

# Can new constitutions tighten the reins?

## The effect of constitutional change on constitutional compliance

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### Abstract

In this paper, we ask whether constitutional change induces better compliance with the constitution. Using an event study design to analyze constitutional changes in 175 countries since 1900, we find that passing new constitutions improves compliance with the constitution overall as well as in different dimensions of constitutional rules. Mere amendments, however, have no significant effect. New constitutions are complied with more, although they tend to include more constraints on the government.

Keywords: constitutional change, constitutional compliance; *de jure-de facto* gap; event study.

JEL: D02; H11; K10; K38; K42; P14; P26; P48.

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## 1 Introduction

Scholars in constitutional economics have spent the last decades inquiring into the determinants and effects of constitutional rules. In recent years, legal scholars, political scientists, and economists have also started paying attention to the narrower questions of what causes constitutional compliance and what are its consequences. Constitutional compliance describes whether *de jure* constitutional rules are implemented *de facto*. In this paper, we answer the question whether passing a new constitution can induce higher constitutional compliance levels by national governments.

Theoretically, the relationship between constitutional change and compliance is ambiguous. On the one hand, it would make sense that powerful executives tend to change constitutions to bring them in line with their political ambitions. If violating constitutional rules is costly (see, e.g., Gutmann et al. 2021; Myerson 2006; Weingast 1997) and the same politicians are able to change the constitution at a lower cost than that of violating it, new constitutions would include fewer constraints and the remaining constraints are the ones the government is more willing to comply with. It can also be argued that the process of constitutional change itself increases the cost of violating constitutional rules in the years thereafter. On the other hand, constitutions may be changed in response to temporary pressure from citizens or foreign actors and not all promises in such a situation are necessarily made with the intention to keep them.

Studies show that the average lifespan of a constitution is less than 20 years (Elkins et al. 2009), which means that new constitutions are written all the time. To study the effect of these constitutional changes on constitutional compliance we use the new Comparative Constitutional Compliance Database (Gutmann et al. 2024) and an event study design for identification. Moreover, we strive to uncover effect heterogeneity depending on the kind of constitutional change and account for contextual factors relevant to the process of constitutional change. We find that constitutional change increases constitutional compliance across various categories of constitutional rules. Yet, we find this effect only for new constitutions, whereas mere

amendments do not induce constitutional compliance.

Our study contributes to a quickly growing empirical literature on constitutional compliance. Law and Versteeg (2013) introduced the first quantitative indicators for the comparison of constitutional underperformance across countries and over time. Gutmann et al. (2024) have introduced a new database for the measurement of constitutional compliance, which covers 175 countries since 1900. Given the new abundance of data, researchers have started to identify one-by-one the determinants of governments' constitutional compliance. For example, they inquire into whether the head of state can be dismissed for violating the constitution (Gutmann et al. 2024), the role of political leaders' characteristics (Gutmann et al. 2023), national culture (Gutmann, Lewczuk, et al. 2022), historical state development (Bologna Pavlik and Young 2023; Grajzl et al. 2023), political polarization (Lewkowicz et al. 2024), and the robustness of civil society (Lewkowicz and Lewczuk 2023). While this body of literature has generated valuable insights concerning the conditions under which constitutions are more likely to be complied with, it fails to offer guidance regarding how imperfect constitutional compliance could be repaired.<sup>1</sup> Constitutional change is probably the most intuitive instrument that could be used to address a deficit in constitutional compliance and we provide the first empirical evaluation of what can be expected from this instrument.

The paper is structured as follows. In Section 2, we briefly survey the relevant literature on constitutional compliance and its determinants. Drawing on these sources, we formulate a theory of how constitutional change affects constitutional compliance and formulate testable hypotheses in Section 3. Section 4 describes our data and estimation strategy. Section 5 discusses our empirical results before Section 6 concludes.

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<sup>1</sup> The determinants of constitutional compliance are also of interest, because higher compliance levels have been linked to faster economic growth (Lewczuk and Metelska-Szaniawska 2023).

## 2 Literature review

In recent decades, constitutional economics has flourished as a field of research (Voigt 2020 surveys this now well-established literature). Empirical research confirms that various constitutional rules are able to shape both policy decisions and economic outcomes (see, e.g., Persson and Tabellini 2003; Voigt and Gutmann 2019). However, less attention has been paid to constitutional change and the longevity of constitutions, although it has been pointed out that this is an important follow-up question once it is established that constitutions matter (Voigt 1999, 2011). Finally, a recent body of literature focuses on the economics of constitutional compliance. This literature is interested in whether and when constitutional text is aligned with political behavior and of course whether such a congruence can help explain the correlation between constitutional rules and aggregate outcomes (Voigt 2021). Here, we link the latter two strands of literature to each other.

Elkins et al. (2009) propose to distinguish between design factors (related to the content and drafting process of the constitution) and environmental factors affecting the survival of national constitutions. Constitutional endurance or survival describes the absence of constitutional change that takes place outside of the constitutionally prescribed amendment procedures and could, thus, be interpreted as a replacement of the existing constitutional order. The authors identify three key features of constitutions that appear to increase their longevity: inclusion, flexibility, and specificity. Constitutions generated in an inclusive manner are more familiar to the public and should, therefore, be more likely to provide focal points for social coordination, even in diverse societies. Flexible constitutions allow for easier adjustment to new circumstances, making it more likely that constitutions can survive in a changing environment. Finally, constitutions with a higher degree of specificity are better at establishing a consensus on whether a political decision violates the constitution (see, e.g., Gutmann et al. 2021; Gutmann, Sarel, and Voigt 2022). Other studies on constitutional change focus on the choice of specific constitutional rules (e.g., Aghion et al. 2004; Hayo and Voigt 2010, 2013, 2016; Ticchi and Vindigni 2010; Riboni 2013; Robinson and Torvik 2016). Negretto (2013) shows that the main

determinants of constitutional choice are the past performance of constitutions in terms of facilitating the effectiveness and legitimacy of governments and the strategic interests of key actors. Compared to their determinants, less is known about the effects of constitutional endurance or constitutional change. Elkins et al. (2009:35) argue that enduring constitutions can support a stronger sense of civic unity. Pérez-Liñán and Castagnola (2016) find that constitutional change in Latin America causes judicial instability and court manipulation. We contribute to this scant literature by investigating the link between constitutional change and constitutional compliance.

Here, we contribute to the emerging empirical literature on the determinants of constitutional compliance. Voigt (2021) proposes a framework for how to analyze these determinants. It focuses on the incentives of government actors to comply with the formal constraints spelled out in the constitution. These can be grouped into: (1) design factors reflected in the content or structure of the constitution and (2) environmental factors under which a constitution operates, e.g., its constitutional history, values and norms in a society, or trust between citizens. Regarding (1), several studies have focused, for example, on the age or the comprehensiveness of the constitution (Metelska-Szaniawska 2021; Lewkowicz et al. 2023). Constraints on constitutional transgressions may also result from the existence of veto players in a constitutional system who prevent each other from overstepping their respective competences. Concerning (2), Bologna Pavlik et al. (2023a) show, for example, that present-day constitutional compliance is affected by the population's historical experience with representative assemblies, Grajzl et al. (2024) emphasize the timing of when nation statehood emerges, Gutmann et al. (2021) identify cultural factors (such as individualism and power distance) that affect constitutional compliance, Metelska-Szaniawska (2021) argues that political conflict may play a role, while Choutagunta et al. (2024) study how a variety of extreme events can exert a shock on constitutional compliance. The benefits from not complying with the constitution depend on three factors. Firstly, personal characteristics of government actors may play a role. In a study on how personal traits of political leaders affect compliance, Gutmann et al. (2023) find that their education, mode of entry

into office, political experience, military background, and whether they are members of extreme left-wing parties play a significant role. Secondly, the more the constitution constrains political actors, the more they can benefit from evading it. Thirdly, the alignment of government preferences with the text of the constitution may play an important role. The more they diverge, the greater the benefits from non-compliance for the government actors.<sup>2</sup>

Among the possible costs of noncompliance, constitutions often stipulate sanctions for government actors who violate constitutional rules (e.g., impeachment procedures). Gutmann et al. (2024) confirm that constitutions that allow for the dismissal of the head of state or government for violating constitutional rules are complied with more. Civil society may also affect the incentives of governments to comply with the constitution. This may come in the form of voting such politicians out of office (see Chilton and Versteeg 2020; Kantorowicz and Metelska-Szaniawska 2024) or as actions of nongovernmental organizations (Lewkowicz and Lewczuk 2023).

Here, we are interested specifically in the connection between constitutional change and constitutional compliance. Elkins (2021) deals with this question for the special case of term limit evasion by political leaders. He observes that one way in which term limits are evaded is through formal revision or abrogation of a constitution. Elkins argues that such incidents may give rise to a vicious cycle in which constitutional non-compliance begets constitutional instability, which in turn begets non-compliance (see also Brinks et al. 2019). Using historical data for Latin America since 1860 on both executive term limit evasion and constitutional change, Elkins (2021) finds that overstaying leaders are much more likely to draft a new constitution than those who comply with term limits. At the same time, a significant share of the studied overstays were facilitated by the replacement of or an amendment to the country's constitution, which extended the term limits and legitimized the overstay. Overstay, therefore, is found to be both a product and a source

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<sup>2</sup> Lewkowicz et al. (2024) show that the benefits from non-compliance are also higher at times of increased conflict in the political arena, in particular driven by the underlying political polarization of society.

of constitutional change. The study most closely related to ours inquires into the difference between 15 revolutionary constitutions adopted between 1976 and 2010 and regular constitutions. Bologna Pavlik et al. (2023) find that the adoption of revolutionary constitutions is associated with significantly increased levels of constitutional compliance.

### **3 Theory**

An obvious reason why constitutional change may occur and why it may be directly linked to constitutional compliance is that politicians want to tailor constitutional rules around their political goals. One example for this is Elkins et al.'s (2021) finding that political leaders use constitutional change to legalize and legitimize them overstaying in office. If this mechanism dominates, one would expect an increase in constitutional compliance due to constitutional change as well as a decrease in the number of constitutional constraints the government must comply with.

Other reasons for increased constitutional compliance have to do with the process of constitutional change itself and its consequences. First, constitutional change may increase the salience of constitutional rules and citizens may, thus, pay more attention to possible violations. Constitutional change typically draws much attention and is widely reported on in the media. It is, therefore, more likely after such a process that citizens pay attention to violations of their new constitutional rule. Second, constitutional change and the associated political processes may also increase the citizens' knowledge of constitutional rules, making it easier for them to identify what constitutes a violation of constitutional rules. Citizens information and attention are independent, but mutually reinforcing factors in increasing the expected cost of violating the constitution. Third, constitutional change may increase the perceived legitimacy of constitutional rules, if they were brought about in a process that itself is perceived as legitimate. This may be only due to the fact that citizens were involved in the constitution-making process or even due to the fact that new constitutional rules are better aligned with citizens' preferences. This increased legitimacy

increases the likelihood that citizens would punish violations of constitutional rules. Finally, constitutional change may attract the attention of international actors, such as media, governments, or international organizations. This additional scrutiny would further increase the expected cost of violating the constitution. The arguments linking the process of constitutional change to constitutional compliance lead to the same prediction as our first argument, i.e., that constitutional change should increase compliance with the constitution. They are, however, different in that only the argument that politicians use constitutional change to get rid of unpleasant constraints implies that constitutional change would reduce the number of relevant constitutional constraints in order to make compliance easier.

Although the arguments in favor of a positive association of constitutional change and constitutional compliance are compelling, it is theoretically also plausible that the relationship between them is negative. Governments may feel pressured by citizens or foreign actors, such as donor countries, to change their policies in favor of protecting human rights, constraining executive power, strengthening the rule of law, etc. In this case, constitutional reforms can be a relatively cheaper response than changing actual government policies. In such a situation, constitutional change may entail adding articles to the constitution which the government has no intention to comply with. Lowering its constitutional compliance may simply be more attractive to particular governments than actually relinquishing political power.

While we consider the arguments in favor of a positive effect on constitutional compliance both more numerous and stronger, it is ultimately up to empirical testing to evaluate the theoretically ambiguous relationship between constitutional change and compliance. We summarize our theoretical arguments in the following two hypotheses:

**H1:** Constitutional change increases governments' compliance with the constitution.

**H2:** Constitutional change reduces the number of relevant constitutional constraints on political leaders.



Constitutional change can come in various forms and it might be overly simplistic to treat all constitutional changes the same way. Perhaps the most important difference between events concerns the size of the constitutional change. Minor amendments to the constitution are both less likely to draw much attention and less likely to be successful in dismantling checks and balances if that is the intention. They can thus be expected to have a negligible effect on constitutional compliance when compared to major constitutional reforms. We summarize this argument as our third hypothesis:

**H3:** More comprehensive constitutional change leads to a larger improvement in compliance.

#### **4 Data and estimation strategy**

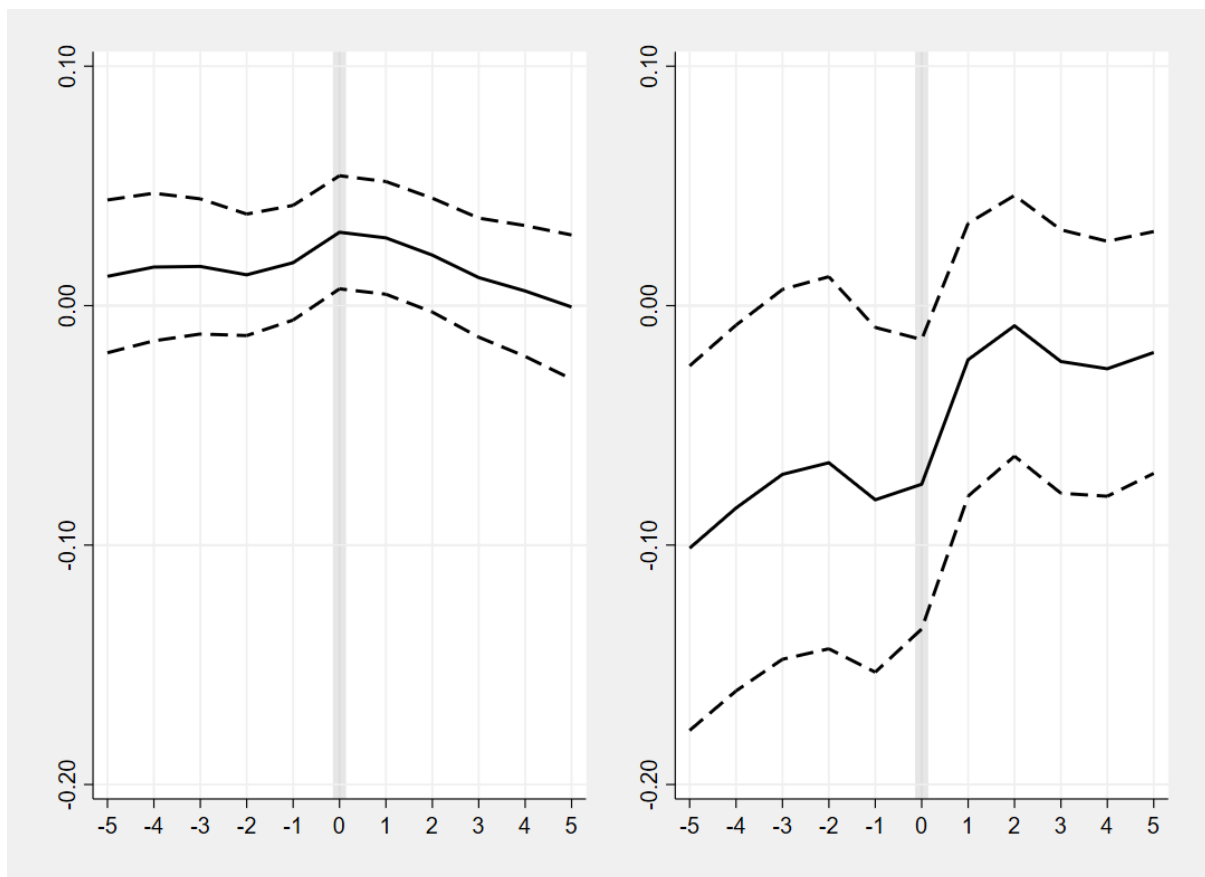
To estimate the effect of constitutional change on constitutional compliance, we draw on constitutional change data from the Comparative Constitutions Project by Elkins et al. (2009) and data on constitutional compliance by Gutmann et al. (2024). Our linear regression models include country and year fixed effects as well as eleven dummy variables identifying the year of a constitutional change and the five years before and after it. The dataset by Elkins et al. does not directly measure the size of a constitutional change, but it distinguishes constitutional amendments from new constitutions, based on whether the constitutional change follows the constitutional amendment procedure. Since amendments based on this definition tend to imply significantly smaller changes than new constitution, we use this as a proxy for the size of the constitutional change. As additional control variables, we control for two dummy variables that identify interim constitutions and reinstated constitutions.

To facilitate an easy interpretation of our results, we plot the estimated coefficients of OLS regression models with 90% confidence bands. These plots can be interpreted as event studies. A causal effect presupposes not only that the level of compliance is different after the constitutional change than before, but there also has to be a corresponding change in the time trend in close proximity to the treatment event at  $t = 0$ .

## 5 Empirical results

Figure 1 evaluates both hypotheses 1 and 3 by plotting the effect of constitutional changes on constitutional compliance and by also distinguishing between amendments and new constitutions. We find both hypotheses 1 and 3 confirmed. Constitutional change is associated with an increase in constitutional compliance and the effect is larger for more extensive constitutional changes. More precisely, we do not even find a relevant effect of constitutional amendments. If at all, they increase compliance only marginally and without lasting effects.

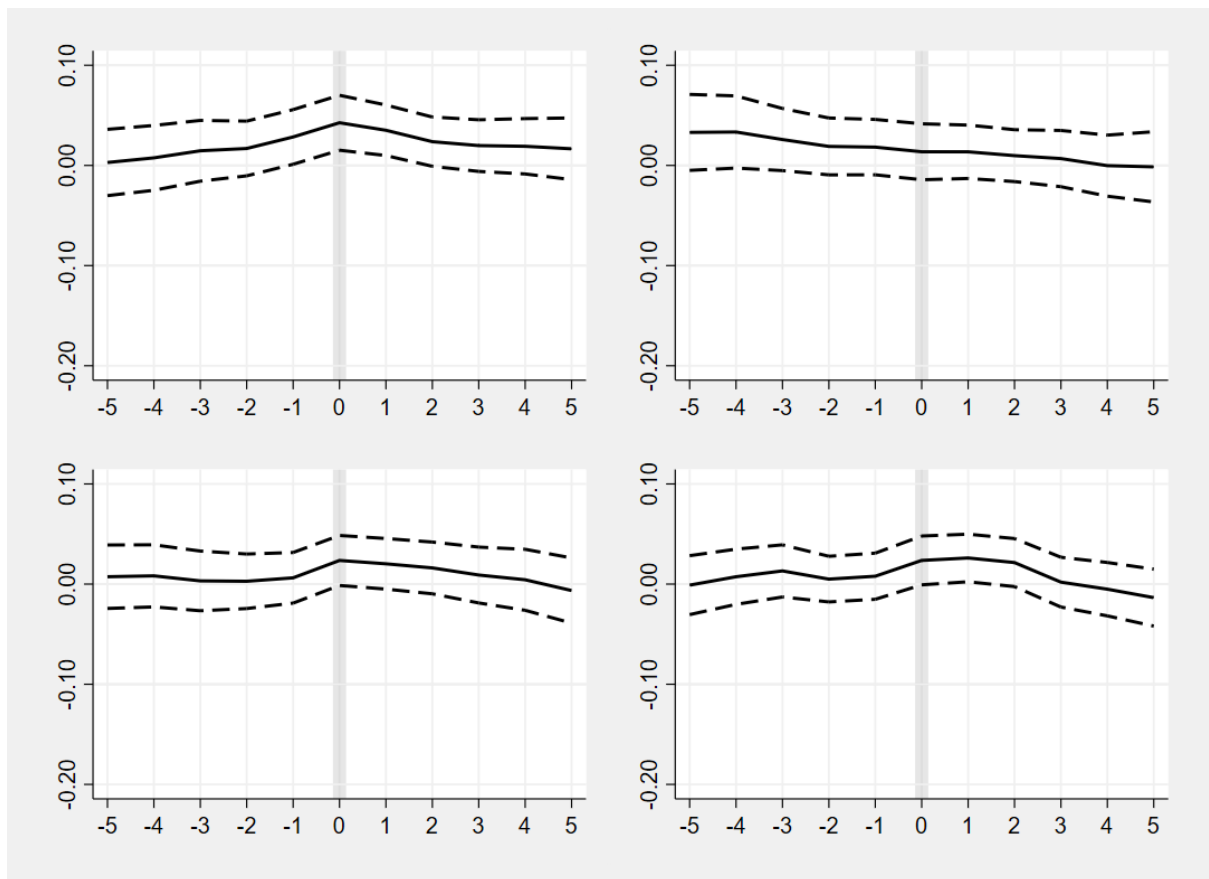
Figure 1: Constitutional change and constitutional compliance – amendment vs new constitution



Note: OLS coefficients estimates plotted five years before and after a constitutional change with 90%-confidence bands. The left figure shows the effect of a constitutional amendment, the right figure shows the effect of a new constitution, as defined by Elkins et al. (2009).

Figure 2 distinguishes constitutional compliance based on four categories: property rights and the rule of law, basic rights, civil rights, and political rights. It depicts the effect of a constitutional amendment in each of these categories. Again, there do not seem to be important and lasting consequences.

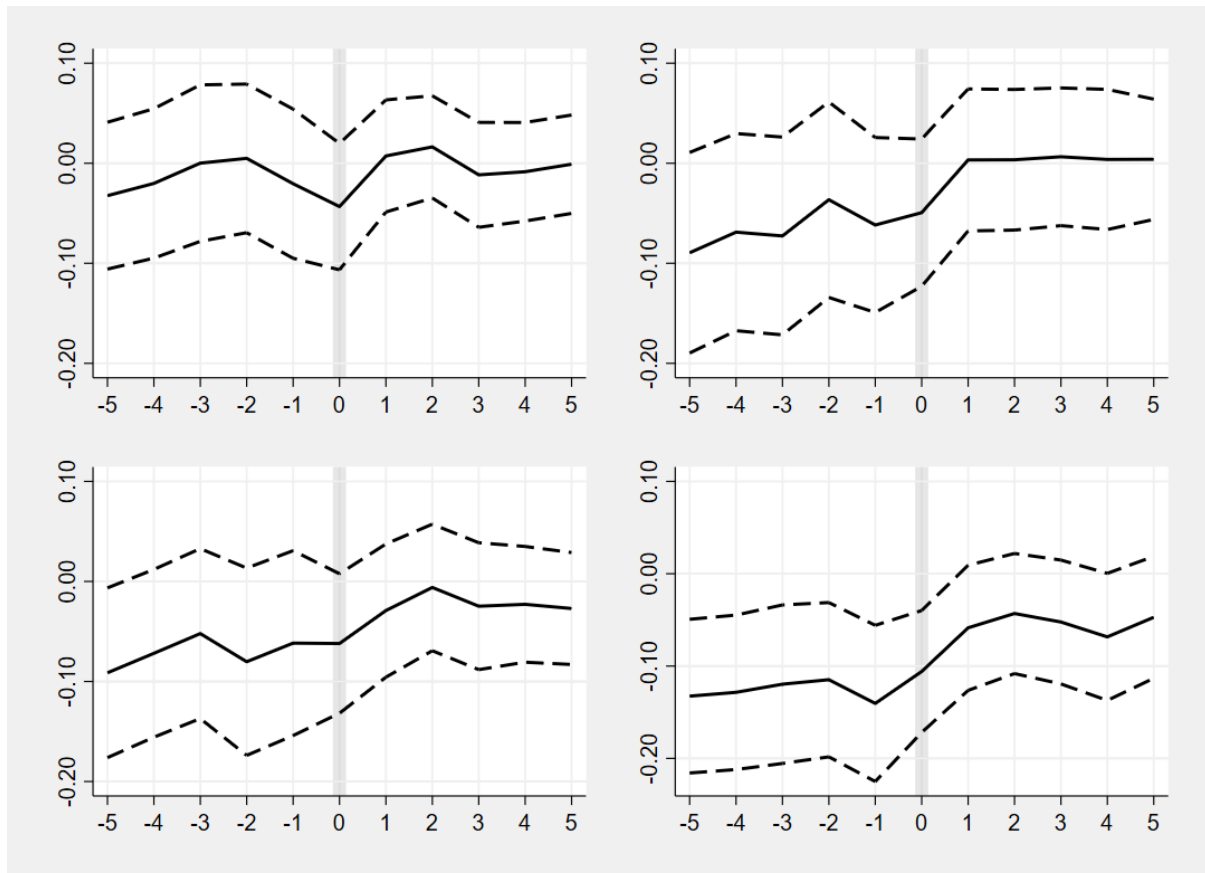
Figure 2: Constitutional change and types of constitutional compliance – amendment



Note: OLS coefficients estimates plotted five years before and after a constitutional change with 90%-confidence bands. The bottom right figure depicts the effect on compliance with basic rights, the bottom left figure depicts the effect on compliance with civil rights, the top right figure shows the effect on compliance with political rights, and the top left figure shows the effect on compliance with property rights and the rule of law.

Figure 3 shows the same results as Figure 2, but for new constitutions. Consistent with Figure 1, we find that new constitutions lead to more compliance. Although differently pronounced, we observe an increase in compliance with all categories of constitutional rules.

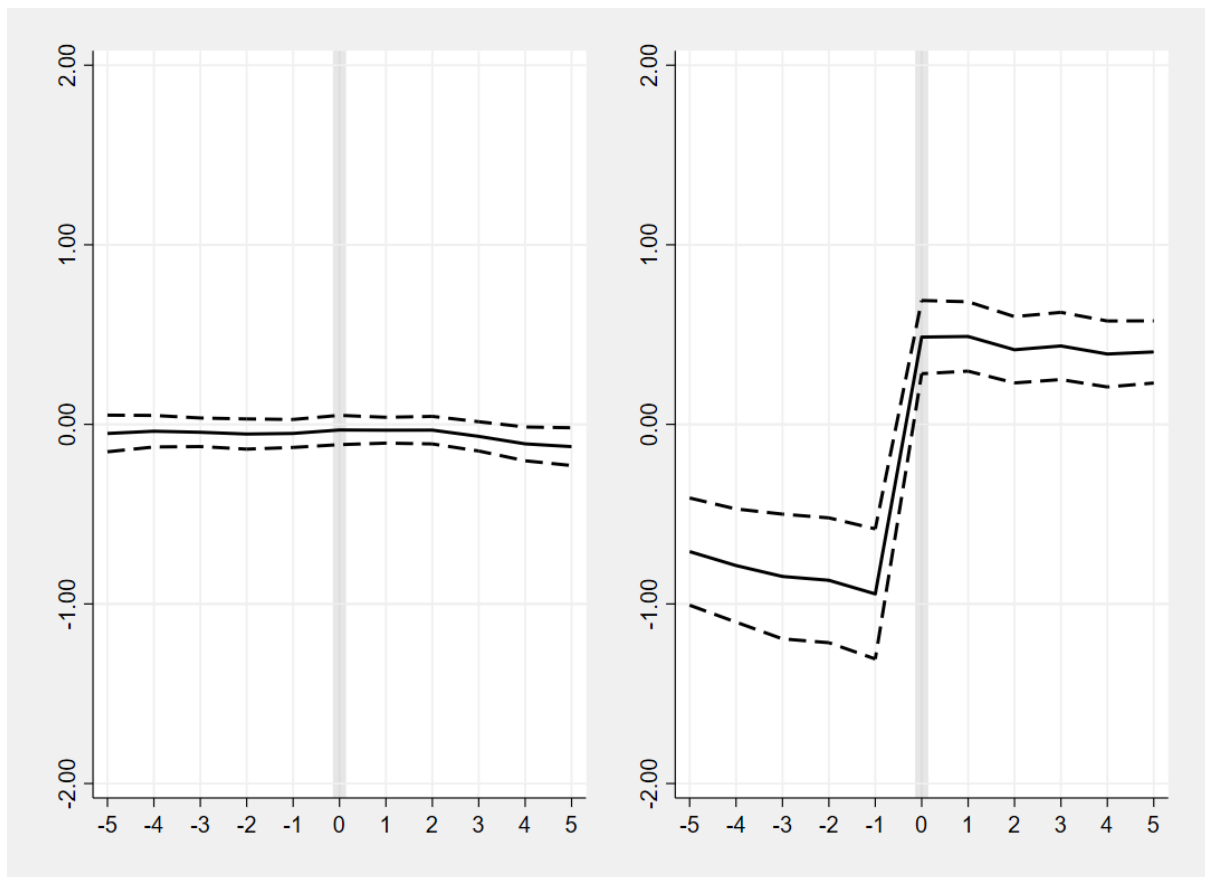
Figure 3: Constitutional change and types of constitutional compliance – new constitution



Note: OLS coefficients estimates plotted five years before and after a constitutional change with 90%-confidence bands. The bottom right figure depicts the effect on compliance with basic rights, the bottom left figure depicts the effect on compliance with civil rights, the top right figure shows the effect on compliance with political rights, and the top left figure shows the effect on compliance with property rights and the rule of law.

Next, we might ask ourselves why constitutional change affects compliance. Figure 4 shows the effect of constitutional change on the *de jure* rights index, which is a simple count of how many of the 14 constitutional rules considered in the Comparative Constitutional Compliance Database by Gutmann et al. (2024) are protected in the constitution. Clearly, constitutional amendments have no effect, but a new constitution on average includes more than one additional constitutional rule of the 14 considered here. This finding clearly contradicts our second hypothesis and indicates that governments do not achieve higher compliance after constitutional change because they lower the bar for constitutional compliance by eliminating unpopular constitutional constraints.

Figure 4: Constitutional change and de jure rights index



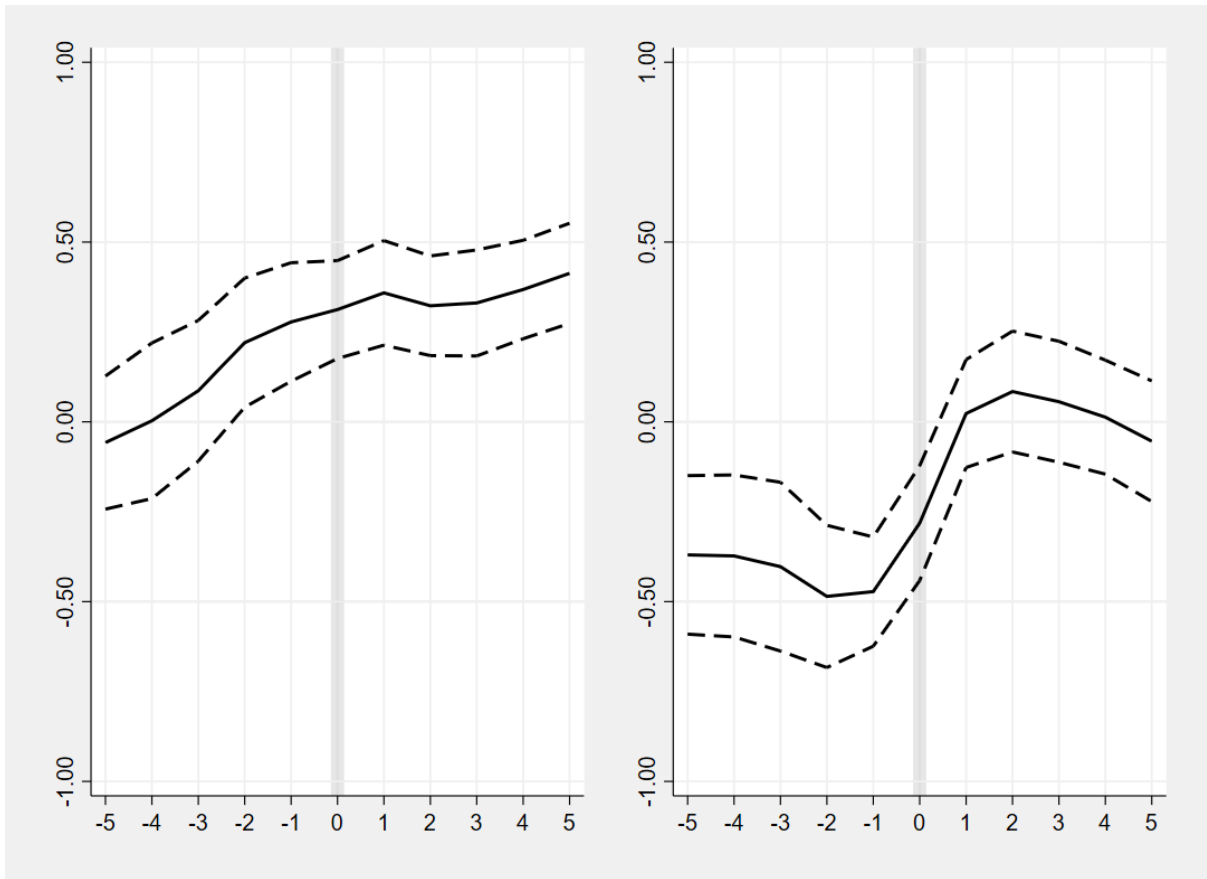
Note: OLS coefficients estimates plotted five years before and after a constitutional change with 90%-confidence bands. The left figure shows the effect of a constitutional amendment, the right figure shows the effect of a new constitution, as defined by Elkins et al. (2009).

Next, we evaluate whether the effect of constitutional change depends on the political environment or whether the constitutional change coincides with a broader political transition. We categorize countries according to whether they are democratic in the year before and in the year after a new constitution is introduced. Countries that are autocratic after the constitutional change show no significant improvement in constitutional compliance (results available on request). Countries that are democratic both before and after a new constitution is introduced and countries that become democracies around that time, however, experience a significant increase in constitutional compliance. This is illustrated in Figure 5. The event study plots point to an important difference between constitutional change in a stable democratic setting and constitutional change in a democratizing autocracy. Only the democratizing countries show a clear deviation from the pre-trend. Countries that are already democratic continue to improve their constitutional compliance around the introduction of new constitution, but no added effect of introducing a constitution is detectable.

Our empirical analysis so far leaves two important questions open. We have not yet evaluated the statistical significance of changes in constitutional compliance and it remains unclear whether the effect of constitutional change and changes in democracy can be empirically disentangled. The regression results in Table 1 provide at least partial answers to these questions. The model estimated here is identical to that underlying Figure 1, with one exception. The dependent variable is not measured as the level of overall constitutional compliance, but as the year-to-year change in constitutional compliance (i.e., the first difference). This allows us to conveniently test whether changes in constitutional compliance in individual years are statistically significant. Our results show not only that in this model new constitutions have a highly statistically significant effect on compliance in the year after a new constitution is introduced, but also the effect of constitutional amendments is significant at the 5% level. While the effects of constitutional amendments are small in size and only temporary, the improvement in constitutional compliance due to a new constitution is sizable and persists over several years.

In Column 2 of Table 1, we add a dummy variable for successful coups and the first difference of the democracy indicator by Bjørnskov and Rode (2020) to the model. The latter indicator now captures year-to-year changes in democracy. After adding these control variables, the coefficient for new constitutions remains stable and highly statistically significant. Nevertheless, the first differenced democracy indicator itself has a clear effect on compliance, which is about three times the size of that of introducing a new constitution. Based on these results, it seems that new constitutions have a significant effect on constitutional compliance that is independent of changes in democracy. At the same time, the constitutional compliance enhancing effect of democratizing is around three times as large as a that of introducing a new constitution.

Figure 5: Constitutional change and constitutional compliance – democracy vs autocracy



Note: OLS coefficients estimates plotted five years before and after a constitutional change with 90%-confidence bands. The left figure shows the effect of a new constitution in a democracy, the right figure shows the effect of a new constitution in a democratizing autocracy.



Table 1: Regression analysis

|                         | (1)                 | (2)                 |
|-------------------------|---------------------|---------------------|
| New constitution t-5    | 0.015<br>(0.014)    | 0.018<br>(0.017)    |
| New constitution t-4    | 0.002<br>(0.010)    | 0.002<br>(0.013)    |
| New constitution t-3    | 0.005<br>(0.016)    | 0.010<br>(0.019)    |
| New constitution t-2    | -0.010<br>(0.015)   | -0.009<br>(0.018)   |
| New constitution t-1    | -0.024<br>(0.019)   | -0.015<br>(0.021)   |
| New constitution        | -0.042<br>(0.031)   | -0.036<br>(0.035)   |
| New constitution t+1    | 0.061***<br>(0.013) | 0.066***<br>(0.016) |
| New constitution t+2    | 0.017<br>(0.010)    | 0.019<br>(0.012)    |
| New constitution t+3    | -0.010<br>(0.011)   | -0.009<br>(0.013)   |
| New constitution t+4    | 0.001<br>(0.008)    | -0.004<br>(0.009)   |
| New constitution t+5    | -0.004<br>(0.008)   | -0.001<br>(0.009)   |
| Amendment t-5           | -0.002<br>(0.004)   | -0.001<br>(0.005)   |
| Amendment t-4           | 0.005<br>(0.004)    | 0.006<br>(0.005)    |
| Amendment t-3           | -0.001<br>(0.004)   | -0.001<br>(0.005)   |
| Amendment t-2           | -0.003<br>(0.005)   | -0.007<br>(0.005)   |
| Amendment t-1           | 0.006<br>(0.006)    | 0.007<br>(0.007)    |
| Amendment               | 0.012*<br>(0.005)   | 0.013*<br>(0.006)   |
| Amendment t+1           | 0.004<br>(0.005)    | 0.006<br>(0.005)    |
| Amendment t+2           | -0.004<br>(0.004)   | -0.003<br>(0.005)   |
| Amendment t+3           | -0.010*<br>(0.004)  | -0.010*<br>(0.004)  |
| Amendment t+4           | -0.004<br>(0.005)   | -0.008<br>(0.005)   |
| Amendment t+5           | -0.005<br>(0.004)   | -0.004<br>(0.004)   |
| Interim constitution    | 0.103<br>(0.158)    | 0.193<br>(0.153)    |
| Reinstated constitution | -0.239***           | -0.209***           |

|                             |         |          |
|-----------------------------|---------|----------|
|                             | (0.027) | (0.015)  |
| Democracy, first difference |         | 0.202*** |
|                             |         | (0.048)  |
| Successful coup             |         | -0.053   |
|                             |         | (0.040)  |
| <hr/>                       |         |          |
| Within R <sup>2</sup>       | 0.01    | 0.04     |
| Countries                   | 175     | 171      |
| Observations                | 10,573  | 8,548    |

Note: OLS coefficient estimates with standard errors in parentheses clustered on the country level. Dependent variable is the first difference in constitutional compliance. Models include country and year fixed effects. \*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$ .

## 6 Conclusion

Our study shows that constitutional change is conducive to constitutional compliance across various categories of constitutional rules. In line with our expectations, we find an effect only for new constitutions, whereas mere amendments do not lead to a relevant change in compliance. It is also these new constitutions that significantly alter the contents of the constitution and on average add more than one out of 14 constitutional rules considered here to the constitution.

New constitutions are associated with increases in constitutional compliance if governments under the new constitution are democratically accountable. However, only in countries that transition from autocracy to democracy are new democracies linked to a significant deviation from the pre-trend. We provide additional regression results to demonstrate that the effect of new constitutions on constitutional compliance is not only highly statistically significant, but it also persists after controlling for changes in democracy. Nevertheless, at only one third the size, new constitutions are significantly less effective in promoting constitutional compliance than democratization is.

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