

Democracy and Constitutional Endurance

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Abstract

Among nations, the life-span of constitutions in force varies considerably. Several internal as well as external factors have been singled out in research to account for this variation; this study, however, is about one determinant only: whether the countries in question are democracies. Following operationalizations of the key concepts, democracy and endurance, two empirical investigations are conducted, which both introduce controls for length of independence. The first investigates five clusters of altogether thirty-three countries; within each cluster, the states represent the same independence year. While controlling for several background factors, the second investigation operates from a comparable-cases perspective and builds upon comparisons among eight pairs of two countries. Findings are that the link between democracy and endurance is evident in four clusters out of five, and that seven pairs out of eight are in the same direction. The thesis that democracy promotes endurance is therefore well substantiated. While several mechanisms may be at play here, an assumed tendency of democracies to pursue constitutional change by resorting to amendments appears somewhat problematic in terms of interpretation, as amendments are about change (of parts) as well as about endurance (of wholes).

Keywords: Comparative law, constitutional amendment, constitutional endurance, democracy, pair-wise comparison.

Constitutions, it has been said, “operate in time, seeking to regulate the future on behalf of the past.”¹ To operate in time, however, requires a capacity to endure, and a constitution is therefore a form of political engineering “to be judged like any other construction by how well it stands the test of time.”² Countries

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¹ Tom Ginsburg, “Constitutional Endurance,” in *Comparative Constitutional Law*, ed. Tom Ginsburg and Rosalind Dixon (Northampton, MA: Edward Elgar, 2011), 112.

² Rod Hague, Martin Harrop, and Shaun Breslin, *Comparative Government and Politics*, 4th ed. (London: Macmillan Press, 1998), 154.

manage this test with varying success. While the lifespan for constitutions for all countries has been found to be approximately nineteen years,³ the deviations from this average figure are many and also quite drastic. Some countries still operate very old and almost archaic national constitutions—the oldest national constitution in the world, the one of the United States, is from 1789, the constitution of Norway is from the year 1814, and the constitution of Belgium has been in place since 1831. Other constitutions have existed for some time now. Of a total of eighty-three constitutions adopted in the world during the 1990s, more than sixty were still in force in 2010.⁴ Still other constitutions are of a very recent origin: the constitution of Finland was promulgated in 2000, the constitution of the Maldives in 2008, and the present constitution of Kenya in 2010. In short, countries differ in terms of constitutional endurance, and the efforts in research to understand and explain the differences have pointed at a variety of factors and variables.

The factors can be grouped by several classification criteria. Some factors are internal in nature and refer to the specific qualities of the constitutional texts: some texts are long, others are short, some are detailed, others are focused, some include rigid prescriptions for amendment, others are flexible, some have come about by means of participatory institutions whereas others have not, and so on. Other criteria are external, and may point to the role of particular environmental events and developments such as wars, coups, revolutions, and similar political and social crises. Quite often, in fact, endurance crumbles away in the face of such shocks. Ghana is one example out of many. Following independence in 1957 and before returning to multiparty rule in the 1990s, the country experienced a series of coups and instable military regimes and the subsequent adoption in 1960, 1969, and 1979 of new constitutions.⁵ Still other criteria are derived from state characteristics: states may be old or not so old, may be exposed or not to diffusion effects, may uphold one or the other regime type or type of party system, and so forth. Furthermore, attempts have been made to explain endurance variation by reference to variations in the interconnection of countries with the international community, the leading idea in these efforts being that countries that are interested in maintaining legitimacy, reputation, and benefits from future relations are less likely to replace their constitutions.⁶ While some headway has certainly been made in research hitherto on the impact of these and other factors, there is still, to

³ Zachary Elkins, Tom Ginsburg, and James Melton, *The Endurance of National Constitutions* (New York: Cambridge University Press, 2009).

⁴ Dag Anckar, "Constitutional Endurance: Lessons from 83 Cases," *International Journal of Politics and Law Research* 1, no. 4 (2013): 48-54.

⁵ Michael Krennerich, "Ghana," in *Elections in Africa: A Data Handbook*, ed. Dieter Nohlen, Michael Krennerich, and Bernhard Thibaut (Oxford: Oxford University Press, 1999), 423-424.

⁶ Erin Rice, "International Participation and Constitutional Survival" (2013), <http://www.democracy.uci.edu/files/democracy/docs> (accessed January 12, 2014).

quote from a review of the literature, a need for more comparative study of the determinants and normative consequences of constitutional endurance.⁷ In the research that is reported here, the focus is, however, on one determinant only: whether the countries in question are democracies. The expectation is quite simply that democracy spells endurance.

This hypothesis is not new, nor is it startling. It has been examined at occasions. Reviews of findings suggest that it is indeed the case that countries with enduring constitutions tend to be richer and more democratic.⁸ However, such findings as a rule have followed from evidence that is case-study based or is for other reasons no more than suggestive, and systematic and broad investigations into the link between democracy and endurance are still in short supply. Theoretically, the present study of the link in question takes a point of departure in three factors which all support the guiding expectation. First, while nondemocracies maintain a weaker commitment to popular rule, constitution-making in democracies involves to a higher extent social inclusions and participatory structures which foster legitimacy and commitment and work against a hasty and ill-considered abandonment of constitutional frameworks. Second, it is in the nature of things that democracies are as a rule more stable and peaceful polities, that do not have to face to the same extent as other states internal and external shocks and crises that constitute threats to constitutional survival; again, therefore, democracies are better equipped to safeguard endurance. Third, while democracies are like nondemocracies from time-to-time compelled to engage in measures of constitutional change, democracies are, for the reasons spelled out above, likely to abstain from whole-scale revisions and to pursue change instead by means of amendment (i.e., formal and partial changes to the text of the constitution). True, the comparative research on amendment politics still has not advanced very far,⁹ and the idea that democracies adopt amendments rather than full-scale revisions is no more than an assumption. But it is certainly a reasonable assumption. The following empirical parts of this exercise will shed some light on its validity.

Measuring Democracy and Endurance

In this research, then, democracy is the independent and endurance the dependent variable. Contesting variables and control variables will be introduced at a later stage. The task of relating independent and dependent variables of course requires that the variables are operationalized and measured, and the following considerations apply.

⁷ Ginsburg, "Constitutional Endurance," 123.

⁸ *Ibid.*, 114.

⁹ Rosalind Dixon, "Constitutional Amendment Rules: A Comparative Perspective," in *Comparative Constitutional Law*, ed. Tom Ginsburg and Rosalind Dixon (Northampton, MA: Edward Elgar, 2011), 104-108.

In regard to democracy, every state that figures in the empirical examinations that follow is given a percentage value which reflects the democratic status of that state. This status is derived from the much-used Freedom House classification of countries; as usual in democracy research, states that are classified by Freedom House as “Free” are regarded here as democracies, whereas states that are classified as “Partly Free” or “Not Free” are regarded as nondemocracies. The percentage value, here called “democracy rating,” is a measure of how frequently the state in question has been rated as “Free” under a time span that runs from independence to the year 2010. However, since the Freedom House materials are available only from the year 1972, years that precede this date are omitted from calculations. To give an example of the calculations, a state that became independent in 1980 and has been ranked thereafter by Freedom House each year, has thirty classifications. If all the rankings have been in the democracy category, the democracy rating of this state is 100; if the state has not been ranked once in this category, the rating is 0. And, if the state is ranked in the democracy category, say, twelve of thirty times, the resulting percentage calculation gives the state a democracy rating of 40. Concerning states that are former British colonies, an available register of corresponding democracy ratings has come to use;¹⁰ concerning other states, use is made of calculations by the author.

In regard to endurance, the measure that is used is straightforward enough, as it denotes the number of national constitutions that have been adopted in each country during the time span from independence until 2010. The primary data source is *Constitutions of the Countries of the World*, a series of updated constitutional texts by Oceana Publications, which is an excellent guide to the constitutions and constitution-like texts from all parts of the globe. Measuring endurance confronts by necessity a specific validity problem, however, which stems from the simple fact that countries have won their independence at different points of time, the implication being that the countries have not had equal possibility by the end of a given research period to demonstrate longevity. For instance, a certain country A, independent in, say, 1970, has by 2010 adopted only one constitution, namely the independence constitution which is still in force. Another country B, independent in, say, 1990, has likewise by 2010 adopted only one constitution. Counting constitutions suggests that the two countries have performed equally well in terms of endurance, both installing only one constitution. Clearly, this conclusion is questionable as it is biased in favor of B, which has existed for a clearly shorter time than A but is still given the same endurance rating. Counting constitution years (i.e., the number of years the running constitution 2010 has been in force) takes care of this imbalance, the endurance marks now being forty years in the case of A and

¹⁰ Dag Anckar, “Democracy as a Westminster Heritage,” *Taiwan Journal of Democracy* 7, no. 1 (2011): 56-57.

twenty years in the case of B—A is now superior to B in terms of endurance performance. However, this conclusion is clearly biased in favor of A, as B, existing as an independent state for a much shorter time, has not had the same opportunity to demonstrate an ability to endure. The endurance performance of B has actually been as good as is theoretically possible; still, the country is classified as inferior to A. Obviously, then, endurance measures must in the following be controlled for independence length.

Observing this, two empirical investigations follow. While somewhat different in terms of scope, outlook, and execution, the two investigations still share many similarities. Above all, they are alike in terms of frame of reference, the comparative logic that is used, and an ambition to examine materials that originate from different points of time. To some extent, the investigations even make use of the same materials (i.e., the same data about the same countries). They therefore build in part on overlapping components, and they may in fact well be seen as exercises in the art of triangulation (i.e., the method of using multiple measures to address the same phenomenon, thereby checking and corroborating results).¹¹

Empirical Tests: I

The first of the two empirical efforts that make up this research is reported in this section. The essential task of controlling independence length is here done by constructing clusters of countries, the countries in each separate cluster being similar to each other in so far as they represent the same or close to the same independence year. To make the construction of clusters somewhat easier, a difference in terms of independence of one year is tolerated. In all, five clusters that comprise a total of thirty-three countries are identified. The identification is based on a list of the nation-states of the world and the respective years of state formation¹² and operates from two points of departure. First, while internally homogenous in terms of time, to cover events and developments over a prolonged time span, the clusters still stem externally from different periods. Second, importantly, the states in each cluster are chosen to represent democracy variation and thereby to introduce variation in the independent variable; the variation is decided on the basis of the democracy data that were explained previously in this study. The compositions of the clusters are given in table 1, which also, for each state, gives information about the respective democracy rating and the number of constitutions adopted from independence until 2010. For instance, the notion Barbados 100/1 in table 1 indicates that,

¹¹ B. Guy Peters, *Comparative Politics: Theory and Methods* (London: Macmillan Press, 1998), 97-102.

¹² J. Denis Derbyshire and Ian D. Derbyshire, *Political Systems of the World*, vol. 1 (Oxford: Helicon Publishing, 1999), 5-6.

Table 1. Democracy Ratings and Number of Adopted Constitutions
in Five Clusters of States

| |
|---|
| Cluster 1: Independent States, 1947-1948 |
| <i>India 76/1; North Korea 0/4; South Korea 58/6; Myanmar 0/3; Pakistan 0/4; Sri Lanka 22/3</i> |
| Cluster 2: Independent States, 1962 |
| <i>Algeria 0/4; Burundi 0/4; Jamaica 100/1; Rwanda 0/5; Samoa 56/1; Trinidad and Tobago 97/2; Uganda 0/4</i> |
| Cluster 3: Independent States, 1965-1966 |
| <i>Barbados 100/1; Botswana 97/1; Gambia 38/2; Guyana 46/2; Lesotho 19/2; Maldives 5/3; Singapore 0/1</i> |
| Cluster 4: Independent States, 1975 |
| <i>Angola 0/3; Cape Verde 54/2; Comoros 0/5; Mozambique 0/3; Papua New Guinea 67/1; Sao Tomé and Príncipe 54/2; Suriname 46/2</i> |
| Cluster 5: Independent States, 1992-1993 |
| <i>Bosnia-Herzegovina 0/1; Czech Republic 100/1; Eritrea 0/2; Macedonia 0/2; Palau 100/1; Slovakia 82/1</i> |

during independence, Barbados always has been classified by Freedom House as a democracy, and has adopted only one constitution, namely the independence constitution, in effect since 1966. The findings in regard to the cluster-wise link between democracy and endurance are briefly summarized in table 2. The remainder of this section expands this summary and comments on the ensuing patterns.

The first cluster consists of six states, independent in the years 1947 and 1948. Three of these states have been typical nondemocracies during their whole existence and report rather poor endurance performances, the average number of constitutions being 3.7. In contrast, the remaining three states, although not representing full-fledged democracies, have experienced times of democratic rule—India and South Korea to a much higher extent than

Table 2. The Democracy-Endurance Link in Five Clusters of States:
A Summary View

| Cluster: | Does democracy promote endurance? |
|----------|---|
| 1. | 1. Perhaps. The evidence is weak and far from convincing. |
| 2. | 2. Yes, evidently. |
| 3. | 3. Yes. However, the pattern is somewhat indistinct. |
| 4. | 4. Yes, evidently. |
| 5. | 5. Yes. However, differences are small. |

Sri Lanka, which has suffered much over the years from ethnic conflict and political violence.¹³ The average number of constitutions is now 3.3; this figure is much influenced by the weak endurance performance of South Korea. This country is, however, a rather difficult case to decide. This is because, from an authoritative viewpoint, the distinction between amendments to the existing constitution and the enactment of a new constitution is more difficult in the Korean case than in other cases.¹⁴ In a strictly formal sense, the country has adopted one constitution only, namely the 1948 constitution. However, this constitution lost its relevance with the outbreak in 1950 of the Korean War, and subsequent internal developments soon transformed the system established by the constitution into a dictatorial regime, maintained by means of amendments.¹⁵ According to a count by Rainer Grote, of nine amendments since 1948, only four may be regarded as normal, while the other five have laid the foundations for the introduction of a new political regime and have replaced the existing constitutional settlement by a fundamentally new one.¹⁶ This count is taken on board here, the finding being, then, that South Korea has adopted, in all, six constitutions. On the whole, therefore, it appears that this first cluster does not offer much support, if any, for the belief that democracy fosters endurance. Regarding the difficult case of South Korea, however, the comment should be added that, since democratization in 1987, no constitutional amendments have been effected, this meaning, given the application of a different time frame, that South Korea stands out as a supporting rather than a denying example of a link between democracy and endurance.

The second cluster has seven members, which all became independent states in 1962. Two of these states are stainless democracies, one is a semidemocracy, and four are evident nondemocracies. As expected, the nondemocracies have performed quite poorly, adopting on average 4.3 constitutions as against 1.3 constitutions in the democracy group. Since the states in this cluster may now look back on a time of fifty years of independence, the close to perfect endurance performance of the democracies is quite impressive. In fact, the figure even to some extent may magnify unduly the tendency of democracies to engage in constitutional turnover, as the change evoked in Trinidad and Tobago by means of a new constitution was rather marginal. The 1976 constitution which replaced at adoption the 1962 independence constitution signified foremost that Trinidad and Tobago had become a republic; compared to the older

¹³ For example, Gamini Samaranyake, "Democratic Socialist Republic of Sri Lanka," in *World Encyclopedia of Political Systems and Parties*, vol. 3, 3rd ed., ed. Deborah A. Kaple (New York: Facts on File, 1999), 1034-1040.

¹⁴ Rainer Grote, "The Republic of Korea: Introductory Note," in *Constitutions of the Countries of the World*, Binder X, release 2008-5, ed. Gisbert H. Flanz (New York: Oceana Publications), 10.

¹⁵ *Ibid.*, 5-6.

¹⁶ *Ibid.*, 10.

constitution, the substantive changes were minimal. In all, the conclusion from this cluster is evident and straightforward: democracy promotes endurance.

Cluster 3 likewise has seven members. They became independent in 1965 and 1966, and they represent a wide variation in democracy status, as Barbados and Botswana are full democracies whereas Maldives and Singapore are just the opposite; Gambia, Guyana, and to some extent Lesotho are in terrain in-between. The outcomes in terms of endurance follow rather closely the same dividing line: the democracies have each adopted only one constitution; the three states that are positioned between the democracies and the nondemocracies have adopted two constitutions each; and of the two nondemocracies, Maldives has introduced three constitutions. Managing one constitution only, the other nondemocracy, Singapore, however, stands for a deviation from this “the-more-democracy-the-more-endurance” pattern. The Singapore constitution has been amended and revised multiple times over the years, however, in order to implement reforms required by circumstances; between 2001 and 2008 alone, the constitution was amended six times.¹⁷ The overall impression from this cluster, although with some reservation, is that democracy indeed links to endurance.

In the fourth cluster are seven states, all independent in 1975. There are no ideal democracies in the group; four states, however, stand out as semidemocracies. The three remaining cases are all evident nondemocracies. In line with expectations, the first subgroup clearly outflanks the second in terms of endurance, having adopted on average 1.8 constitutions as against 3.7. Among the nondemocracies, Comoros has a particularly unsatisfying endurance record, which reflects a highly unstable political life, marked by demonstrations, violent clashes, electoral irregularities, and even military interventions.¹⁸ Indeed, a review of developments in Comoros even has raised questions concerning the country’s continued existence.¹⁹ The 1975 constitution of Papua New Guinea is still in force, but the merits of this constitution in terms of endurance are perhaps not all that convincing. Over the years, the constitution has been amended more than twenty times; also, an Organic Law on the integrity of political parties and candidates implemented a far-reaching reform of the parliamentary system in 2003.²⁰ Still, the overall

¹⁷ Rainer Grote, “The Republic of Singapore: Introductory Note,” in *Constitutions of the Countries of the World*, Binder XVI, release 2009-2, ed. Gisbert H. Flanz (New York: Oceana Publications), 3-6.

¹⁸ Dag Ankar, “Lilliput Federalism: Profiles and Varieties,” *Regional and Federal Studies* 13, no. 3 (2003): 119-120.

¹⁹ B. David Meyers, “Comoros,” in *World Encyclopedia of Political Systems and Parties*, vol. 1, 3rd ed., ed. Deborah A. Kaple (New York: Facts on File, 1999), 233.

²⁰ Rainer Grote, “The Independent State of Papua New Guinea: Introductory Note,” in *Constitutions of the Countries of the World*, Binder XIV, release 2009-4, ed. Gisbert H. Flanz (New York: Oceana Publications), 3-6. Also, R. J. May, “Political Parties in Papua New Guinea,” in *Political Parties in the Pacific Islands*, ed. Roland Rich, Luke Hambly, and Michael C. Morgan (Canberra: Australian National University, ANU E Press, 2008), 83-102.

outcome in this group is unambiguously supportive of the belief that democracy is advantageous to endurance.

Finally, the fifth cluster has six states which became independent in 1992 and 1993. Of course, since these states have existed as of today for only a restricted period, the number of constitutions is fairly low throughout. It is worth noting, however, that the three perfect and close-to-perfect democracies of this group (Czech Republic, Palau, and Slovakia), all have adopted only one constitution so far, whereas the average figure for the three other states, all of which clearly are nondemocracies, is 1.3. The constitution of Bosnia-Herzegovina is somewhat special in so far as it has an international contractual form, being an integral part of the so-called Dayton Agreement, signed in 1995. Concerning democratic Palau, the present constitution, much amended, already had been entered into force in 1981, when Palau was still a part of the Trust Territory of the Pacific Islands, which was governed by the United States.²¹

In an overall assessment, the hypothesis that democracy links to endurance is well substantiated. The link is evident or near-evident in four clusters out of five, and further summations add to the picture. If a democracy rating of 75 is taken to mark a cutting point between democracies and others, there are eight democracies in all in the clusters, seven of which represent a maximum endurance. Indeed, democracy spells endurance. On the other hand, of the remaining twenty-five cases of nondemocracies, four represent a maximum endurance level, whereas twenty-one do not, several in fact having introduced four or even more new constitutions. Indeed, nondemocracy spells nonendurance. Of course, the above figures in the overall assessment violate the rule of observing and controlling for independence length, and they are therefore to be judged by caution and reservation. Still, the pattern is uniform enough to be convincing.

Empirical Tests: II

The second empirical effort operates from a comparable-case perspective, which, in a political science context, was developed decades ago by Arend Lijphart and defined by him as a method “in which the cases are selected in such a way as to maximize the variance of the independent variables and to minimize the variance of the control variables.”²² Suggestions in the methodological literature are that applications of this so-called most-similar-system design should preferably make use of variables that are at a systemic

²¹ Frank Quimby, “The Yin and Yang of Belau: A Nuclear Free Movement Struggles with the Quest for Economic Development,” in *Micronesian Politics* (Suva: Institute of Pacific Studies, University of the South Pacific, 1988), 135-139.

²² Arend Lijphart, “The Comparable-Cases Strategy in Comparative Research,” *Comparative Political Studies* 8, no. 2 (1975): 164.

rather than subsystemic level, make use of a deductive rather than an inductive design, and operate with a varying rather than constant dependent variable²³—all these conditions are met in the research that follows. In short, the method aims to achieve a large measure of control, and implements this goal by searching for systems that are as similar as possible on attributes other than the one which is examined for explanatory power.

Implementations of this method may follow different paths. Here, operationally, the research takes the form of pair-wise comparisons (i.e., comparisons between pairs of two countries which are selected on the basis of relevant criteria).²⁴ Two criteria come to use here. One is that the two countries that make up each pair differ in regard to the value of the essential independent variable; the other is that the countries are similar or close to similar in regard to the values of other relevant factors (i.e., contesting variables or control variables). In the cases at hand—the research question being whether democracy links to endurance—within each pair, democracy status must vary while other endurance-related factors must be held constant. These factors, to be discussed shortly, are: independence year, ethnic diversity, constitutional rigidity, colonial heritage, and state size. If the examination of a given pair results in the finding that one country differs in terms of endurance from the other, then, given the logic of the comparison, it follows that this difference is a consequence of the democracy difference and that democracy variation is linked to endurance variation. If, on the other hand, no evident difference of endurance is at hand, it follows that the democracy difference has not brought about an endurance difference, and that no link has been established between democracy and endurance.

In regard to the measurement and operationalization of dimensions, the following four considerations apply. The first dimension, length of independence, is again matched on the basis of data provided in an available list of state formations in the world,²⁵ and the second, democracy rating, is likewise based on calculations explained earlier. The third dimension, ethnicity rating, operates from the expectation that homogeneous countries are less inclined than heterogeneous countries to introduce constitutional change. This expectation, again, is rooted in the belief that the more fragmented a country, the more competing groups there are, and, given an understanding of these groups that constitutions may produce changes in their relative power, the less the potential of the population to develop a lasting agreement about the fundamental values and methods that are in need of constitutional protection.

²³ Carsten Anckar, “On the Applicability of the Most Similar Systems Design and the Most Different System Design in Comparative Research,” *International Journal of Social Research Methodology* 11, no. 5 (2008): 389-401.

²⁴ See Stein Rokkan, *Citizens, Elections, Parties* (Oslo: Universitetsforlaget, 1970), 52.

²⁵ Derbyshire and Derbyshire, “Political Systems,” 5-6.

Of course, the impact of fragmentation may be strengthened or weakened by a variety of circumstances. Generally, however, it is a reasonable belief that endurance is challenged and threatened by higher rather than moderate levels of societal fragmentation. Within pairs, the countries should therefore be fairly similar in terms of fragmentation. To decide empirically the level of fragmentation in the respective countries, use is made of a review, which reports for every country in the world three indices of fragmentation which are combined into an index of total fragmentation.²⁶ For the purpose of this study, this total fragmentation index comes to use; the maximum total fragmentation value is 2.00.

The fourth dimension is about the degree of constitutional rigidity (i.e., the difficulty of the constitutional amendment process). Intuitively, it is, of course, a reasonable expectation that low-rigidity countries that represent less difficulty engage in constitutional change to a larger extent than high-rigidity countries. Empirically, however, the relation between rigidity and endurance appears to be less straightforward. The study by Elkins, Ginsburg, and Melton suggests that the relation, although positive, is anything but linear;²⁷ also, reviewing the capacity of several rigidity conceptions to explain amendment variation, Astrid Lorenz makes the observation that the conceptions produce “strikingly different results.”²⁸ Lorenz even feels compelled to ask the question, “Has the pro-intuitive effect of constitutional rigidity been overestimated?”²⁹ Anyhow, the general impact of the rigidity factor should certainly be investigated here; again, within pairs, the countries should be fairly similar. Relevant comparisons are made by means of a method that measures constitutional rigidity on a scale from 0 (no rigidity) to 9 points (high rigidity).³⁰ The method cannot be discussed here at length; some brief annotations on operationalization must suffice. First, constitutions are measured on the basis of prescribed parliamentary majority thresholds for constitutional amendment, qualified majorities (two-thirds and equivalents) authorizing two and supermajorities (three-fourths and equivalents) authorizing three rigidity points. Second, constitutions are classified on the basis of involving in any form or not referendums in the amendment process, affirmative classifications authorizing two or three rigidity points, depending on whether simple or qualified referendum majorities are prescribed. Third,

²⁶ Carsten Anckar, Mårten Eriksson, and Jutta Leskinen, *Measuring Ethnic, Linguistic and Religious Fragmentation in the World*, Occasional Papers Series (Åbo, Finland: Department of Political Science, Åbo Akademi University, 2002).

²⁷ Elkins, Ginsberg, and Melton, “The Endurance,” and Ginsberg, “Constitutional Endurance,” 118.

²⁸ Astrid Lorenz, “How to Measure Constitutional Rigidity,” *Journal of Theoretical Politics* 17, no. 3 (2005): 339.

²⁹ *Ibid.*, 354-355.

³⁰ Dag Anckar, “Hur kan konstitutionell rigiditet mätas?” [How to measure constitutional rigidity], *Politiikka* [Politics] 55, no. 3 (2013): 168-179.

still more rigidity points are calculated on the basis of the extent to which the constitutions apply techniques for “repetition”—amendment proposals being considered by the same body in repeated sittings, or “broadenings,” proposals being considered by several executive and/or legislative institutions in joint or separate sittings. Finally, broadenings that imply that a decision by one body is remitted for acceptance to another body, as well as so-called “pre-final votes”³¹ which do not relate to a final document but to the declaration of a need for amendment or to a first draft or similar, likewise contribute to the pool of rigidity points.

To the above four dimensions are added two dimensions that are of a somewhat different nature. They are about colonial heritage, if and when such a background factor is in the picture, and about state size as measured by population. The colonial heritage factor is determined on the basis of the existence of an identifiable metropolitan power at the time of independence. Concerning state size, an approximate and somewhat arbitrary classification of countries into four categories is applied. The relevant distinctions are between microstates (populations of one million or less), small states (populations in the range of one to five million), medium-sized states (populations in the range of six to thirty million), and large states (populations exceeding thirty million). This is, of course, a coarse and even superficial classification, but it serves to a sufficient degree the purpose of the analysis. Rather than depicting specific and individual factors that may be directly related to the degree of constitutional endurance, these two dimensions are of a summary nature, as they cover varieties of conditions and mechanisms that may or may not carry an impact on endurance. Colonial heritage appears vital, as constitutional systems used by and transferred from former colonial powers may prove unsatisfying and call for endurance-violating revisions—for instance, about the imported constitutional regulations in Africa, it has been said that they “hardly ever worked” and that they “were either soon withdrawn, fundamentally modified by the new rulers or simply ignored.”³² Concerning state size, already in the early 1970s, theoretical investigations suggested that size differences relate to differences among nations in, for instance, the extent of citizen participation, the maintenance of security and order, perceptions of loyalty and the common interest, the nature of rational behavior, and the control of leaders.³³ One may certainly assume that the impact of such differences ramify through political

³¹ Lorenz, “How to Measure Constitutional Rigidity,” 347.

³² Dieter Nohlen, Michael Krennerich, and Bernhard Thibaut, “Elections and Electoral Systems in Africa,” in *Elections in Africa: A Data Handbook*, ed. Dieter Nohlen, Michael Krennerich, and Bernhard Thibaut (Oxford: Oxford University Press, 1999), 3.

³³ Robert A. Dahl and Edward Tufte, *Size and Democracy* (Stanford, CA: Stanford University Press, 1973), 12-16.

machineries and while so doing may cultivate the conditions for constitutional endurance.

What is needed in terms of materials, then, is a number of pairs of countries, and data that describe the positions of these countries on six dimensions. To repeat, ideally these positions should be within pairs similar or close to similar for all dimensions but democracy. Given these conditions, in all, eight pairs of countries have been identified; the countries and the appending relevant data are listed in table 3. Generally, the identification process has faced a principal and difficult problem in comparative research, which is, according to a famous saying by Lijphart, one of a combination of many variables and a small number of cases.³⁴ Indeed, in the present exercise, the number of cases at hand has not been large enough to cover to a full extent the many combinations of dimensions that are searched for, and this has, in consequence, necessitated a two-phased matching strategy. In a first step, the four first dimensions have been observed as strictly as possible, and in a second step, the two remaining dimensions have been added to the pairs if and when possible. Or, in other words, the primary search has been for pairs that satisfy the first four criteria, and if and when such pairs have been found, the extent to which they satisfy also the remaining two criteria has been regarded of second-rate importance. As evident from table 3, in quite a few cases, complete matches have not really been possible. For instance, in regard to the first pair (Malta vs. Maldives), the desirable similarity in terms of ethnicity is not fully achieved, and the same comment applies also to the second pair (Slovakia vs. Armenia). The rigidity factor is somewhat problematic in the seventh pair (India vs. Philippines), and it has not been possible to make consistent and full use throughout of the colonial heritage factor. On the whole, however, the outcome of the matching is fairly satisfying. An effort has been made in table 3 to evaluate for each pair on a scale from 1 to 5 the goodness of fit of the matching; the finding is that all pairs, with two exceptions, namely pairs 7 and 8, are placed in high positions. The mean is as high as 4.25; this, of course, is only an indicative figure.

The empirical findings are summarized in table 4, which again lists the pairs, and now within each pair introduces the outcome in regard to the dependent variable (i.e., the number of constitutions adopted since independence in each country until 2010). Furthermore, the table communicates, for each pair, an appreciation of the extent to which the pair-wise outcomes are in support of the view that democracy promotes endurance. Two points summarize the findings.

First and foremost, the thesis that democracy promotes endurance gains full support. The outcomes from the examination of seven pairs out of eight are in this direction, and while the differences in regard to the dependent variable

³⁴ Arend Lijphart, "Comparative Politics and the Comparative Method," *American Political Science Review* 65, no. 3 (1971): 685.

Table 3. Endurance Determinants in Eight Matched Pairs of States:
Matched Dimensions and an Outcome Evaluation

| Pairs: | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|----------------------------|--------------|-----------|--------------|----------|-----------------------|------------------|---|
| Malta vs. Maldives | 1964 1965 | 86 5 | 0.14 0.66 | 4 5 | Britain Britain | Micro Micro | 4 |
| Slovakia vs. Armenia | 1992 1991 | 86 0 | 0.87 0.26 | 2 2.5 | No No | Small Small | 4 |
| Mauritius vs. Swaziland | 1968 1968 | 100 0 | 1.36 1.00 | 3 3.5 | Britain Britain | Small Small | 5 |
| Czech R. vs. Bosnia | 1991 1991 | 100 0 | 1.23 1.37 | 2.5 2 | No No | Medium Small | 5 |
| Tuvalu vs. Seychelles | 1978 1976 | 100 3 | 0.20 0.37 | 2 2.5 | Britain Britain | Micro Micro | 5 |
| Barbados vs. Lesotho | 1966 1966 | 100 19 | 0.87 0.96 | 2 2 | Britain Britain | Micro Small | 5 |
| India vs. Philippines | 1947 1946 | 76 30 | 1.20 1.14 | 3 5 | Britain Spain | Large Large | 3 |
| Papua NG vs. Mozambique | 1975 1975 | 66 0 | 1.54 1.51 | 3 4 | Australia Portugal | Medium Medium | 3 |

Key: Column 1: Year of independence; 2: Democracy rating; 3: Ethnicity rating; 4: Constitutional rigidity score; 5: Colonial heritage; 6: State size; 7: Pair-wise goodness of fit; scale 1-5.

Table 4. The Democracy-Endurance Link in Eight Pairs of States:
A Summary View

| Pairs | Constitutions | Does democracy promote endurance? |
|------------------------------------|--------------------------------|-----------------------------------|
| Malta vs. Maldives | 1964 1968, 1998, 2008 | Yes |
| Slovakia vs. Armenia | 1992 1995, 2005 | Yes. Indicative evidence |
| Mauritius vs. Swaziland | 1968 1968, 1973, 2005 | Yes |
| Czech R. vs. Bosnia | 1992 1995 | No |
| Tuvalu vs. Seychelles | 1978, 1986 1976, 1979, 1993 | Yes. Indicative evidence |
| Barbados vs. Lesotho | 1966 1966, 1993 | Yes. Indicative evidence |
| India vs. Philippines | 1949 1935, 1973, 1987 | Yes |
| Papua New Guinea vs. Mozambique | 1975 1975, 1990, 2004 | Yes |

(i.e., endurance) are not always conspicuous, they are so in half of the cases. Furthermore, there is much consistency and permanence in the general picture. Of the eight democracies that are components of the pairs, all but one have introduced only one constitution and therefore move on a maximum endurance level. Importantly, the one exception, Tuvalu, is perhaps not really a substantial exception. Namely, the Tuvalu constitution of 1986 that replaced the 1978 independence constitution did not alter significantly the guiding principles of the former constitution, but only proclaimed in a new preamble and a new chapter on constitutional principles the fundamental importance of Tuvaluan culture and customs as foundations of the state.³⁵ On the other hand, of the eight nondemocracies that are in like manner components of the pairs, all but one have introduced two (two cases) or three (five cases) constitutions and therefore stand out as inferior endurance performers. Or, in other words, we have two rules and two exceptions. The one rule states that democracies avoid constitutional upheavals; it is to some extent a matter of interpretation if the case of Tuvalu really constitutes an exception to this rule. The other rule states that nondemocracies are less qualified endurance-builders; the exception to this rule is the case of Bosnia-Herzegovina, the somewhat peculiar constitutional status of which already has been mentioned here.

Second, in the introductory notes to this study, the thought was mentioned that a capability of democracies to sustain endurance may in part follow from a tendency of such states to replace whole-scale revisions by a regular and diligent use of the amendment instrument. Also, the prospect of checking empirically the validity of this thought was held out. This is now done, admittedly in a tentative manner only, in table 5. This table surveys the use of constitutional amendments in the eight democracies that were parts of the pairwise comparisons effectuated above—concerning the case of Tuvalu, however, appropriate data have not been available. The time sequences that are observed vary among cases, in part for purely technical reasons, as the countries have been independent entities for different periods, in part for practical reasons, as there have been differences among the cases in terms of data availability. The primary data source again has been the series, *Constitutions of the Countries of the World*, notably the introductory notes and comments by the editors that precede the actual constitutional texts. More often than not, these comments cover developments over the time sequence from an earlier release of materials to the actual release; amendments, of course, are important elements of such developments and are listed, although not always with the same accuracy.

To repeat, the findings are preliminary and tentative at best. They follow from an examination of only a few democracies, and they do not involve comparisons with nondemocracies. This second omission is particularly

³⁵ Alexander Somoza, "Tuvalu," in *Elections in Asia and the Pacific: A Data Handbook*, ed. Dieter Nohlen, Florian Grotz, and Christof Hartmann (Oxford: Oxford University Press, 2001), 824-825.

Table 5. Constitutional Amendment Acts in Democracies:
A Review of Eight Cases

| Democracy | Amendment Acts |
|------------------|--|
| Barbados | From independence to 1997: amendments in 1974, 1980, 1980, 1981, 1989, 1989, 1990, 1992, 1995 |
| Czech Republic | From independence to 2002: amendments in 1993, 1995, 2001, 2002 |
| India | From 1950 to 2012: 97 amendment acts |
| Malta | From independence to 2007: amendments in 1965, 1966, 1967, 1970, 1972, 1974, 1976, 1977, 1979, 1987, 1989, 1990, twice in 1991, 1994, 1995, twice in 1996, 1997, 2000, 2001, 2003, and twice in 2007 |
| Mauritius | From 1981 to 1997: amendments twice in 1982, 1983, 1986, twice in 1990, four times in 1991, 1992, 1994, 1995, three times in 1996, and 1997 |
| Papua New Guinea | From independence to 2002: 23 amendment acts |
| Slovakia | From independence to 2006: amendments in 1998, 1999, 2001, twice in 2004, and three times in 2006 |
| Tuvalu | Data missing |

harmful, as available although nonsystematic evidence suggests that, in particular cases at least, nondemocracies may be ever so prone as democracies to engage in amendment policies. Take the case of nondemocratic Uganda, for instance. In less than two decades of the passage of the 1995 constitution, more than 120 amendments to the constitution were made or proposed.³⁶ The rather similar case of nondemocratic Singapore was mentioned earlier in this exposition. Still, the materials presented here are suggestive, as they show that democracies indeed engage by means of amendment in constitutional change. The constitution of India was amended ninety-seven times up to 2012, which makes it one of the most frequently amended constitutions of the world.³⁷ Several other cases likewise report large numbers of amendments. As noted earlier in this study, the constitution of Papua New Guinea has been amended repeatedly; over the years up to 2007 there were more than twenty amendment acts to the 1964 independence constitution of Malta; and the 1966 independence constitution of Barbados was amended nine times up to 1997.³⁸ During the

³⁶ Sauda Nabukenya, "Why Constitutions in Africa Do Not Stand the Test of Time," <http://www.communitylawcentre.org.Za> (accessed December 28, 2013).

³⁷ Rainer Grote, "The Republic of India: Introductory Note," in *Constitutions of the Countries of the World*, Binder VIII, Release 2013-1, ed. Gisbert H. Flanz (New York: Oceana Publications), 6.

³⁸ Velma Newton, "Barbados: Introductory & Comparative Notes," in *Constitutions of the Countries of the World*, Binder II, Release 97-5, ed. Gisbert H. Flanz (New York: Oceana Publications), v-vi.

short time span from independence until 2006, the constitution of the Slovak Republic was amended on eight occasions.³⁹ In democratic constitutional politics, amendments appear to be ever-present and routine.

Conclusion

This study has demonstrated the existence of a link between democracy and endurance: more than nondemocracies, democratic entities are conducive to constitutional endurance. This state of affairs may be explained by reference to two general factors. First, democracies tend more than nondemocracies to promote and maintain political and social qualities that work toward a preservation of constitutional frameworks. Second, more than nondemocracies, democracies lack characteristics that work against and undermine constitutional survival. Both factors have appeared in the theoretical underpinning of this research, which has built on the notion of a tendency of democracies to engage in a participatory and inclusive mode of constitution-making and to implement constitutional change in terms of piece-meal amendments rather than full-fledged constitutional upheaval, and on the notion of democracies being less exposed to constitution-demolishing crises, shocks, and environmental changes. True, focusing only on correlation traits between democracy and endurance, this research has not penetrated the explanatory factors and mechanisms that are in the terrain between the independent (democracy) and the dependent (endurance) variables. The research, therefore, has not been about the testing of a worked-out theory. The findings, however, have been unequivocal enough to speak in favor of the general credibility of such a theory.

This, however, does not mean much more than the exposition of a general pattern. There are in the world of constitutions exceptions to this pattern, and it remains an important task for imminent research to penetrate and understand such exceptions. Participatory forms of constitution-making, for instance, do not always produce a satisfactory endurance outcome. A recent handbook for constitution-makers emphasizes that it is of crucial importance that priorities are determined locally, since if and when local actors participate in defining the problem, they are more likely to take ownership also of the solutions. The same handbook further emphasizes that no effort should be spared to promote dialogues and to include all relevant parties in participatory constitution-making.⁴⁰ Still, although there seems to be a fairly broad consensus in the literature about the importance of public involvement, many of the underlying assumptions of this belief remain untested and the empirical support for the

³⁹ Rainer Grote, "The Slovak Republic: Introductory Note," in *Constitutions of the Countries of the World*, Binder XVI, Release 2008-1, ed. Gisbert H. Flanz (New York: Oceana Publications), 5-6.

⁴⁰ Michele Brandt, Jill Cottrell, Yash Ghai, and Anthony Regan, *Constitution-Making and Reform: Options for the Process* (Geneva: Interpeace, 2011), 9-10.

participation thesis is still limited at best.⁴¹ The rather convincing evidence of this study notwithstanding, other findings point in another direction and question the universal validity of a doctrine that foresees fortunate constitutional outcomes only of democratic procedures. For instance, interestingly, the promulgation of new constitutions in democratizing nations do not appear to necessarily foster democratic deepening but may in fact produce a decline in the level of democracy. Thus, research has indicated that, while in a set of 132 new constitutions in 118 democratizing nations the ensuing level of democracy increased as expected in 62 cases, it decreased or remained the same in 70 others.⁴² It must be left an open question here to what extent constitutional borrowing, more intensified during recent decades than before, contributes to such a state of affairs by importing into constitutional frameworks elements that do not fit smoothly into the actual context.⁴³

Generally speaking, many inconsistencies in findings and interpretations that concern the relation between democracy and endurance probably follow from the simple fact that democracy is a compound and evasive concept. While countries in a democracy category share and must share several defining qualities, there is still room for divergences that introduce too much analytical leeway in conceptions of democracy. In consequence, the endurance-enhancing qualities are perhaps not present in all democracies and the extent to which they are present may still vary considerably. Also, the social contexts in democracies may vary and therefore pose diverse challenges to specific countries. If political systems are still grappling with the definition of their collectivity, “crafting a formal democratic constitution that reflects shared norms and values is a daunting challenge,” it is said in the opening page of a study of constitution-making in divided societies.⁴⁴ One illustrative example may be found from the making of new constitutions in the wake of the decolonization of the small Pacific island states. While most constitutions were made in a democratic manner, due to the divisive nature of Fiji politics, the constitution-making process in that country was conducted in a secretive and elitist way.⁴⁵ It is not altogether without some design that Fiji stands out precisely among the Pacific

⁴¹ For example, Tom Ginsburg, Zachary Elkins, and Justin Blount, “The Citizen as Founder: Public Participation in Constitutional Approval,” *Temple Law Review* 81 (2008), 361-382.

⁴² Todd A. Eisenstadt and Carl LeVan, “The Gap from Parchment to Practice: The Ambivalent Effects of New Constitutions on Democracy,” paper presented at American University, Washington, D. C., May 28-29, 2013, <http://www.american.edu/spa/gov/democratization-conference-2013.cfm> (accessed December 28, 2013).

⁴³ For example, Wiktor Osiatynski, “Paradoxes of Constitutional Borrowing,” *International Journal of Constitutional Law* 1, no. 2 (2003): 244-268.

⁴⁴ Hanna Lerner, *Making Constitutions in Deeply Divided Societies* (Cambridge, UK: Cambridge University Press, 2011), 1.

⁴⁵ Yash Ghai, “Constitution Making and Decolonisation,” in *Law, Politics and Government in the Pacific Island States*, ed. Yash Ghai (Suva: Institute of Pacific Studies, University of the South Pacific, 1988), 14.

island states as having a particularly bad endurance record. Constitutions were promulgated in Fiji in 1970, 1990, and 1997; following coups in 2000 and 2006, the fourth constitution of the country was recently signed into law in 2013.

Future analyses of the relation between democracy and endurance also need to take aboard and accommodate more fully the distinction between amendment and full-fledged constitutional change. If it is true, as it appears to be, that democracies rely more than nondemocracies on revisions via amendment, then the focus in endurance analyses on whole-scale revisions may be to some extent misleading, as it moderates unduly the democratic inclination to pursue constitutional change. The inclination is certainly there, and on occasions it takes the form of a full revision, as, for instance, when Finland in 2000 promulgated a new constitution which replaced the 1918 constitution and implied a move from a semi-presidential to a semi-parliamentary regime.⁴⁶ More often, however, the inclination is manifested in terms of amendments, this meaning that the relation between democracy and endurance turns equivocal and difficult to sort out. Endurance is promoted but is also undermined. On the one hand, amendments imply change and renovation—certain prescriptions are deleted, revised, or replaced, and endurance is hence in part abolished and truncated. Amendments, therefore, in a manner of speaking, are endurance-destroyers. Yet, precisely by accommodating changes in parts and details, amendments are also endurance-preservers—they make possible the survival of a whole, the parts of which they have modernized, reproved, and polished, while leaving the context intact. It would seem desirable and even necessary to develop in future research a methodological tool for measuring endurance that combines realizations of whole-scale revision and partial revision and thus unifies the two strategies for pursuing constitutional change. Of course, observing that some amendments may be fairly piece-meal and of limited importance while others are more overall and extensive and in fact come near a total over-haul, such a tool must be sensitive to amendment distinctions in terms of grading and classification.

⁴⁶ Dag Anckar, “Finland inför millenniumskiftet: en regimbestämning” [Finland at the turn of the millenium: A regime change], *Statsvetenskaplig Tidskrift* [The Political Science Journal] 102 (1999): 241-261.