute the significance of constitutional rigidity, while the traditional position it is the most important part of a constitution. This article argues that the dispute is due to the misuse of independent and dependent variables, as well as inappropriate methodology. I use the theory of veto players to measure constitutional rigidity, and create a new index covering 94 democratic countries. First, I explain the underlying logic of the veto players approach and the specific derivation of the rules for the construction of the rigidity index. Second, I explain why the lack of constitutional rigidity is a *necessary but not sufficient* condition for significant constitutional amendments in democratic countries. Finally, I create a new dataset on the *significance* of constitutional amendments and estimate a heteroskedastic model, in which more significant amendments lead to a better fit. I also pointout other areas where constitutional rigidity can be used.

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“…Amending clause…describes and regulates…amending power. *This is the most important part of the constitution.*”

(John W. Burgess, *Political Science and Constitutional Law* 1890: 137).

Today this centuries-old quotation may seem obvious or self-evident. Indeed, often people argue that “institutions matter.” If this is true it should a fortiori apply to constitutions; and then, even more forcefully to the most important rules of the constitution, the amendment provisions. Yet, contemporary empirical research based on the study of actual constitutions all over the world does not corroborate these expectations. Empirical studies do not find a reliable relationship between the stringency of rules and amendment infrequency. Rasch and Congleton, despite their appreciation of formal rules, have to summarize the literature as follows: “Clearly, there may be much more to be learned about the relationship between amendment rates and amendment procedures.” (Rasch and Congleton 2006, 549)

In a more forceful way in an article entitled, "Does the constitutional amendment rule matter at all? Amendment cultures and the challenges of measuring amendment difficulty," Ginsburg and Melton dispute the significance of amendment rules and “go on to develop a measure of amendment culture as an alternative to institutional factors that constrain amendment.” (2015, 691). They conclude that their measure of political culture, which is in fact the inclusion of a lagged dependent variable, matters more than institutional factors. Finally, based on their findings, others go even further and abandon the use amendment rules altogether and present the (in)frequency of amendments as a measure of constitutional rigidity, or “entrenchment.”[[1]](#footnote-1) (Versteeg and Zackin 2016).

This is not a superficial disagreement. Given the importance of constitutional amendment rules to Burgess, if empirical research leads to the conclusion that these rules hardly matter (as Rasch and Congleton (2006) argue after reviewing all the literature), or do not matter at all (Ginsburg and Melton 2015), or can be ignored altogether (Versteeg and Zackin 2016), then such conclusions of irrelevance are even more justified for all the other institutions which are less significant than constitutional amendment rules.

I show that constitutional amendment rules have a significant impact on amendment frequency. I produce an index of constitutional rigidity on the basis of veto players covering the 94 countries that are democracies (those that have a Polity score of 6 or above in 2013 (Marshall 2016)). Using this measure of constitutional rigidity and data on the significance of constitutional amendments that I collected, I corroborate Burgess’ claim. The paper starts with a review of the literature on constitutional rigidity. I show that most of this literature uses only a subset of institutional rules and does not focus on democratic countries. Focusing on democracies is important as these are the only countries where institutional rules are likely to apply. I also show that a segment of the literature mixes amendment rules with contextual conditions, making it difficult to assess the role of institutions. Then, I present a model of constitutional rigidity by explaining how one can measure the core of a constitution, that is, the outcomes that cannot be changed given the existing amendment rules and the preferences of the actors.[[2]](#footnote-2) The model takes all of the amendment rules into account and evaluates them only in democratic countries. In addition, the relationship is evaluated in isolation, without interaction between institutions and contextual factors. This will permit future analyses to examine the added value of any particular theory that specifies non-institutional factors likely to affect constitutional revisions.

On the basis of this model I explain the discrepancy between Burgess’ expectation and the contemporary empirical research. I argue that there are three reasons that empirical research questions Burgess’ arguments: 1. The independent variable. 2. The dependent variable. 3. The applied methodology.

1. The independent variable I use is a proxy for the size of the core. Most authors have used similar ideas but not always consistently. A few have adopted a different approach, including contextual and cultural variables. Also, most of them have applied their analysis to a limited number of countries (around 30), or to all countries, or to countries regardless of their status in terms of democracy (Ginsburg and Melton (2015). I use only the periods where the constitutions in place in 2013 in 94 countries were ranked at 6 or above in the Polity Index.
2. The dependent variable in the literature so far has been the frequency of all constitutional amendments. On the basis of the model, I explain why the appropriate variable should be the significant amendments and I include the variable “significance”[[3]](#footnote-3) in my calculations.
3. The appropriate method is not a linear regression, since the theory provides a necessary but not sufficient condition for the frequency of significant amendments. Advancements in methodology (See Goertz and Starr (2002) and Goertz (2017)) indicate that the necessary but not sufficient conditions lead to two different predictions, one on the size of the dependent variable, and the other on its variance. The appropriate method treats the predicted differences in variance (heteroskedasticity) as an asset instead of a liability in the estimation. Therefore, I corroborate that constitutional rigidity leads to fewer significant amendments and constitutional flexibility may or may not lead to the adoption of significant amendments.

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In the conclusion, I argue that the combination of the independent variable I employ, the restriction of the dependent variable to significant amendments, and the application of the appropriate methodology bridge the apparent gap between century-old theory and contemporary empirical evidence. This congruence corroborates the measure of constitutional rigidity I calculate. In the discussion I present some additional areas in which it can be applied.

1. CONSTITUTIONAL RIGIDITY ACCOUNTS

Constitutions systematically involve (besides Burgess’s “most important” amending clauses) two categories of items: human rights and the rules of the political game. These two categories of items require time consistency. That is, human rights and the rules of the political game must be well known in advance and respected by all participants. In addition, they need to remain constant (as long as they have not become obsolete), so that all participants know their rights and obligations. For this reason, constitutions often protect their texts from change by making modification difficult. Indeed, constitutions include provisions requiring qualified majorities of one body, concurrent majorities of several bodies, or both, in order to be modified. In addition, many constitutions specify alternative procedures for constitutional amendments. For example, some alternatives provide for less stringent majorities in the legislature if the modifications are supported by a referendum. Finally, many constitutions involve provisions that cannot be modified at all, such as human rights or the broad political regime existing in a country.

The multiplicity of these constitutional amendment provisions is extremely important for the way the political game is played in different countries, since the stringency of amendment rules can render political institutions almost “exogenous”, with the outcome resulting from decisions made in the past and imposed on the current players. On the other hand, if these restrictions are weak, actors will include a constitutional revision in their agenda any time the actors disagree with the constitutional rules.

For example, in some countries, such as France (Art. 77), the rules concerning the electoral system are set by ordinary legislation. This is why the electoral system became the subject of political competition in 1985 (when it switched from plurality rules to proportional representation) and 1986 (when it switched back to plurality). In other countries, like Slovenia (Art. 80), a two-thirds majority is required for a change of the electoral system. In Greece (Art. 54), the electoral system is protected by two amendment procedures: the requirement of a two-thirds majority in Parliament, or the changes “shall be applicable as of the elections after the immediately following ones.” As such rules are evidently consequential for the political game, students of constitutions have been studying the issue of “constitutional rigidity.”

These studies have been done at the normative and theoretical level, starting with the debate between Jefferson (who advocated frequent changes of constitution) and Madison (who prevailed in establishing a long-standing one), as well as the empirical one, such as those that attempt to assess the level of constitutional rigidity in different countries. Given the variety of locking mechanisms in constitutions and given the ability of founders to combine them either as supplements or as substitutes, the range of constitutional rigidity is extremely high, and the conclusions of the empirical literature are quite diverse.

There are two major approaches to measuring constitutional rigidity in the literature. The first uses institutional measures exclusively, while the second combines those measures with other criteria that measure the frequency of amendments and indicators on which this frequency depends. Focusing on the institutional factors alone, constitutional rigidity may differ from one article of a constitution to the next,[[4]](#footnote-4) as the constitution itself may provide for different provisions for the modification of different articles (not to mention the prohibition of amending certain articles like human rights, or the regime type); for the same article or sets of articles, alternative methods of revision may provide a choice of alternative political institutions. Finally, the array of revision procedures applicable is wide, ranging from multiple bodies, to referendums, to time delays that sometimes involve intermediate elections, and sometimes even creating special bodies, e.g. assemblies.

Focusing on institutions, some authors consider only a subset of the issues. For example, Lutz (1994) and Lijphart (2012) focus on the qualified majorities required in the amendment process (cited in Lorenz (2005, 341-342)), whereas Anckar and Karvonen (2002) focus mainly on the political actors involved (cited in Lorenz (2005, 344-345)). Lutz (1994) studied 82 constitutions (the fifty US state constitutions as well as 32 countries) but Lorenz (2005) was not able to apply Lutz’s index successfully to “measure the rigidity in countries which are not mentioned by him…” (Lorenz 2005, 342). Lijphart creates a fourfold typology depending mainly on the majority threshold required for approval and finds that this classification correlates with the strength of judicial review, which he assesses independently and also classifies in a fourfold group (Lijphart 2012, 214-215). Schneier (2006) uses a similar method and classifies 101 constitutions in five categories and nineteen subcategories.

Other authors (e.g. Elster (2000) and Lane (2011)) also use non-voting criteria such as time delays. La Porta, et al. examine a group of countries whose constitutions have remained unchanged since 1980 (La Porta, et al. 2004, 448). They measure constitutional rigidity on a scale from 1 to 4, which is broken down in La Porta et al.’s Table 1:

“One point each is given if the approval of the majority of the legislature, the chief of the state, and a referendum is necessary in order to change the constitution. An additional point is given for each of the following: if a supermajority in the legislature (more than 66 percent of votes) is needed, if both houses of the legislature have to approve, if the legislature has to approve the amendment in two consecutive legislature terms, or if the approval of a majority of the state legislatures is required”. (La Porta, et al. 2004, 451).

Rasch and Congleton (2006) combine data on amendment rates from Lutz (1994) with the institutional information they have on formal amendment rules in various countries. They then “create indexes of consensus and of the number of central government veto players or points of agreement required to secure a constitutional amendment” (Rasch and Congleton 2006, 546). They find that the “frequency of lawful constitutional changes, unfortunately, cannot be understood by focusing on the number of veto players and degree of required consensus alone” (Rasch and Congleton 2006, 548). Rasch and Congleton also argue that “the political demand for constitutional reform reflects economic, political, and cultural circumstances, as well as the magnitude of unresolved problems at any given point in time” (Rasch and Congleton 2006, 548). Lorenz focuses on a mix of institutional and contextual variables and combines elements of Lutz’s, Lijphart’s, and Anckar and Karvonen’s work to identify “the type of majority rule with the number of voting arenas or actors” (Lorenz 2005, 346). Lorenz found that the Lutz index “tends to explain only those amendment data which he presented,” while the Anckar and Karvonen index “tends to confirm the hypothesis about an inverse correlation between the difficulty and the contemporary amendment rates” (Lorenz 2005, 347, 354). Finally, Lorenz found Lijphart’s index “tends to result in the consistently weakest relationship between rigidity and amendment rates” (Lorenz 2005, 355).

Turning now to the combination of institutional and other factors, the most recent and sophisticated effort has been done by the Comparative Constitutions Project of Elkins, Ginsburg, and Melton (2009). These authors start from the premise that constitutional rigidity should be calculated using a combination of the institutional procedures required for amendment and the actual frequency, or lack thereof, of amendment. According to them, neither of these two components is sufficient on its own. While the institutional component can be assessed (with difficulties that they enumerate and that this literature review corroborates) by looking at the constitution, the frequency of amendment depends on a host of social and historical factors: “Thus, we regress the amendment rate on a set of amendment procedure variables as well as a host of factors that should predict political reform more generally, including those factors included in our model of constitutional duration” (Ginsburg and Melton 2015, 695). Such factors include percentages of different ethnic groups, economic development, amendment rate, amendment rate squared, etc. (Elkins, Ginsburg and Melton 2009, 227-228). Tsebelis and Nardi (2016) use the same indicators in their analysis. But statements such as “constitutional rigidity [has] a negative effect on amendment frequency,” which most of this literature shares,[[5]](#footnote-5) cannot be accurately evaluated with the use of measures that include amendment frequency as an ingredient of constitutional rigidity. This is probably the reason that this composite index was not used in subsequent analyses by Ginsburg and Melton (2015).

Given the variety of variables included, the reader will not be surprised to find out that the correlation among the indexes of constitutional rigidity is low (Ginsburg and Melton 2015, 698). In fact, “only three combinations yield a correlation greater than .5: Anckar and Karvonen with Lijphart, Lijphart with Lorenz, and Lorenz with Lutz. The other correlations are smaller than 0.5 and correlation between the CCP and Lorenz measures is even negative” (Ginsburg and Melton 2015, 697). The fact that the Comparative Constitutions Project indicator of rigidity has many negative correlations with other indices indicates the significance of the departure from institutional variables, as that analysis included social, economic, and other ingredients in the calculation. But there is another potential explanation of the low correlations. Tsebelis (2017) separates the two different methods that the founders of each country use to protect the constitution: the number of veto players and the required majorities. The indicators generated have a negative correlation because 89 percent of the countries that require just one body for constitutional changes also require a two-thirds majority or greater. Among countries that require two bodies, that percentage decreases to 63 percent, whereas only 52 percent of countries that require three bodies also require a two-thirds majority or greater. The most extreme countries (using only one of the two methods and generating the negative correlation) are Bulgaria and Mongolia on the one hand (requiring a three fourths qualified majority from a single chamber) and Australia, Canada, Denmark, France, Iceland, Ireland, Italy, and Paraguay on the other, requiring a simple majority for approval in three different bodies, usually including a bicameral legislature. So, depending on the weight of these two different components, constitutional rigidity may take different values. I address this issue with the construction of a new index of constitutional rigidity.

II. Constitutional Veto Players and Constitutional Core

Every constitution includes a series of articles that specify the rules concerning its future revision. The rules of constitutional revision specify a series of collective or individual actors, such as one or both chambers of a legislature, or a special assembly, or a referendum, or an elected president, that are required to agree on the revised text in order for a revision to be approved. In other words, they specify the set of constitutional veto players. In the same or subsequent articles, the constitution specifies a series of provisions, such as required quorums, majorities, time constraints, and additional rules, such as intermediate elections, that govern the decision of each one of these constitutional veto players. It is often also the case that constitutions present a series of alternative mechanisms for their revision, a type of system that Albert (2014, 917) calls “multi-track”. If these alternative paths of revision are followed, the previously specified constitutional veto players are rescinded or quashed, either partially or completely. In other words, the articles of constitutional revision both set and (may) rescind constitutional veto players.

This section will analyze constitutional rigidity on the basis of the “constitutional veto players” defined by the constitution and the “constitutional core” that they produce. The constitutional core is the set of provisions that cannot be changed *on the basis of the rules specified by the constitution and the preferences of the actors’ that are required to approve constitutional changes*. If, for example, revisions require a 2/3 majority in a unicameral legislature, and a minority controlling more than 1/3 of the seats is in favor of the status quo, then, the status quo is in the constitutional core. If, however, this minority shrinks to 1/4 of the seats, and the 3/4 agree, then, the status quo is not part of the constitutional core. On the basis of this definition, it is obvious that the higher the required majorities—say a 2/3 majority instead of a 3/5 majority or a simple majority—the more rigid the constitution. It is also obvious that the higher the required majorities, the more provisions will remain unchangeable, that is, the larger the constitutional core. As a special case, if the requirement for revision is unanimity, as is the case for treaties within the European Union, then revisions become *almost* impossible. I underline the word almost, because the EU was, after almost 10 years of attempts, negotiations and referendums, able to achieve unanimous support of the Lisbon Treaty in 2007. But I want to again point out that the definition of core I am using is different from the one in the legal literature, which considers only the provisions that the constitution explicitly declares as unamendable as the core (Albert 2015). Similarly, the more bodies that are required to agree for a revision (for instance, a bicameral parliament instead of a unicameral one), the more difficult it is to change the constitution. Below I specify the implications of different rules for the size of the constitutional core.

Let us start with the location of the constitutional core. It is placed in the center of the political spectrum, because anything located farther away from the center (in any direction) will be overruled by the specified qualified majority. Consequently, in a democracy, one should not expect the constitution to include “extreme” positions, that is, positions objected to by an overwhelming majority of the citizens. While this statement is true in general, the precise study of the institutional provisions by which constitutional revision become possible will enable us to deepen our understanding of constitutional rigidity.

The fundamental mechanism of constitutional revisions is a qualified majority of an existing legislative body (parliament) or some specifically elected institution (constituent assembly). To this qualified majority, additional institutions may be added, either as complements or as substitutes. If they are complements, the number of constitutional veto players increases; if they are substitutes, the previously defined constitutional veto players are rescinded. Let us examine these mechanisms of adding or subtracting veto players and the effect they have on the constitutional core.

Adding and subtracting veto players

Let us first consider the case of adding a veto player. Think of a requirement that specifies a qualified majority of two different institutions, say a lower house and an upper house, required to agree to an identical text, or a unicameral legislature required to approve the same text twice, both before and after an election, or a referendum required for the approval of a text produced by a unicameral legislature. Figure 1 presents the cores C1 and C2 of the two required institutions.

Any outcome located inside the core of either institution also belongs to the bicameral constitutional core. Indeed, points X and Y are part of the constitutional core, since any modification of X would fail to command the required majority inside Veto Player One, and any modification of Y would fail to command the required majority inside Veto Player Two. But the new constitutional core is not restricted to the combination (union) of the two cores. It also includes the whole area between the two cores. Indeed, if one connects X and Y with a straight line, the segment XX’ is located inside the core of Veto Player One, and consequently cannot be modified; similarly, the segment YY’ is located inside the core of the Veto Player Two and cannot be modified. The segment X’Y’ also cannot be modified, because each one of the two veto players would like to pull points in this segment in opposite directions. Consequently, the whole segment XY is part of the bicameral core, no matter where X and Y are located inside the cores of Veto Players One and Two. In other words, the addition of a second institutional veto player does not simply extend the core to include the core of this second veto player, but all the area between the two cores (the area A1A2B1B2 in Figure 1). This is a general statement relating to *any* additional constraint the constitution may introduce. It *never reduces* the size of the previously existing core.

INSERT FIGURE 1

Let us now consider the opposite case: what happens if the constitution, instead of adding constraints, adds alternative methods of revision? Figure 2 presents such a situation. Consider that in addition to a three-fourths majority required for approval by a bicameral legislature, represented by chambers A1A2A3 and B1B2B3, the constitution requires either an approval by a referendum, represented by Player P, or by an elected president of the Republic, represented by Player Q. On the basis of the previous analysis, the bicameral core would be the whole area A1A2A3B3B2B1. The additional requirement of a referendum would expand the core to the area A1A2A3PB2B1, while the alternative route of asking for the approval of the President of the republic would generate the core A1A2A3QB2B1. However, the dotted areas in the picture are not parts of the constitutional core of the country. The reason is that the points in the dotted areas can be modified by *one* of the two permissible mechanisms—*either* the referendum *or* the president). The constitutional core will be the intersection of the two possible cores, represented by the shaded area in Figure 2.

INSERT FIGURE 2

The two figures demonstrate the logic of constitutional revisions. Their extent depends not only on the institutional provisions, but also on the positions of the actors involved. For example, in Figure 1 the constitutional cores of the two chambers could be smaller or overlap, leading to a reduction of the size of the constitutional core, or they could be larger and farther away from each other, leading to its expansion. Similarly, in Figure 2, one of the two procedures could become easier than the other. For example, if Q is inside the triangle PA2B2, then the intersection of the two cores will be identical with the core and requiring approval by Q and P will become irrelevant.

However, there are two rules that will produce stable effects on constitutional cores. The first is that adding constraints will never reduce a constitutional core, although it may not affect it, depending on the positions of the actors. The second is that adding alternatives will never expand it, although again, depending on the position of the actors, it may result in no change. These are the two rules that I will use extensively in the calculation of constitutional cores for the sample of countries in this analysis.

On the basis of this analysis, the specific institutional procedure specified in the constitution is the threshold for all constitutional amendments and therefore cannot be ignored in a democracy. Whether a country requires revisions of the constitution or not will depend on many factors, like the preferences of the different actors involved, social or economic changes, etc. However, how successful any attempt to change the constitution will be depends on constitutional rigidity, that is, the rules regarding how the constitution can be changed, or, in our analysis, the size of the constitutional core. No matter what the prevailing conditions in a country, constitutional revisions will be less successful if the qualified majority threshold increases, say from 3/5 to 3/4, or the number of actors—veto players— required increases, say from 2 to 3.

1. CONSTRUCTING A CONSTITUTIONAL RIGIDITY INDEX

As Figures 1 and 2 indicate, the size of the constitutional core depends not only on the institutions regulating amendments, but also on the positions of the different actors involved. However, these positions are functions of many contextual factors, like the underlying dimensions of amendment (or conflict), the prevailing conditions at the time of the debate, etc. Think of issues like discrimination based on gender, race, or sexual preference and how much attitudes towards these issues have changed over the years. They can become issues of conflict or of political consensus, sometimes over long periods of time and other times extremely fast (as social issues go). Similarly, if a provision about the environment is to be included, the relevant positions are not simply the left-right dimension, but the positions of the different actors with respect to the environment. This argument indicates that for any specific amendment procedure in a country, one could calculate the positions of the different actors and have a better approximation than the aggregate comparative indicator I present here.[[6]](#footnote-6) However, there is no way to include these variations in a cross-national study involving constitutions ranging for centuries. Consequently, I will have to restrict the analysis to institutional factors alone. I will be focusing on the constitutions of countries included in the “Constitute Project” (<https://www.constituteproject.org/>), that is, constitutions in effect in 2013. I will restrict my analysis to only “democratic” countries, which I will operationalize as countries ranking 6 or above in the *Polity* Index.[[7]](#footnote-7)

When there are several alternative procedures, I measure only the one that is presented in the constitution *first*, that is, was intended by the founders to be the primary process. I focus on this method because the particular procedure that will actually be used depends on which one is “easier” in the prevailing political conditions, which in their turn, depend on the policy positions of the actors involved. For example, the Italian Prime Minister Mateo Renzi could have attempted his constitutional revision either through a 2/3 majority of both Chambers, or through a simple majority in both Chambers and a referendum. He chose the second procedure, because the proposed constitutional revision was significantly reducing the powers of the Italian Senate, so, it was impossible to have it accepted by 2/3 of the Senators. It turned out that the proposed amendment did not get voters’ approval and failed anyway (Tsebelis 2017). Similarly, the Chilean Constitution specifies three alternative ways of amendment, and the intersection of the corresponding cores is the empty set, but applying the first method made the constitutional revision fail in 2017 (Tsebelis 2018). So, I focus on the method of constitutional revision that is mentioned first in the constitution, which I call the “usual” method. If there are subsequent methods they will be included in the calculation (see below), and if there are different procedures for explicitly enumerated articles of the constitution they will be ignored.

The fundamental method for calculating the index is the summation of the approval thresholds of different elected institutions. This is my way of combining the veto players required by the founders of the constitution with the qualified majorities included to protect it. For all countries, any elected body that must approve a constitutional amendment is included in the formula with the value representing the threshold that must be reach in order for approval to be granted. Included in this formula, if applicable, are the executive, legislative (counted as a single body), people, and states. For example, if a legislative body must pass an amendment by a simple majority, 0.50 is added to the formula. If an intervening election is required between two rounds of majority approval, 0.5 + 0.5 is added.

Measure of Bicameral Legislatures

The second chamber is an issue requiring separate discussion. It may be argued that it is an independent majority from the lower chamber (after all, usually it has a different composition), or it may be argued that it is part of a bicameral legislature. Most of the time, the founders of a constitution include the legislature as a required veto player for revisions and specify the required majority for a valid decision; if the legislature is composed of two chambers, then most of the time both of them are included.[[8]](#footnote-8) I use the Euclidean distance between the two chambers[[9]](#footnote-9) as a measure of their disparity: If one legislature is composed of parties with proportions x1, x2, x3, …xn, while the second legislature from parties with percentages x’1, x’2, x’3 …x’n, the compositional distance between the two chambers is [(x1-x’1)2+(x2-x’2)2+(x3-x’3)2+…(xn – x’n)2].5, which increases as a function of the difference in the percentage that each party wins in each chamber. If the two chambers have identical composition, what Lijphart (2012, 99)calls “congruent”, this indicator counts them the same as a single unicameral legislature. According to this index, constitutional revisions become significantly more difficult as the difference in the composition of the two chambers increases.[[10]](#footnote-10) To be clear, I measure the difference in the composition of the two chambers at the end of 2013. My choice implies that this difference approximates the average difference over the whole period of democratic rule in a country which would have been a more accurate measure.

The Epsilon Rule

In addition, I am incorporating any modification of the rules that makes constitutional amendments more or less difficult than specified in the fundamental method by adding, or subtracting, an epsilon (i.e. a small number, in this case 0.01) for any provision that would increase, or decrease, rigidity. For example, if there is a provision outlining the percentage of members required for a quorum, if there is a requirement that a revision be passed twice, or if there is a delay from one passage to the next, an epsilon is added to the formula. If there is an alternative procedure specified, an epsilon is subtracted (see section II).

This method ensures that all the rules specifying constitutional rigidity are incorporated, including any compositional differences of the two legislative chambers. What is missing is the actual ideological distance of the different parties, or other institutional veto players. For example, it is possible that, in a country that requires approval by a bicameral legislature and a referendum, the position of the people is between the House and the Senate, in which case they should not be included in the calculations since they would be absorbed as a constitutional veto player (Tsebelis 2002). Yet, the formula would include an additional 50 percent for the referendum, despite the fact that, if the measures are approved by the two houses, they would not be rejected by the referendum.

While these rules are applied in a consistent way no matter the combination of procedures specified by the constitutions of different countries, they are not the only ones possible. For example, under the current assumptions it makes no difference for the constitutional rigidity of a country if the Parliament votes by simple majority for the amendments, and subsequently a referendum is required for adoption, or if there is a new election and the new Parliament approves the amended provisions, as long as simple majorities in Parliament and the referendum are required. Some might object to this simplification. Indeed, the voters may have different preferences than a subsequent Parliament and it is not obvious which one of them is closer to the positions of the initial Parliament. However, the calculation of the constitutional rigidity index would be: .5+.5=1 in both cases. Similarly, it makes no difference in the index if a double passage by the same parliament is required or if there is a quorum requirement. Both cases require the addition of an epsilon to the indicator. With that in mind, these choices are the simple application of assumptions outlined earlier in this paper. For the researchers that do not share them, I provide the necessary information to alter them and produce a different indicator of constitutional rigidity in Appendix I. The only thing I claim at the theoretical level is that the rules I use are reasonable and consistently applied.

From the empirical side, the indicator of constitutional rigidity provides a negative correlation with the frequency of constitutional amendments in all the current, as of 2013, constitutions of democratic countries. This is a subset of the data on amendment frequency from Ginsburg and Melton (2015). They use the constitutions of all countries in their sample, which cover up to 790 constitutions of different countries regardless of their democratic status. They also include multiple constitutions per country. I consider only the constitutions in effect in 2013 (see above) and the constitutional history of countries *only* when they are democratic. If a country falls below 6 in the Polity index, the corresponding years are eliminated, affecting the denominator of the frequency of constitutional amendment variable, as well as the numerator in cases where there were amendments at times when the country was not democratic.[[11]](#footnote-11) These restrictions leave a sample with a wide range of both constitutional rigidity and constitutional amendment frequency. The range of the constitutional rigidity scale extends from 0.5 to 1.51. These numbers roughly correspond from one to three different veto players with simple or qualified majorities. The standard deviation of constitutional rigidity is .27. An intuitive way of understanding this measure is to say that a change of two standard deviations is roughly equivalent to adding a referendum or the approval of a popularly elected President as a requirement for the validity of a constitutional amendment. With respect to amendment frequency, the range is from 0 (no amendments in any democratic year) to 1 (amendments passed in every democratic year). The average constitutional rigidity in the sample is 0.9 and the average amendment frequency is 0.28 amendments per year (that is, an amendment every 4 years).

Let us now turn to the relationship between the two variables. Plotting amendment frequency against the veto player index of constitutional rigidity calculated above produces Figure 3, which provides a visual display of the negative relationship between restrictive amendment rules and amendment frequency. When amendment frequency is regressed against veto player constitutional rigidity the standardized results produce a negative coefficient of -.294 with a p-value of 0.004.[[12]](#footnote-12) The significance of these numbers is that one standard deviation increase in constitutional rigidity is associated with a decrease in amendment frequency of nearly a third of a standard deviation[[13]](#footnote-13). Or, adding a referendum requirement will decrease amendment frequency by half a standard deviation. In other words, adding a referendum requirement halves amendment rate in eight years. So, the answer to the question that Ginsburg and Melton (2015) ask: “Does the constitutional amendment rule matter at all?” is a resounding “yes” for democratic countries.

INSERT FIGURE 3

This first result corroborates Burgess’ as well as much of the rest of the literature’s expectations. However, as I will show below, this is only part of the story. The theoretical expectations should be more precise and as a result the empirical tests more discriminating. I will show that, at the theoretical level, my predictions cover not only the relationship between constitutional rigidity and frequency of amendments, but also the variance of this relationship, and therefore heteroskedasticity should be included in the theoretical predictions and empirically tested. To this point I now turn.

IV. CONSTITUTIONAL AMENDMENT THEORY AND TESTS

INSERT FIGURE 4

Figure 4 presents two different constitutional cores, one Large and one Small (a subset of the Large), as is the case when one removes restrictions from the amendment rule (say a move from a 3/4 to a 3/5 majority or if only one chamber of a bicameral legislature is required to approve constitutional revisions, as is the case in Austria). The configuration presents three different potential positions of the status quo. In the first case the status quo (SQ) is located inside the small core, and therefore no constitutional revision is possible. In the second case, the status quo (SQ’) is located outside the small core but inside the large core and constitutional revisions are possible if the core is small, but impossible if the core is large. In the third case, the status quo (SQ”) is located outside both cores, and constitutional revisions are possible, but the set of possible constitutional revisions is larger in the case the constitutional core is small. All these statements are true in both cases regardless of the position of the status quo in each one of the three areas.

There are several conclusions from this analysis. First, regarding the *frequency* of amendments, the expectation that the larger the core, the fewer constitutional amendments are possible is justified. This expectation is shared by most of the literature I have reviewed and corroborated with the use of the new index I have presented in this paper (Figure 3). Second, the arguments above produce necessary but not sufficient conditions for constitutional amendments. Constitutional amendments are impossible when the status quo is inside the core, but just possible (not necessary) in cases where the status quo is outside the core. This statement has implications about the variance of the relationship between constitutional rigidity and the frequency of amendments: lower constitutional rigidity will present higher variance because more constitutional amendments become possible (but, again, not necessary). Consequently, my analysis predicts not only a *negative* relationship between constitutional rigidity and amendment frequency, but a *heteroskedastic* one too.

Second, regarding the *significance* of amendments. Significant amendments are the ones that make important modifications to the constitution, that is, they produce a vastly different status quo. Figure 4 demonstrates a big distance between the old and the new status quo. Figure 4 also demonstrates that this is not possible with the large core. Consequently, the negative heteroskedastic relationship expected in the argument above will be more pronounced the more significant the amendments under consideration.

This particular expectation about significance, is congruent with the findings in the literature on legislative output both in the US (federal and state level) and in comparative perspective. For example, Howell, et al. (2000) have divided federal legislation into three different categories: landmark, significant, and trivial and find that while divided government depresses the production of landmark legislation by about 30%, it has no substantive effect on the production of important, albeit not landmark, legislation and actually has a positive effect on the passage of trivial laws. In a study of policymaking in state legislatures, Crosson (Forthcoming) measures the size of the legislative core and finds substantively larger results when accounting for bill significance. Finally, Tsebelis (2002) has divided legislation in European countries into two categories and has found that veto players and their distance are negatively correlated with the production of significant legislation, but not with the production of non-significant pieces of legislation.

In order to be able to test the idea that the importance of amendments increases the significance of the relationship between rigidity and frequency I had to assess the significance of the constitutional amendments in my sample. I created a survey that contained the constitutional data from Ginsburg and Melton (2015) organized by country, such that country experts could evaluate the significance of all of the amendments in countries of their expertise. I posted a link to the survey on the constitutional law blog I-CONnect[[14]](#footnote-14), in addition to personally reaching out to a range of people from other lists of country-experts.

The questionnaire presented a three-class typology of amendment significance, consisting of “amendments of exceptional significance”, “significant amendments”, and “insignificant amendments”. These categories break down as follows:

* Category Three includes “amendments of exceptional significance” that, at the time of passage, transformed the understanding of at least one area of the constitution of the country. In other words, amendments in this category transform how legislative bargaining or interbranch relations transpire, introduce an entirely new class of individual rights to a citizenry, or were subsequently deemed "unconstitutional" by the Supreme Court of a given country.
* Category Two includes “significant amendments,” meaning changes that added or modified an important aspect of the constitution. These amendments alter (but do not transform) key institutional features of the legislative, executive, or judicial bodies of government, or their relation, expand the electorate (but not fundamentally alter it) in some way, or add onto already existing individual rights.
* Category One is the residual category of “not significant, or insignificant amendments”. Given that the bar is very high for Categories Two and Three, most amendments will belong to this residual category.

The survey elicited multiple sets of answers for numerous countries (from one to six). In the case of discrepancies between sets of ratings, I used the median rating.[[15]](#footnote-15) If the median was not an integer but an interval (a possibility with two or four responders), I used the lower of the two numbers.

V. Constitutional rigidity and significance of amendments: a negative heteroskedastic relationship.

The collection of data on the significance of constitutional amendments enables the testing of the predictions generated in the previous section: The relationship between constitutional rigidity and amendment frequency will have three dimensions:

1. On average, the frequency of amendments will decline with constitutional rigidity.
2. The variance of the relationship will decline with constitutional rigidity
3. The significance of the relationship will increase as a function of the significance of amendments.

In order to test these predictions, I will use a model of heteroskedastic regression. Heteroskedasticity is generally considered a liability in empirical estimations because it reduces the reliability of coefficients, which is exactly what all the literature has found. But my analysis predicts heteroskedasticity, so the discovery of such a feature should not be considered a liability. I am expecting to find a negative coefficient for the relationship between constitutional rigidity and the frequency of amendments, but also on the variance of this frequency. I also expect to find more significant results when the amendments under consideration are more significant.

INSERT TABLE 1

Table 1 tests all of these predictions. It examines three different categories of significance: first, all of the amendments (Categories One, Two, and Three in Appendix 2), second, the more significant ones (Categories Two and Three), and third, the most significant ones (Category Three). For each category, three regressions are performed: the null model (assuming no relationship between constitutional rigidity and frequency), the linear model (assuming a linear but not heteroskedastic relationship between constitutional rigidity and frequency of amendment), and the heteroskedastic model (assuming a negative effect of rigidity on both the frequency of constitutional amendments and the variance of this frequency). In all three cases, I produce the added explanatory value of each model by reporting the p-values from a Likelihood Ratio test comparing the specified models.

This table has two main points. First, the coefficients of constitutional rigidity are negative for both the mean frequency and the variance of this frequency, as the theory predicts. Second, the added value, denoted by the highlighted p-value of the difference between the null model and the heteroskedastic model, increases with the significance of amendments, moving from .009 for all amendments, to .001 for significant and fundamental amendments, and to .000 for fundamental amendments. In other words, the relationship between constitutional rigidity and the frequency of constitutional amendments is heteroskedastic, as predicted, and the significance of this relationship increases with the significance of amendments under consideration.

CONCLUSIONS

I have used a veto players approach to produce an indicator of constitutional rigidity covering all democratic countries. I showed that constitutional rigidity affects the frequency of significant amendments in the following ways: high rigidity makes amendments rare, but low rigidity simply enables amendments, which may or may not occur, depending on political, social, or economic factors. As a result, low constitutional rigidity produces a higher average rate and higher variance of significant constitutional amendments. The higher the significance of amendments, the stronger the above relationship. This evidence corroborates Burgess’ statement that opened this article and also explains the empirical findings of contemporary literature. It explains the surprising findings of the empirical literature in two ways: first, data on constitutional amendments are excessively noisy when one does not control for the significance of amendments; second, the relationship between constitutional rigidity and significant amendment frequency is heteroskedastic, and therefore requires the appropriate estimation techniques. This analysis indicates that conclusions that constitutional amendment rules do not matter at all and should either be replaced by cultural explanations (Ginsburg and Melton 2015), or completely ignored (Versteeg and Zackin 2016), are misleading and unwarranted.

My analysis originated from the discrepancy between theoretical expectations and empirical results regarding constitutional rigidity and amendment frequency and proceeded to examine both the validity of the theory and the accuracy of the tests. I pointed out that at the theoretical level the expectations were based on the average frequency of amendments alone and did not account for the fact that constitutional rigidity is a necessary, but not sufficient, condition for a lack of constitutional amendments. This omission reduces the significance of the results because it counts heteroskedasticity as a liability instead of an asset. At the empirical level the problems were more significant: sometimes the samples did not exclude non-democratic countries. Also, the independent variable was not created in a theoretically informed and consistent way, in contrast to the one I produced in this paper (see Appendix 1). Additionally, the dependent variable (constitutional amendments) had not been modified to account for the significance of these changes (see Appendix 2). Finally, the method of analysis was linear regression instead of heteroskedastic.

The independent variable I created in this article can be used to revisit other parts of the literature as well. Tsebelis (2017) has used constitutional rigidity, as measured by the provisions of the constitution, and amendment frequency, the number of times a constitution was amended divided by the years of existence of the constitution under a democratic regime, in order to calculate the “time inconsistency of a constitution,” that is, the frequency of revisions despite locking. This analysis used easily available indicators, such as the qualified majority required for constitutional amendments, or the number of actors required to be involved in a revision, finding that long constitutions were time inconsistent, but concluded that “… the elaboration of a more detailed (in terms of procedures) as well as encompassing (in terms of countries) measure of constitutional rigidity would certainly improve one’s understanding of the issue of time inconsistency.” As calculated above, VP Rigidity can be used to produce a more accurate indicator of time inconsistency and examine the relationship with the length of a constitution. Tsebelis (2017) calculates time inconsistency as the difference between the the actual frequency of amendments and the predicted one, on the basis of constitutional provisions alone. Tsebelis and Nardi (2016) were expecting time inconsistency to be more pronounced among OECD countries and this is why they restricted their analysis to these countries only. Figure 5 examines both arguments, using the more accurate measure of constitutional rigidity calculated in this article and corroborates both expectations.[[16]](#footnote-16) Indeed, long constitutions are more time inconsistent than shorter ones, and this relationship is more pronounced among OECD countries.

INSERT FIGURE 5

In addition, constitutional rigidity is associated with the importance of constitutional courts in different countries. Cooter and Ginsburg (1996) and Tsebelis (2002) among others have made the argument that at the theoretical level, the larger the size of the core, the less afraid the judges are that they will be overruled by the political system. The evidence for this proposition is usually restricted to ordinary legislation (see Tsebelis (2002) for developed countries and Andrews and Montinola (2004) for developing countries).[[17]](#footnote-17) The only exception is Santoni and Zucchini (2004), who have examined the Italian Constitutional Court from 1956-1992 and found that the frequency with which it disputes the constitutionality of laws increases when the *constitutional* core increases. In their case the core increases as a function of the policy positions of the parties necessary to participate in a procedure of constitutional revision. While most of the literature on the judiciary focuses on judicial independence, as measured by the length of tenure, and the procedures of appointment and possible replacement of judges, it is actually the interaction between independence and discretion, as indicated by the index of constitutional rigidity I present here, that should produce important judicial decisions. This is why the rigidity index presented here has to be included as an independent variable in the studies of significant constitutional court decisions and why it is relevant to constitutional studies more generally.

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FIGURE 1

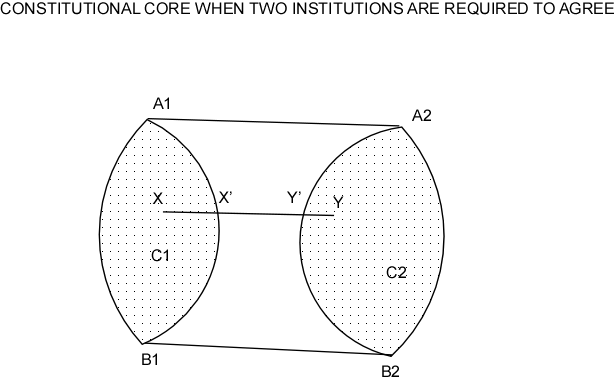


FIGURE 2

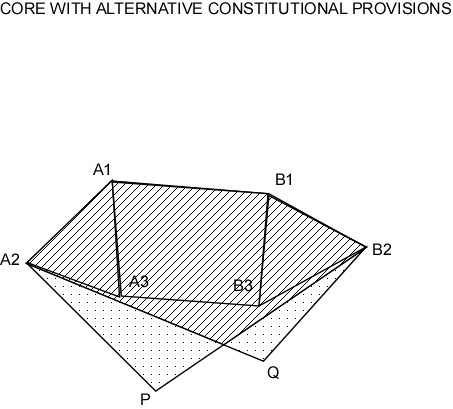


FIGURE 3

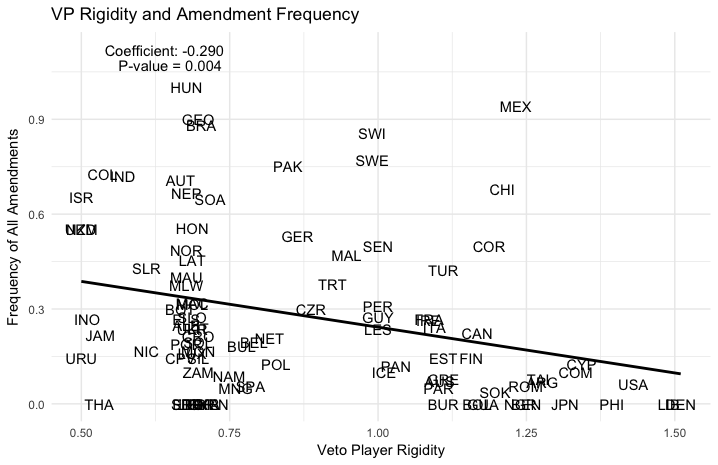
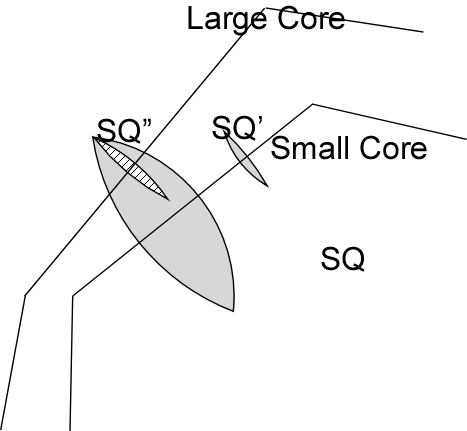


FIGURE 4



Large Core produces smaller winset, no matter where SQ is.

FIGURE 5

Length and Time Inconsistency of Democratic Constitutions

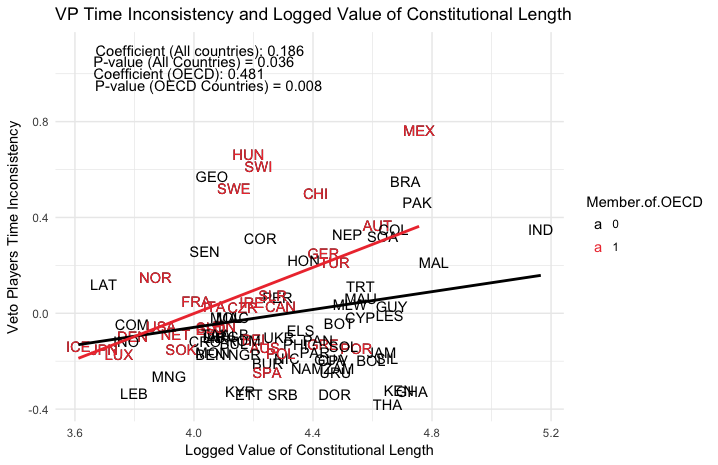


TABLE 1

Added value of different models (chi2 statistics and p-values of Likelihood Ratio tests):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Dependent Variable | Models Being Compared | Chi2 | P-Value | Number of Country Observations |
| Frequency of All Amendments | Null model vs. Mean-only model | 8.48 | 0.004 | 94 observations |
|  | Mean-only model vs. Heteroskedastic model | 1.04 | 0.309 | 94 observations |
|  | Null model vs. Heteroskedastic model | 9.51 | **0.009** | 94 observations |
| Frequency of Major + Fundamental Amendments | Null model vs. Mean-only model | 5.24 | 0.022 | 94 observations |
|  | Mean-only model vs. Heteroskedastic model | 9.71 | 0.002 | 94 observations |
|  | Null model vs. Heteroskedastic model | 14.95 | **0.001** | 94 observations |
| Frequency of Fundamental Amendments | Null model vs. Mean-only model | 3.11 | 0.078 | 94 observations |
|  | Mean-only model vs. Heteroskedastic model | 60.26 | 0.000 | 94 observations |
|  | Null model vs. Heteroskedastic model | 63.37 | **0.000** | 94 observations |

Appendix I: Veto Players Rigidity Index by Country

For additional information about how the index is calculated, please see the author’s website.

|  |  |
| --- | --- |
| Country | VP Rigidity |
| Albania | 0.677 |
| Argentina | 1.277 |
| Australia | 1.104 |
| Austria | 0.667 |
| Belgium | 0.791 |
| Benin | 1.250 |
| Bolivia | 1.167 |
| Botswana | 0.667 |
| Brazil | 0.702 |
| Bulgaria | 0.770 |
| Burundi | 1.110 |
| Canada | 1.167 |
| Cape Verde | 0.667 |
| Chile | 1.209 |
| Colombia | 0.536 |
| Comoros | 1.333 |
| Costa Rica | 1.187 |
| Croatia | 0.697 |
| Cyprus | 1.343 |
| Czech Republic | 0.887 |
| Denmark | 1.510 |
| Dominican Republic | 0.697 |
| East Timor | 0.677 |
| El Salvador | 0.677 |
| Estonia | 1.110 |
| Finland | 1.157 |
| France | 1.086 |
| Georgia | 0.697 |
| Germany | 0.864 |
| Ghana | 0.707 |
| Greece | 1.110 |
| Guatemala | 1.177 |
| Guyana | 1.000 |
| Honduras | 0.687 |
| Hungary | 0.677 |
| Iceland | 1.010 |
| India | 0.570 |
| Indonesia | 0.510 |
| Ireland | 1.085 |
| Israel | 0.500 |
| Italy | 1.095 |
| Jamaica | 0.532 |
| Japan | 1.315 |
| Kenya | 0.723 |
| Kyrgyz Republic | 0.707 |
| Latvia | 0.687 |
| Lebanon | 0.687 |
| Lesotho | 1.000 |
| Liberia | 1.490 |
| Lithuania | 0.697 |
| Luxembourg | 0.687 |
| Macedonia | 0.687 |
| Malawi | 0.677 |
| Malaysia | 0.947 |
| Mauritius | 0.677 |
| Mexico | 1.232 |
| Moldova | 0.687 |
| Mongolia | 0.760 |
| Montenegro | 0.697 |
| Namibia | 0.749 |
| Nepal | 0.677 |
| Netherlands | 0.817 |
| New Zealand | 0.500 |
| Nicaragua | 0.610 |
| Niger | 1.240 |
| Norway | 0.677 |
| Pakistan | 0.848 |
| Panama | 1.030 |
| Paraguay | 1.102 |
| Peru | 1.000 |
| Philippines | 1.394 |
| Poland | 0.828 |
| Portugal | 0.677 |
| Romania | 1.249 |
| Senegal | 1.000 |
| Serbia | 0.677 |
| Sierra Leone | 0.697 |
| Slovak Republic | 0.610 |
| Slovenia | 0.687 |
| Solomon Islands | 0.697 |
| South Africa | 0.717 |
| South Korea | 1.197 |
| Spain | 0.785 |
| Sweden | 0.990 |
| Switzerland | 0.990 |
| Taiwan | 1.270 |
| Thailand | 0.530 |
| Trinidad and Tobago | 0.923 |
| Turkey | 1.110 |
| Ukraine | 0.687 |
| United Kingdom | 0.500 |
| United States | 1.430 |
| Uruguay | 0.500 |
| Zambia | 0.697 |

Appendix II: Amendment Significance Classification by Country

For a breakdown by country and year, please see the author’s website.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Country | Insignificant Amendment | Major Amend. | Fundamental Amend. | Total Amend. | # Democratic Years Under Constitution in Force in 2013 |
| Albania | 2 | 1 | 0 | 3 | 12 |
| Argentina | 1 | 1 | 0 | 2 | 30 |
| Australia | 6 | 0 | 2 | 8 | 112 |
| Austria | 33 | 14 | 1 | 48 | 68 |
| Belgium | 19 | 7 | 4 | 30 | 155 |
| Benin | 0 | 0 | 0 | 0 | 23 |
| Bolivia | 0 | 0 | 0 | 0 | 4 |
| Botswana | 5 | 8 | 1 | 14 | 47 |
| Brazil | 14 | 8 | 0 | 22 | 25 |
| Bulgaria | 2 | 1 | 1 | 4 | 22 |
| Burundi | 0 | 0 | 0 | 0 | 8 |
| Canada | 21 | 6 | 1 | 28 | 126 |
| Cape Verde | 1 | 2 | 0 | 3 | 21 |
| Chile | 11 | 5 | 1 | 17 | 25 |
| Colombia | 10 | 4 | 2 | 16 | 22 |
| Comoros | 0 | 0 | 1 | 1 | 10 |
| Costa Rica | 4 | 22 | 6 | 32 | 64 |
| Croatia | 1 | 2 | 0 | 3 | 14 |
| Cyprus | 2 | 3 | 1 | 6 | 48 |
| Czech Republic | 4 | 1 | 1 | 6 | 20 |
| Denmark | 0 | 0 | 0 | 0 | 60 |
| Dominican Republic | 0 | 0 | 0 | 0 | 3 |
| East Timor | 0 | 0 | 0 | 0 | 11 |
| El Salvador | 7 | 1 | 0 | 8 | 30 |
| Estonia | 2 | 0 | 1 | 3 | 21 |
| Finland | 2 | 0 | 0 | 2 | 14 |
| France | 8 | 4 | 0 | 12 | 45 |
| Georgia | 2 | 4 | 3 | 9 | 10 |
| Germany | 27 | 6 | 1 | 34 | 64 |
| Ghana | 0 | 0 | 0 | 0 | 13 |
| Greece | 2 | 1 | 0 | 3 | 38 |
| Guatemala | 0 | 0 | 0 | 0 | 18 |
| Guyana | 1 | 4 | 1 | 6 | 22 |
| Honduras | 13 | 2 | 0 | 15 | 27 |
| Hungary | 0 | 0 | 2 | 2 | 2 |
| Iceland | 2 | 4 | 1 | 7 | 69 |
| India | 12 | 25 | 9 | 46 | 64 |
| Indonesia | 0 | 1 | 3 | 4 | 15 |
| Ireland | 8 | 9 | 3 | 20 | 76 |
| Israel | 22 | 11 | 3 | 36 | 55 |
| Italy | 15 | 1 | 0 | 16 | 66 |
| Jamaica | 6 | 4 | 1 | 11 | 51 |
| Japan | 0 | 0 | 0 | 0 | 62 |
| Kenya | 0 | 0 | 0 | 0 | 3 |
| Kyrgyz Republic | 0 | 0 | 0 | 0 | 3 |
| Latvia | 4 | 4 | 2 | 10 | 22 |
| Lebanon | 0 | 0 | 0 | 0 | 9 |
| Lesotho | 0 | 4 | 0 | 4 | 17 |
| Liberia | 0 | 0 | 0 | 0 | 8 |
| Lithuania | 0 | 4 | 1 | 5 | 21 |
| Luxembourg | 7 | 11 | 1 | 19 | 119 |
| Macedonia | 6 | 1 | 0 | 7 | 22 |
| Malawi | 4 | 2 | 0 | 6 | 16 |
| Malaysia | 4 | 2 | 2 | 8 | 17 |
| Mauritius | 7 | 2 | 9 | 18 | 45 |
| Mexico | 9 | 6 | 1 | 16 | 17 |
| Moldova | 2 | 3 | 1 | 6 | 19 |
| Mongolia | 0 | 0 | 1 | 1 | 21 |
| Montenegro | 0 | 0 | 1 | 1 | 6 |
| Namibia | 2 | 0 | 0 | 2 | 23 |
| Nepal | 2 | 1 | 1 | 4 | 6 |
| Netherlands | 18 | 1 | 0 | 19 | 92 |
| New Zealand | 48 | 25 | 13 | 86 | 156 |
| Nicaragua | 2 | 1 | 1 | 4 | 24 |
| Niger | 0 | 0 | 0 | 0 | 3 |
| Norway | 51 | 2 | 1 | 54 | 111 |
| Pakistan | 0 | 2 | 1 | 3 | 4 |
| Panama | 2 | 1 | 0 | 3 | 25 |
| Paraguay | 1 | 0 | 0 | 1 | 21 |
| Peru | 3 | 1 | 0 | 4 | 13 |
| Philippines | 0 | 0 | 0 | 0 | 26 |
| Poland | 2 | 0 | 0 | 2 | 16 |
| Portugal | 1 | 6 | 0 | 7 | 37 |
| Romania | 0 | 0 | 1 | 1 | 18 |
| Senegal | 5 | 1 | 0 | 6 | 12 |
| Serbia | 0 | 0 | 0 | 0 | 7 |
| Sierra Leone | 0 | 1 | 0 | 1 | 7 |
| Slovak Republic | 5 | 1 | 3 | 9 | 21 |
| Slovenia | 2 | 2 | 2 | 6 | 22 |
| Solomon Islands | 4 | 2 | 0 | 6 | 31 |
| South Africa | 11 | 0 | 0 | 11 | 17 |
| South Korea | 0 | 0 | 1 | 1 | 27 |
| Spain | 0 | 2 | 0 | 2 | 35 |
| Sweden | 29 | 1 | 0 | 30 | 39 |
| Switzerland | 8 | 4 | 0 | 12 | 14 |
| Taiwan | 0 | 0 | 1 | 1 | 13 |
| Thailand | 0 | 0 | 0 | 0 | 3 |
| Trinidad & Tobago | 13 | 1 | 0 | 14 | 37 |
| Turkey | 6 | 4 | 1 | 11 | 26 |
| Ukraine | 2 | 0 | 2 | 4 | 17 |
| United Kingdom | 48 | 8 | 1 | 57 | 103 |
| United States | 6 | 6 | 1 | 13 | 205 |
| Uruguay | 3 | 0 | 1 | 4 | 28 |
| Zambia | 1 | 0 | 0 | 1 | 10 |

1. “The measure does not rely on formal amendment rules because these rules are mediated so dramatically by political norms (Ginsburg and Melton 2015; Klug 2015).” (Versteeg and Zackin 2016, 661) [↑](#footnote-ref-1)
2. This definition of a “core” is different from the one in the law literature, which considers as “core” only the constitutional provisions that are not allowed at all to be modified (Albert, The Unamendable Core of the United States Constitution 2015). See below. [↑](#footnote-ref-2)
3. From the Comparative Constitutions Project dataset. I thank Tom Ginsburg for providing the data. See below for discussion. [↑](#footnote-ref-3)
4. On the basis of this, Albert (2014) distinguishes constitutions as either “comprehensive” (if the whole constitution can be modified with the same rules), “restricted” (if different provisions are subject to different rules), or “exceptional” (where different rules are used exclusively for one provision or a set of related provisions). [↑](#footnote-ref-4)
5. See Lutz (1994, 365-366), Lijphart (2012, 211), Rasch and Congleton (2006, 542), as well as Dixon (2011, 106). [↑](#footnote-ref-5)
6. See, for example, Tsebelis (2017) about Italy, and Tsebelis (2018) about Chile. [↑](#footnote-ref-6)
7. The combination of the two sources produces 92 countries. To these, I added Israel and the UK, bringing the number of countries to 94 (they are not included in Constitute because they do not have a written constitution, but they do have fundamental documents that are functionally equivalent). The choice of cut off point is arbitrary (although 6 is usually used in the literature). I replicated my calculations using all the higher cut off points and got similar results. Also, three of the countries I cover—the UK, Turkey, and Taiwan—modified their amendment rule during the time covered by my study. Given that their constitution changed in the dimension I am examining here, I considered only the more recent part of their amendment history. The alternative would have been to consider these three countries as two observations each, bringing the total number to 97 instead of 94. [↑](#footnote-ref-7)
8. Austria is an exception and the upper chamber participates only in constitutional revisions related to Federalism. South Africa’s upper chamber functions similarly. Burundi requires different majorities for each of its chambers (4/5ths for the lower and 2/3rds for the upper). [↑](#footnote-ref-8)
9. Calculated on the basis of the composition of the two chambers at the end of 2013. The underlying assumption here is that over time differences in compositional distance will remain small. [↑](#footnote-ref-9)
10. I have also used two alternative measures. One considers all bicameral legislatures as 1.5 unicameral ones and the other considers the chi2 distance in the composition of the two chambers. The correlations among these indices are extremely high, so I report the results of Euclidean distances alone. This method is close to Negretto’s (2012) approach. He considers the effective number of parties in each legislature as creating an obstacle to the passage of constitutional reforms. All these methods use numeric approximations to spatial distributions, so they rely on strong *ceteris paribus* assumptions. For Negretto, such assumptions rely on the similarity of Latin American countries. For this article, the comparison is only between the two legislatures of the same country. [↑](#footnote-ref-10)
11. I also drop amendments from the sample if the individuals coding the significance of these amendments agreed that there was no amendment in a given year. This occurred in the following cases: Austria 1954, Cape Verde 1992, Czech Republic 2013, El Salvador 2003, Guatemala 1986, Honduras 2012 and 2013, Latvia 2013, Luxembourg,1988, Malaysia 1959 and 1961, Nicaragua 1994, Switzerland 2007 and 2011. In Nepal, there was an amendment in 2012 that was missing from the data. Given that out of 866 classified amendments only 15 cases of disagreement were identified, the Ginsburg and Melton (2015) amendment data are very reliable. [↑](#footnote-ref-11)
12. A linear regression gives a coefficient of -.290 (with the same p value). [↑](#footnote-ref-12)
13. This is just over 0.06 amendments per year [↑](#footnote-ref-13)
14. http://www.iconnectblog.com/2017/10/constitutional-amendment-significance-a-survey/ [↑](#footnote-ref-14)
15. Unless the answers indicated a violation of the instructions. For example, all amendments approved on the basis of constitutional rules, but rejected by the Constitutional Court on the basis of substance (not procedure), were classified as 3, since (on the basis of the Court’s judgment) they were unconstitutional. [↑](#footnote-ref-15)
16. The time inconsistency measure only covers countries with a codified constitution, so Israel, New Zealand, and the United Kingdom drop out of the sample. [↑](#footnote-ref-16)
17. In legal terms, statutory interpretation, that is judicial decisions based on laws, not the constitution. [↑](#footnote-ref-17)