

# Participatory Constitution Making and the Protection of Minority Rights

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## Abstract

Is a more in direct democracy better for the constitutionalization of minority rights or not? In particular, are some rights more likely to be included than others when the process is more participatory? Or do the groups that primarily participate in direct democratic instruments protect their privileged status? While public participation in constitution making has received considerable scholarly attention, we know little about the impact of direct democratic measures on the constitutional protection of individual rights of minorities. For quite some time, scholars argued that more direct participation will lead to better democratic outcomes, yet more recent research pointed to the implicit majoritarian aspect in this argument and to the inherent danger that majoritarian processes. In particular, we wonder whether the implicit traps these processes can create, are a real challenge for the hegemonic elite bargaining process that is constitution making. Hence, we argue that public participation in constitution making influences the constitutionalization of minority rights, but that the effect varies by type of right: while more public participation in constitution-making processes would result in more constitutional protections for rights that can be subsumed under the concept of power sharing, it would decrease group autonomy provisions. We assume that group autonomy rights are perceived as less threatening to elite interests than power sharing rights. They do not require an interruption in the bargaining process. However, for the constitutionalization of power sharing an outside interruption (for example through) is beneficial. Drawing on new and unique data, this article examines the inclusion of minority protections in constitutions worldwide from 1974 [1918] to 2020. We show that direct democratic measures indeed have a differential effect on the constitutionalization of minority rights. While public participation does affect the probability for rights that guarantee power sharing provisions, the same measures have no effect on the probability for rights that protect group autonomy. This points to a complex interaction between the type of minority right, the expectation about its actual enforcement, elite bargaining and direct democratic procedures. The article's findings have important implications for understanding the relationship between political representation and the protection of vulnerable groups.

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# 1 Introduction

The constitutionalization and protection of minority rights or rights of disadvantaged/marginalized groups is a key characteristic, some would even argue, a necessary condition of a consolidated democracy. What we see is a "constitutional resurgence" of these rights, i.e., an increased push for their constitutionalization, but also increased conflict over these rights in the last years. We define these minority rights or rights of marginalized and disadvantaged groups here in relation to groups experiencing "a pattern of disadvantage or inequality" (Healey, 2011, 16) in comparison with more dominant societal groups. This means "belonging to national or ethnic, religious and linguistic minorities". Hence, minority rights should offer "the best possible accommodation of the ethnic, religious and linguistic population diversity in these societies" (Koubi, 1994, 182) as well as protections of other disadvantaged groups (women or members of the LGBTQI community). And while it is clear, that the constitutionalization of the rights of disadvantaged groups is not equivalent to the actual protection against threats and inequality, they are an important first step towards representation and equality of these groups. In order to understand the constitutionalization of minority rights, it is important to understand the conditions under which this constitutionalization actually occurs.

In this article, we focus on a key element of the constitution making process, the involvement of the public. Research finds evidence of a small but positive relation between public participation in the constitution-making process and the constitutionalization of minority rights or rights of marginalized and disadvantaged groups. The effect is significant the earlier in the process of constitution making this participation of the public occurs, but has no effect on the inclusion of minority rights provisions at later stages of the constitution making process (Fruhstorfer and Hudson, 2021). And while this research suggests, that the timing of participation matters in important ways, the evidence for a substantive impact of public participation is missing. In light of this, we argue that the weak evidence for an impact of public participation in constitution making is due to the cursory engagement with the concept of minority rights.

For example, Fruhstorfer and Hudson (2020) rely on a additive index of minority rights and do not distinguish between different concepts of minority rights or rights of marginalized and disadvantaged groups. Hence, we assume that minority rights cannot be lumped together but can only be assessed when treating them as the multi-faceted concept they are. The creation of an additive index requires an equivalence between the different rights that is not existent and thus poses problems of concept validity. Minority rights or rights of marginalized and disadvantaged groups that are included in this index range from provisions for territorial secession, the horizontal effects of constitutional rights to the right of matrimonial equality. These are rights provisions that concern different groups, are on a different level of organization capacity and are both individual or organizational rights. Thus, they are very diverse and we can expect that the process of constitution making has different effects on the probability that individual rights are included.

In the paragraphs that follow, we summarize the expectations in the literature, outline our key hypotheses, describe the data and statistical models as well as their results and what we can learn about the relationship between participatory constitution-making processes and the protections of different minority rights and constitutional protections for disadvantaged groups.

## **2 Ethnos or Demos for the Constitutionalization of Rights**

### **2.1 Public Participation and Constitution Making**

Constitutions are an important part of modern states and serve to create "*substantive* limitations and obligations" for any government (Murphy, 2007, 6). Public participation in the constitution making process became sort of a go-to instrument to create legitimacy and public support for a new constitution (Hart, 2003). This is particularly important because the process of how a constitution is established, has become equally as important as the content of the final document for the legitimacy of the new constitution (Hart, 2003). Public participation is here defined as "citizens' involvement in political will-formation and decision-making" (Geissel and Michels, 2018, 129). In the process of constitution-making the public can become involved via different ways, most commonly via a

referendum to ratify the text (Elkins and Hudson, 2019) but also in different stages of the process, i.e., consultations or deliberation in the formulation of the text but also in the election of the drafters.

Public participation in constitution making processes has empirically been connected to a higher level of democracy (Eisenstadt et al., 2017a; Barany and Moser, 2009), a better chance in resolving pre-existing conflicts (Widner, 2005; Samuels, 2005), and expanded rights protections (Elkins et al., 2008; Negretto, 2020). Also, to include participatory instruments in the constitution making process is an important part of the recommendations and guidance provided by international organizations advising the drafting process (Landemore, 2020; Ghai and Galli, 2006; Hart, 2010; Gluck and Ballou, 2014).

Previous research has also shown that when we distinguish between different steps of the constitution making process, we see the influence of the process on the subsequent success or failure in democratization (Eisenstadt et al., 2017a). However, similarly important – with a potentially confounding finding – is that once started, public involvement often continues through all stages of the constitution making process using all tools available in these different stages (Eisenstadt et al., 2017a, 115). And, the temporal element is of particular importance: While research has found only limited evidence of a causal and systemic relationship between an overall level of participatory constitution making and the constitutionalization of minority rights, Fruhstorfer and Hudson (2020, 12) show "that public input during early stages is substantive, while at later stages largely cosmetic". Thus, while we know that the impact public participation in the drafting process has on the overall level of minority rights or rights of marginalized and disadvantaged groups is small but significant, its effect on the constitutionalization of different types of rights is still unresolved.

In addition, some scholars also warn about the potential negative effects of direct democratic measures in constitution making (Wheatley and Germann, 2013; Saati, 2016, 2017). And research has provided strong empirical evidence for negative effects of public participation on minority rights or rights of marginalized and disadvantaged groups in ordinary politics and legislation (Christmann and Danaci, 2012; Lewis, 2011). In particular, we see detrimental effects of

direct democratic instruments when it comes to same-sex marriage, naturalization, or religious rights (Gamble, 1997; Abou-Chadi and Finnigan, 2019; Lewis, 2011; Hainmueller and Hangartner, 2019). Here "the critique of direct democracy as an instrument of majoritarian hegemony is empirically justified" (Fruhstorfer and Hudson, 2020, 4). The costs of more participation might also increase because participants want to use this forum to signal to voters, constituents or other party members by occupying more partisan or extreme political positions (Arato, 1995, 225). This "overbidding" or "grandstanding" (Elster, 1995, 388) makes the probability of compromise for a sustainable formulation in the constitutional text harder (see also Elkins et al., 2008).

In addition, we also have to consider the characteristics of those that participate in direct democratic measures and how this is representative of all citizens (or all inhabitants) of a respective country. The mobilization of distinctive groups varies strongly and sometimes features the dominance of more conservative participation and sometimes a stronger participation of liberal or left-leaning citizens, overall liberals and conservatives are represented in roughly equal proportions (Verba et al., 1993, 308). Yet, what really makes a difference in the participation are socio-demographic characteristics: "younger, female, unmarried and divorced citizens participate less" (Linder and Mueller, 2021, 144), which results in a dominance of older, male participants. And most importantly, a "defect of direct democracy lies in the unequal participation of the social classes" (Linder and Mueller, 2021, 144) and thus a lack of "representativeness of participatory input" (Verba et al., 1993, 314), making the voices of disadvantaged groups or minorities less prevalent.

## **2.2 The Rights of Minorities and Disadvantaged Groups**

When defending those that belong to a marginalized or disadvantaged group, minority rights protections range from inclusive institutions to socioeconomic rights (Hart, 2001). Minority rights can be defined as "the cultural, linguistic, and wider social and political rights attributable to minority-group members, usually but not exclusively, within the context of nation-states" (May, 2006, 255). It is clear that human rights are a substantive part of modern constitutions, the protection of the in-

dividual against majoritarianism is not (Anagnostou, 2005; Hailbronner, 2015; de Mesquita et al., 2005). Examples of the disenfranchisement of minority groups or systemically disadvantaged people via direct democratic decision making tools are manifold (Osiatynski, 1994) and we can fully see how this hostility is nurtured by majoritarian dominance and how meaningful it is to constrain it.

And while the concept of minority rights or rights of marginalized and disadvantaged groups is normative important, we should always be aware that it is rooted in a colonialist concept of hegemonic power developed by international organizations decades ago. And until recently, the understanding of minority rights or rights of marginalized and disadvantaged groups was usually not enriched by the perspective of actual minorities or disadvantaged groups. Starting with the Congress of Vienna in 1815, politics established the concept of a nation-state with a homogeneous national population and defined borders (Preece, 1997, 78), something also described as the “structural coupling of statehood and national identity” (Koenig and de Guchteneire, 2017, 4). This perception was new in its restrictiveness, it was part of a trend of complete ignorance or rejection of legal minority protections that became widespread at that time. However, there were also early instances of dealing with non-majority groups, for example when the London Protocol of 1830 granted Greece independence from the Ottoman Empire, but stipulated equal treatment of Muslims living in the newly formed Kingdom of Greece for international recognition of the country’s independence (Preece, 1997, 80). Early occurrences of minority rights protections were not a uniquely Western European phenomenon, but also featured in the early accomplishments of Latin American and Eastern European constitutionalism. Also, for some time researchers assigned strategies to different epochs, associating the homogeneous nation approach with the 19<sup>th</sup> and early 20<sup>th</sup> centuries, and the multiculturalism approach with the post-WWII era. This periodization, however, is not really so clear-cut. Following this modernization argument, we can assume that minority rights or rights of marginalized and disadvantaged groups were actively pursued by non-domestic parties creating a first platform of minority representation. Input from non-domestic elite groups might have increased over time, which led to an increase of the involvement of mi-

nority groups themselves but also created an international legal personality for individuals (Peters, 2016). The diversity of countries that ‘gave birth’ to new minority rights or rights of marginalized and disadvantaged groups ranges from the obligation to provide material support to indigenous groups in Argentina 1819 to the horizontal effects of constitutional rights in Jamaica 1962.<sup>1</sup>

These rights extend to a variety of groups and rather diverse provisions were constitutionalized, diverse both in simple wording but also substantive content. Provisions concerning territorial secession or citizenship rights for indigenous groups range from the very basic mentioning to a clear and inclusive legal norm. For example, the Ethiopian Constitution provides a constitutional provisions on the right of secession which is unlimited: *"Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession* (Art. 39, Ethiopian Constitution 1994). However, as there is no mean of secession provided, this can result in constitutional – or even violent – conflict. Here, the Armenian Constitution is clearer. It provides the possibility to decide upon secession but also the mean: *"Questions of membership of the Republic of Armenia in supranational international organizations, as well as questions concerning changes of the territory of the Republic of Armenia shall be solved through referenda"* (Art. 205 Armenian Constitution 1995). Another important provision that is included in the minority rights index by Fruhstorfer and Hudson (2020) directly concerns minorities or disadvantaged groups and is the question of citizenship rights for indigenous groups - thus a conceptually very different right than secession. Surprisingly, this is a rather rare provision explicitly included in constitutions. While Venezuela or Uganda clarified the citizenship status of indigenous groups within the territorial borders, most countries do not have any provision concerning this issue. The Venezuelan Constitution is here an example of how this can be constitutionalized in an inclusive manner: *"Native peoples, as cultures with ancestral roots, are part of the Nation, the State and the Venezuelan people, which is one, sovereign and indivisible. In accordance with this Constitution, they have the duty of safeguarding the integrity and sovereignty of the nation* (Art. 126 Venezuela). This is not to preclude that indigenous groups actually strive for citizenship.

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<sup>1</sup>Fruhstorfer and Hudson (2020) include the a number of these rights in their minority protection index.

These examples show that the treatment of rights as a coherent concept of individual rights that represent a similar logic of functioning is problematic. Thus, when we aim to conceptualize these rights, we have to make assumptions about how our measures of minority rights or rights of marginalized and disadvantaged groups reflects the structure of the concept (Goertz, 2008). We require a link between the abstract concept of minority rights or rights of marginalized and disadvantaged groups and the indicator level of individual rights. Prior conceptualizations have differentiated for example between three types of rights, i.e., multicultural rights (for example for immigrants), language and territory rights for minorities, and indigenous rights (for example resources) (Kymlicka, 2017), the classic differentiation of rights of individuals and rights of collectivities (Van Boven et al., 2010, 145) or what Chilton and Versteeg (2020) differentiate as individual and organizational rights.

Du to the specificity and diversity of rights that concern minorities, disadvantaged or historically marginalized groups, we will develop a different conceptualization specifically targeted towards minority rights. We rely on Lijphart (2004), who emphasized the importance of power sharing and group autonomy as salient attributes of successful democratic development. Based on this we expand the use of these attributes to the conceptualization of minority rights or rights of marginalized and disadvantaged groups. Power sharing entails that all groups have the possibility to participate in political decision making while group autonomy requires the possibilities for these groups to decide their own affairs (Lijphart, 2004, 97). Sriram writes: “Power-sharing arrangements have lasting effects on societies where they are put in place, as they can not only allocate access to power to particular groups in the short to medium term but also shape the legal and institutional landscape” (Sriram, 2013, 275). In Bogdanor’s succinct description: “The essence of power-sharing is the departure from majority rule that enables all the major groups in the country to play their part in government” (Bogdanor, 1997, 66). In a sense, power sharing ensures that every disadvantaged group can make its political opinion heard (for example by being eligible for a political office) (Cassola et al., 2016, 236).

Supplementing the most basic democratic idea of power sharing, are measures of group au-

Table 1: Group autonomy and power sharing rights

| Group autonomy   | Power sharing   |
|--|---|
| Political rights specifically for indigenous groups (seven rights) | Provision for territorial secession                               |
| Citizenship rights for indigenous groups                           | Obligation to provide material support to a particular group      |
| Provision for citizenship through naturalization                   | General guarantee of equality                                     |
| Specific group in guarantee of equality (sixteen possible groups)  | Constitutional rights have horizontal effects                     |
| Freedom of religion  | Separation of religion and state                                  |
| Right to same sex marriage   | Right to matrimonial equality                                     |
| Right to self-determination  | Rights provisions binding on private parties as well as the state |
| Right to free development of the personality                       | Rights restrictions (8 possible groups)                           |

tonomy, ranging from personal to political autonomy. This is in fact “the right to be different and to be left alone; to preserve, protect, and promote values which are beyond the legitimate reach of the rest of society” (Hannum, 2011, 4). Political autonomy is more about freedom than actual participation. Group autonomy signifies that group decisions are being respected and considered, while participation actually involves the group in the larger political entity.

Thus, we propose a three-level concept with individual rights as indicators, group autonomy and power sharing as secondary level and minority rights protections as basic level (Goertz, 2008). Based on this differentiation, we create the following groups:

### 2.3 The Interaction of the Demos and the Minority Group

While Przeworski (1991) cautions against the success and sustainability or justice or stability (or whatever the definition of success is) of a constitutional design of the bargaining type, Brown (2008, 676) emphasizes a refined perspective, arguing that the stability of a constitutional structure cannot be achieved "by minimizing interest and passion but by incorporating them in the constitutional process" and by strengthening the inclusiveness of the bargaining process and the ensuing social contract. Focusing on the influence of domestic public participation, Maboudi and Nadi

(2016) take up this specific question of how the effect of the process impacts the textual outcome. In their path-breaking study on the Egyptian constitution making process, they show that input from the public had an influence on the development of the Egyptian constitution. Hudson (2021) expands this in his landmark study and proposes a new theoretical concept of party-mediated public participation and shows that majorities are often able to impose a large part of their construction of societal organization onto minorities. Widner (2008) also explicitly argues this, yet without systematic tests, it is difficult to show that participatory constitution making does not substantively foster rights protection in constitutions or exclude citizens for the benefit of only expert opinions (Mansbridge et al., 2012). In addition, the mere prospect of public participation influences how legislative institutions map majority preferences and influence them preemptively in their decision making (Gerber and Hug, 1999). Hence, the influence of majority opinions might work already in drafting of the constitutional text with a looming referendum. This inclusiveness is a key element of how elite bargains gain legitimacy, however all too often, inclusiveness in constitution making means horizontal inclusion, i.e., the inclusion of all key societal groups (contrary to vertical inclusion that would specifically include marginalized groups) (Schädel et al., 2020).

When it comes “to the explanation for the emergence and expansion of formal human rights regimes” (Moravcsik, 2000, 210) the three main factors that are used to explain why certain institutional solutions ‘end up’ in a constitution, are functionalist, ideational/normative, and strategic/electoral market benefits (Goderis and Versteeg, 2014; Hirschl, 2013). Thus, when engaging with the question of whether public participation is detrimental or beneficial for the constitutionalization of minority rights or rights of marginalized and disadvantaged groups, we have to engage with the question of strategic choice, a functionalist perspective (Holzinger et al., 2019; Hirschl, 2004a; Ginsburg, 2003; Galligan and Versteeg, 2013) or ideational representation. This means, to argue that the inclusion of minority rights or rights of marginalized and disadvantaged groups in constitutions is based on a clear cost-benefit calculation by those in power or that constitutions represent norms and values. The ideational perspective – in short – comes from the normative standpoint that political systems mature beyond pure majority-dominated democracies (Dworkin,

1990; Hirschl, 2013) and that in this process protections against tyranny develop through the pure force of ideas. Ideational arguments focus on the continuous maturing of democracies that at some point in history become aware of rights (Ginsburg and Versteeg, 2013, 593) and the urgency of their protection and their justiciability – what some describe as growing rights-consciousness (Engel, 2012; Hirschl, 2004b). Ideas shape behavior, similar to rules shaping behavior, yet this normative perspective has both analytical and empirical problems that are difficult to overcome. While it is difficult to convincingly frame and empirically assess this perspective, a variety of constitutions do not reflect their countries' political identity at the moment of adoption (Jacobsohn, 2010; Jacobsohn and Roznai, 2020).

Hence, we pursue here an argument that is based on the perspective that a “pragmatic political bargaining thinly disguised as principled constitutionalism” (Hirschl, 2013, 164) with a strategic notion of political bargaining to produce a stable political entity (Albertus and Menaldo, 2012) is the basis of minority rights constitutionalization. At the core of this strategy stands the assumption that constitutional politics is a political process in the domain of political decision making (Hirschl, 2013, 165) for an elite eager to preserve its hegemonic power (Moravcsik, 2000; Gill, 2002). The decision about the constitutionalization of minority rights or rights of marginalized and disadvantaged groups is a political decision, in its core it is still often considered as a "gift" awarded by the hegemonic power group. Those in power decide which minority rights or rights of marginalized and disadvantaged groups are constitutionalized and we assume they seldom decide without some political interest and a clear cost-benefit calculation, we can safely argue that any form of public participation impacts this calculation. Constitution making is in fact an elite bargain renegotiating the distribution of power. The inclusion of the public might become an attractive option for disputes that are considered suitable for public debate or to seek quasi-legitimization. At times it serves to *outsource* certain discussion that might be too contentious for political personal to gain from an elite-settlement.

Yet empirically, studies show the detrimental effect of direct democratic decisions, compared to representative democratic decisions, on all minority rights protection issues, also – and surprisingly

even more so – when it comes to group autonomy. While some argue that there is no systemic oppression of LGBTIQI rights caused by direct democratic procedures (?), newer studies with a more substantive empirical approach show the negative impact of direct democratic instruments on the issue of same-sex marriage, a clear issue of group autonomy and not power-sharing (Lupia et al., 2010; Nicholson-Crotty, 2006). Also, the Swiss case serves here as example of how the rejection rate of naturalization of immigrants significantly decreased when citizens stopped making those decisions (Hainmueller and Hangartner, 2019).

But public participation in constitution making might influence the constitutionalization in various different ways. When we divide minority rights or rights of marginalized and disadvantaged groups between the themes of power sharing and group autonomy, a rational-choice argument would suggest that minority rights that fall within a power-sharing arrangement will be less well received in an elite-bargaining setting but profit from public participation, while rights that concern group autonomy are more likely to be supported in the cost-benefit calculation of political actors. Rational, goal-oriented actors will seek to emphasize the issues that maximize their personal benefit. In this sense, we can assume that power-sharing is more likely to influence the negotiators personal benefits (power) and will be less likely to be supported.

Thus, we propose the following hypothesis that include both perspectives, the empirically observed detrimental effect of public participation and the cost-benefit calculation of elite bargaining. We assume that more public participation in constitution-making processes has a differential effect on the constitutionalization of group autonomy and power sharing rights. We argue that group autonomy rights are perceived as less threatening to elite interests than power sharing and thus their constitutionalization is more independent from public participation. At the same time, power sharing rights require the public participation corrective to drive the elite bargaining towards the constitutionalization of a power sharing arrangement – and sometimes even this corrective is not sufficient. Anecdotally, we can see evidence of this evaluation of threats to majority interests in the South African constitution, which included provisions that would protect the cultural interests of the Afrikaner minority, but does not include provisions for power sharing that the National Party

sought to include (Hudson, 2021). Transferring these two opposite expectations for the process of constitution making, our hypotheses are as follows:

*H<sub>1a</sub>* The constitutional protection of power-sharing rights increases with the level of public involvement in the constitution making process, while the protection of group-autonomy rights is not influenced.

*H<sub>1b</sub>* The constitutional protection of both power-sharing and group autonomy rights decreases with the level of public involvement in the constitution making process.

## **3 Research Design**

### **3.1 Dependent Variable**

To test our theoretical expectations, we rely on various datasets. To estimate the levels and types of minority rights or rights of marginalized and disadvantaged groups, we draw from the Comparative Constitutions Project and their dataset on constitutional content (Elkins et al., 2014). Earlier, we noted the distinction that can be made between those constitutional provisions that have the purpose of ensuring group autonomy and those that work toward power sharing. To operationalize this distinction, we isolate individual variables. We consider the idea of group autonomy to be captured by constitutional provisions that accord specific political rights to indigenous groups, guarantee some form of group self determination, and provide for the defense of culture. Explicit power sharing agreements are rare, and generally not included in the constitutional text. However, we do have data on whether or not the constitution includes "positive obligations to transfer wealth to, or provide opportunity for, particular groups" (Elkins et al., 2014, 124). We also utilize variables that code guarantees of equality that specifically mention clan/tribe, and political party. We create two additive indices for these two concepts but also test for individual rights. Based on this, we estimate the relationships between these politically important outcomes and constitution-drafting processes.

## 3.2 Explanatory Variable

Our key explanatory variables are the level of public participation and the timing of participation in the constitution making process. When considering the effects of public participation in the drafting process, we differentiate between the various elements and stages that fall under a larger concept of direct democratic involvement. Superficially, public participation in constitution-making means at the very least that the public had some opportunity to engage and to be involved in the process. Hence, we follow Eisenstadt et al. (2017b) in their three-stage conceptualization with mutually exclusive categories of public participation in constitution making and differentiate between the consecutive stages of convening, debating, and ratifying. We rely on the dataset provided by Eisenstadt et al. (2017b) for data on public participation in constitution-making processes between 1974 and 2014 (and updated until 2020).<sup>2</sup> We use their three category measure of the level of public involvement in the constitution-making as well as their aggregate measure of public participation (ranges from 0 to 6). The level of participation is measured as imposed, mixed or popular (Eisenstadt et al., 2015). An imposed level of participation in the convening stages entails either a strong executive, executive appointed committee or the party as central committee. A mixed level combines a strong elite influence with a special body or legislature involvement. As Fruhstorfer and Hudson (2021) correctly pointed out, this measure is limited to public participation within the representative systems of public involvement and does therefore focus on a specific concept of direct democracy. We also have to consider that a certain path dependency is established at the convening stage, when a particularly participatory path is chosen – this will be reflected in the subsequent stages of the constitution making processes. We list the countries included in this study in Table 2.

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<sup>2</sup>We are currently updating this dataset with data since 1918.

### 3.3 Control Variables

To test our theoretical expectations, we control for the following variables: We think it is particularly important to control for the level of democracy (with the variable polyarchy as measured by the V-Dem project (Coppedge et al., 2020)) and existing societal and ethnic cleavages (ethno-linguistic fractionalization index (Alesina et al., 2003)) as well as the level of conflict intensity in the drafting year and the two prior years (mean level) (Gleditsch et al., 2002). We also include a measure of conservatism (ideology) that describes the extent to which the current government promotes a specific ideology or societal model in order to justify the regime in place (Coppedge et al., 2020) As earlier research has pointed to the importance of content of the previous constitution as key determinant for the content of a new constitution (Elkins et al., 2009, 55-59), we also add a control in some of our models for the content of the previous constitution.<sup>3</sup> We include the summary statistics for all the variables in Table 3.

Before we continue, we have to briefly address the question of endogeneity. Even with our control for the prior content of the constitution, we might still face an endogeneity problem in terms of simultaneity between the level of participation in the drafting process and the inclusion of minority rights or rights of marginalized and disadvantaged groups. However, (Fruhstorfer and Hudson, 2020) confirm that endogeneity is not a problem in the analysis of the relation between public participation and minority rights and pursue several tests, in particular a two-stage least squares (2SLS) model to try to both diagnose and avoid any simultaneity in their original specification. They explicitly point out that we should not be concerned about simultaneity for this relationship (Fruhstorfer and Hudson, 2020, 9).

*We think about adding specific control variable for individual rights. For example, we might control for the level of religious influence in the country, a value that might significantly influence the perspective on certain majorities (e.g. LGBTQI). Hence, we could include the sum percent of religious adherents. These data are drawn from the World Religion Project (Maoz and Henderson,*

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<sup>3</sup>We did not include the controls in the tables reported as we can include only very few observations for the lagged dependent variable, so the coefficients are large and do not change the overall outcome. We will mitigate this problem with the historical extension of the dataset.

2013).

## 4 Analysis

To begin, we can establish the basal relationship between the variables that hold the greatest interest. As one might expect, there is a simple correlation ( $r=0.27$ ,  $p=0.005$ ) between the Eisenstadt et al. (2017b) aggregate measure of public participation in the constitution-making process and the comprehensiveness of minority rights protection. This reflects the fact that the countries that prioritize public participation in the drafting process are also often interested in comprehensive rights provisions, but we can be much more precise in our specification of this relationship. We next turn to a broader consideration of the possible relationship between public participation in constitution-making processes and the specificity of the rights protections that the constitution offers. We estimate several logistic regression models using selected minority rights from the CCP dataset as the dependent variables. These models do not give us a complete picture of the relationship between drafting processes and minority rights, but they do serve to demonstrate the gains from this alternative modelling strategy and focusing on individual rights.

### 4.1 Effects of public participation on individual rights

In Table 4, we estimate the effects of participatory drafting on the likelihood that a new constitution will include race, language, or religion as a group characteristic included in the constitutional guarantee of equal treatment. We find differing relationships between participation and these potential provisions. Constitutions that are drafted in processes that can be classified as mixed or popular at the convening stage are more likely to include a provision guaranteeing equal treatment regardless of race. We find no evidence for a similar relationship regarding language rights. We see the effect of a mixed process and popular process on the protection for religious freedom. And, protections for religious groups as well as race are more likely in more diverse states (i.e., ethno-linguistic diversity) but not for language.

While women are not a minority in numerical terms, women have historically been legally oppressed in various ways. We therefore test for the effects of participatory drafting on the likelihood that gender-protecting rights will be included in new constitutions. A general guarantee of equality regardless of gender is so common as to now be considered a generic right, however a provision guaranteeing equality of the partners within a marriage is not. We find no relationship between higher *aggregate* levels of participation and the likelihood that women will receive specific protections in the constitutional text either through specific mention of gender in the constitutional guarantee of equal treatment, or in a provision for matrimonial equality.<sup>4</sup> We do however find that higher levels of public participation at the convening stage of the process are associated with a higher likelihood that a provision for matrimonial equality will be included in the constitution. This is in line with earlier research about the relation between gender provisions in peace agreements and the participation of women in the elite bargaining (Phelan and True, 2022).

We also tested the influence of public participation in different constitutional design stages on different rights that fall within the realm of indigenous rights, this includes guarantees for indigenous representation, right to self-determination, transfer of wealth, cultural rights, right to internal governance, right to tribe/clan and political party. We find that high levels of public participation during constitution making do not influence the probability to provide guarantees for indigenous representation in the central government, or provisions for group self determination. Also, we find no associations (positive or negative) between participation at the convening stage and provisions for indigenous self government or a state duty to protect culture (which in many cases could be considered a majority protection in any case).

We also find no relationship between participatory drafting and the inclusion of provisions that would guarantee equal treatment without regard for tribe or clan, or political party (Table 14). Yet, one provision sticks out and it is a hugely adequate representation of power sharing: the transfer of wealth or opportunity. We do find a positive and significant relationship between more participation in the convening phase of a constitution-making process and provisions that require the state to

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<sup>4</sup>Due to sparse data, we are unable to estimate the relationship between participation at the convening stage of the process and the inclusion of gender in the constitutional guarantee of equal treatment.

take positive actions to transfer wealth or power to a previously oppressed group. Examples are the land distribution to disadvantaged groups in Art. 395 of the 2009 Bolivian Constitution or the explicit duty of affirmative action and positive discrimination in favor of marginalized groups in the constitutions of Uganda (1995, Art. 32) and Tunisia (2014, Art. 12). And while these provisions are quite rare, the association between public engagement during the convening stage of constitution making and the introduction of these provisions for wealth distribution is robust and we are thus confident about this effect.

With a lack of comparative empirical research on the relation between public involvement in the constitutional design and wealth redistribution, we can only speculate about the mechanism at play here. The acceptance of inequality is according to Rawls closely related to the famous "veil of ignorance", not knowing enough about the society to judge its injustice (Rawls, 1971). Yet, one could argue that those people who participate in the early stages of constitutional design and not in the classic referendum stage are actually those who are able to lift the veil, see the injustice and thus support wealth redistribution.

An illustrative case that sheds light on the underlying causal story of creating opportunities for public participation and the constitutionalization of wealth distribution is Portugal in 1976. Poverty and wealth distribution were important factors in the 1974 military coup ("undeserved misery" of the Portuguese population). Right from the beginning of this transition, it became clear that any political way forward would have to address this issue. Wealth distribution was put on the military agenda and de facto constitutionalized in 1974. The Constituent Assembly took up this demand. As a directly elected body of partisan representatives with a 91 percent of votes (Brito Vieira and Carreira da Silva, 2013, 912) is created nevertheless in a revolutionary setting proved beneficial for the protection of minority rights or rights of marginalized and disadvantaged groups. The pressing issue of implementing social and minority rights was translated into the debating and deciding body (Brito Vieira and Carreira da Silva, 2013, 920). This process epitomized public participation in the early stages of the constitution making process that contributed to the "lifting of the veil" to protect against social injustice.

## **4.2 Effects of public participation on group autonomy and power-sharing rights**

In our Hypotheses, we propose that more public participation in constitution-making processes would result in more constitutional provisions for group autonomy, but not for power sharing. We argue that group autonomy would be perceived as less threatening to majority interests than power sharing. In Tables 14 and 15, we present the results estimating the relationship between participation in the drafting process and the level of group autonomy or power sharing rights based on a linear regression. In line with our expectations, the probability of an increase in power-sharing rights increases with the level of public involvement in the constitution making process. We can confirm the importance of the timing of this involvement. While there is no significant influence of the aggregate level of public participation in constitution making, we find that public mixed and popular involvement at the convening stage in contrast to an imposed convening stage increases the level of power sharing rights, however the increase is notably small. Conversely, the protection of group-autonomy rights is not influenced by the level of public involvement at any stage of the constitution making process. While the level of democracy plays an important role for the implementation of both concepts, we also find that the level of ethnolinguistic diversity has a strong and significant effect on the implementation of group autonomy rights. Constitution making processes that occur in countries with a higher level of ethnic, linguistic and religious diversity lead to a higher level of group autonomy rights, independent of how participatory the process is.

We earlier described the idea that group autonomy rights could be perceived as less threatening. Additionally, the potential enforceability of power sharing and group autonomy rights is a relevant concern. A variety of constitutions have rhetorically strong rights protections, yet the practicality of enforcing them is minimal. The expectation that some rights will never get actually enforced might influence the willingness to constitutionalize – or not – these rights. We know from previous studies, that organizational rights (compared to individual rights) are more likely to be de facto respected. Chilton and Versteeg (2016, 576) show that a key is "the establishment of organizations

with the incentives and means to protect their own interests." Hence, our results provide further support for this argument. As we find that group autonomy rights are introduced in elite bargaining settings of countries with a higher level of ethnolinguistic diversity, one reason for this might be that the possibility that group autonomy rights are much harder to implement and to practically enforce. At the same time power-sharing arrangements obviously benefit from public participation in constitution making, especially in the first stages, and we assume that the cost-benefit calculation that is usually dominant in elite-bargaining settings is interrupted by the involvement of the public.

## 5 Conclusions

This study offers a crucial next step toward understanding the linkage between public involvement during constitution making and minority rights protections. In particular we have shown that while this relationship is conditioned by the constitution that is being replaced and other characteristics of the constitution making process, participation can make a real difference in this aspect of the constitutional text.

Our findings are on the more hopeful side on a normative spectrum. The cynical but rational expectation that more participation might lead to something like a majoritarian constitution is not borne out by the data. This is in line with earlier research that suggests that participation itself is unimportant to constitutional outcome (Saati, 2017; Horowitz, 2000). Rather, we see some of the opposite effect. The public participation during the convening stage of the constitution making process makes the inclusion of provisions concerning wealth distribution to disadvantages groups more likely. Individual case studies only point to the opposite effect: that is of either a reduction of wealth redistribution upon public participation in Switzerland and an increased transfers of wealth to disadvantaged groups only upon mandated representation of the respective group in India. Similarly, we see a positive effect on the probability of a constitutionalization of protections against inequality based on race and religion. We were also able to confirm our key hypothesis, namely that an elite bargaining setting as constitution making process can be interrupted by direct

democratic measures. This matters when a clear cost-benefit calculation might hinder the political actors from substantive decisions in favor of minorities, disadvantaged or historically marginalized groups.

However, there are still important questions that remain unanswered – in particular, are certain minority rights or rights of marginalized and disadvantaged groups strategically emphasized during the different stages and thus become more or less salient issues for the public? Further research should thus explore this interaction with a specific focus on the historic development of the minority rights sections to more fully understand these complex relations.

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# Appendix

Table 2: List of cases

| Country                  | Year | Country            | Year |
|--------------------------|------|--------------------|------|
| Afghanistan              | 1990 | Dominican Republic | 2010 |
| Afghanistan              | 2004 | Ecuador            | 1998 |
| Albania                  | 1998 | Ecuador            | 2008 |
| Algeria                  | 1976 | Egypt              | 2011 |
| Algeria                  | 1989 | Egypt              | 2014 |
| Andorra                  | 1993 | El Salvador        | 1983 |
| Angola                   | 2010 | Equatorial Guinea  | 1982 |
| Armenia                  | 1995 | Eritrea            | 1997 |
| Azerbaijan               | 1995 | Estonia            | 1992 |
| Belarus                  | 1994 | Ethiopia           | 1995 |
| Belgium                  | 1994 | Fiji               | 1990 |
| Benin                    | 1990 | Fiji               | 2013 |
| Bhutan                   | 2008 | Finland            | 2000 |
| Bolivia                  | 2009 | Gabon              | 1990 |
| Bosnia-Herzegovina       | 1995 | Gambia The         | 1996 |
| Brazil                   | 1988 | Georgia            | 1995 |
| Bulgaria                 | 1991 | Ghana              | 1992 |
| Burkina Faso             | 1991 | Greece             | 1975 |
| Burma                    | 2008 | Guatemala          | 1985 |
| Burundi                  | 1992 | Guinea             | 1990 |
| Burundi                  | 2005 | Guinea             | 2010 |
| Cambodia                 | 1981 | Guinea-Bissau      | 1984 |
| Cambodia                 | 1993 | Guyana             | 1980 |
| Central African Republic | 1994 | Haiti              | 1987 |
| Central African Republic | 2004 | Honduras           | 1982 |
| Chad                     | 1989 | Hungary            | 2011 |
| Chad                     | 1996 | Iran               | 1979 |
| Chile                    | 1980 | Iraq               | 2005 |
| China                    | 1978 | Kazakhstan         | 1995 |
| China                    | 1982 | Kenya              | 2010 |
| Colombia                 | 1991 | Kyrgyzstan         | 1993 |
| Comoros                  | 2001 | Kyrgyzstan         | 2010 |
| Congo Brazaville         | 2006 | Laos               | 1991 |
| Congo Kinshasa           | 2003 | Lesotho            | 1993 |
| Cote d'Ivoire            | 2000 | Liberia            | 1984 |
| Croatia                  | 1991 | Lithuania          | 1992 |
| Cuba                     | 1976 | Macedonia          | 1991 |
| Czech Republic           | 1993 | Madagascar         | 1992 |
| Djibouti                 | 1992 | Madagascar         | 2010 |
| Dominican Republic       | 2002 | Malawi             | 1994 |
|                          |      | Maldives           | 2008 |
|                          |      | Mali               | 1992 |

| Country          | Year |
|------------------|------|
| Mauritania       | 1991 |
| Moldova          | 1994 |
| Mongolia         | 1992 |
| Morocco          | 1992 |
| Morocco          | 2011 |
| Mozambique       | 1990 |
| Mozambique       | 2004 |
| Namibia          | 1990 |
| Nepal            | 1990 |
| Nepal            | 2007 |
| Nicaragua        | 1974 |
| Nicaragua        | 1987 |
| Niger            | 2010 |
| Nigeria          | 1989 |
| Nigeria          | 1999 |
| Oman             | 1996 |
| Papua New Guinea | 1975 |
| Paraguay         | 1992 |
| Peru             | 1993 |
| Philippines      | 1987 |
| Poland           | 1997 |
| Portugal         | 1976 |
| Qatar            | 2004 |
| Romania          | 1991 |
| Russia           | 1993 |
| Rwanda           | 1995 |
| Rwanda           | 2003 |
| Saudi Arabia     | 1992 |
| Senegal          | 2001 |
| Serbia           | 2006 |
| Sierra Leon      | 1991 |
| Slovakia         | 1992 |
| Slovenia         | 1991 |
| Somalia          | 1979 |
| Somalia          | 2012 |
| South Africa     | 1996 |
| Spain            | 1978 |
| Sri Lanka        | 1978 |
| Sudan            | 1998 |
| Suriname         | 1987 |
| Swaziland        | 2005 |
| Switzerland      | 1999 |

| Country           | Year |
|-------------------|------|
| Syria             | 2012 |
| Tajikistan        | 1994 |
| Tanzania          | 2011 |
| Thailand          | 1991 |
| Thailand          | 2007 |
| Togo              | 1992 |
| Trinidad & Tobago | 1976 |
| Tunisia           | 2014 |
| Turkey            | 1982 |
| Turkmenistan      | 1992 |
| Uganda            | 1995 |
| Ukraine           | 1990 |
| Ukraine           | 1996 |
| Uzbekistan        | 1992 |
| Venezuela         | 1999 |
| Vietnam           | 1992 |
| Yemen             | 1991 |
| Zambia            | 1991 |
| Zimbabwe          | 1979 |
| Zimbabwe          | 2013 |

Table 3: Summary statistics

| Statistic              | N   | Mean  | St. Dev. | Min    | Pctl(25) | Pctl(75) | Max   |
|------------------------|-----|-------|----------|--------|----------|----------|-------|
| Minority rights index  | 147 | 0.346 | 0.107    | 0.182  | 0.273    | 0.364    | 0.864 |
| Min. rights ind. (t-2) | 101 | 0.293 | 0.095    | 0.091  | 0.227    | 0.364    | 0.636 |
| Aggregate part.        | 143 | 2.441 | 1.767    | 0.000  | 1.000    | 4.000    | 6.000 |
| Polyarchy              | 147 | 0.328 | 0.218    | 0.018  | 0.160    | 0.470    | 0.891 |
| Ethno-linguistic       | 148 | 0.514 | 0.236    | 0.000  | 0.322    | 0.711    | 0.930 |
| IO missions            | 150 | 0.113 | 0.318    | 0      | 0        | 0        | 1     |
| Aid/GDP                | 117 | 0.078 | 0.100    | -0.001 | 0.007    | 0.114    | 0.467 |
| Conflict intensity     | 148 | 0.342 | 0.562    | 0.000  | 0.000    | 0.667    | 2.000 |

|                     | Language         | Language          | Language          | Language          |
|---------------------|------------------|-------------------|-------------------|-------------------|
| Convening (mixed)   | 2.005<br>(1.031) |                   |                   |                   |
| Convening (popular) | 1.129<br>(0.791) |                   |                   |                   |
| Prior conflict      | 1.000<br>(0.000) | 1.000*<br>(0.000) | 1.000*<br>(0.000) | 1.000*<br>(0.000) |
| Ethnolinguistic     | 3.478<br>(3.322) | 4.898<br>(4.802)  | 4.243<br>(4.076)  | 3.986<br>(3.816)  |
| Polyarchy           | 1.195<br>(1.552) | 3.384<br>(4.656)  | 3.141<br>(3.944)  | 2.930<br>(3.931)  |
| Ideology            | 0.910<br>(0.215) | 0.907<br>(0.217)  | 0.827<br>(0.204)  | 0.889<br>(0.211)  |
| Debating (mixed)    |                  | 0.558<br>(0.291)  |                   |                   |
| Debating (popular)  |                  | 0.471<br>(0.341)  |                   |                   |
| Ratifying (mixed)   |                  |                   | 0.617<br>(0.340)  |                   |
| Ratifying (popular) |                  |                   | 0.420<br>(0.243)  |                   |
| Aggregate           |                  |                   |                   | 0.881<br>(0.122)  |
| Observations        | 100              | 99                | 99                | 98                |
| Log Likelihood      | -65.699          | -65.302           | -64.783           | -64.900           |
| Deviance            | 131.397          | 130.605           | 129.565           | 129.800           |
| AIC                 | 145.397          | 144.605           | 143.565           | 141.800           |
| BIC                 | 163.633          | 162.771           | 161.731           | 157.309           |

\*\*\* $p < 0.01$ ; \*\* $p < 0.05$ ; \* $p < 0.1$

Table 4: Logistic regression. DV: provide for equality for language

|                     | Religion             | Religion             | Religion             | Religion             |
|---------------------|----------------------|----------------------|----------------------|----------------------|
| Convening (mixed)   | 4.593**<br>(3.129)   |                      |                      |                      |
| Convening (popular) | 5.440*<br>(4.851)    |                      |                      |                      |
| Prior conflict      | 1.000<br>(0.000)     | 1.000<br>(0.000)     | 1.000<br>(0.000)     | 1.000<br>(0.000)     |
| Ethnolinguistic     | 16.962**<br>(19.009) | 14.983**<br>(16.478) | 15.379**<br>(16.340) | 13.912**<br>(14.936) |
| Polyarchy           | 0.066*<br>(0.107)    | 0.214<br>(0.334)     | 0.349<br>(0.495)     | 0.159<br>(0.249)     |
| Ideology            | 0.565*<br>(0.170)    | 0.526**<br>(0.155)   | 0.548**<br>(0.159)   | 0.567*<br>(0.165)    |
| Debating (mixed)    |                      | 1.316<br>(0.773)     |                      |                      |
| Debating (popular)  |                      | 2.195<br>(1.739)     |                      |                      |
| Ratifying (mixed)   |                      |                      | 1.680<br>(1.020)     |                      |
| Ratifying (popular) |                      |                      | 1.051<br>(0.671)     |                      |
| Aggregate           |                      |                      |                      | 1.248<br>(0.199)     |
| Observations        | 100                  | 99                   | 99                   | 98                   |
| Log Likelihood      | -51.266              | -54.021              | -54.096              | -53.390              |
| Deviance            | 102.531              | 108.042              | 108.191              | 106.780              |
| AIC                 | 116.531              | 122.042              | 122.191              | 118.780              |
| BIC                 | 134.767              | 140.208              | 140.357              | 134.290              |

\*\*\* $p < 0.01$ ; \*\* $p < 0.05$ ; \* $p < 0.1$

Table 5: Logistic regression. DV: provide for equality for religion

|                     | Race                  | Race                  | Race                  | Race                  |
|---------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Convening (mixed)   | 4.978**<br>(3.807)    |                       |                       |                       |
| Convening (popular) | 18.806**<br>(23.849)  |                       |                       |                       |
| Prior conflict      | 1.000<br>(0.000)      | 1.000<br>(0.000)      | 1.000<br>(0.000)      | 1.000<br>(0.000)      |
| Ethnolinguistic     | 41.951***<br>(53.798) | 23.913***<br>(28.373) | 22.591***<br>(26.142) | 22.035***<br>(25.948) |
| Polyarchy           | 0.460<br>(0.752)      | 2.626<br>(4.411)      | 1.280<br>(2.002)      | 0.942<br>(1.567)      |
| Ideology            | 1.368<br>(0.448)      | 1.211<br>(0.379)      | 1.247<br>(0.394)      | 1.300<br>(0.408)      |
| Debating (mixed)    |                       | 1.222<br>(0.784)      |                       |                       |
| Debating (popular)  |                       | 1.383<br>(1.200)      |                       |                       |
| Ratifying (mixed)   |                       |                       | 5.162**<br>(3.901)    |                       |
| Ratifying (popular) |                       |                       | 2.271<br>(1.585)      |                       |
| Aggregate           |                       |                       |                       | 1.386*<br>(0.251)     |
| Observations        | 100                   | 99                    | 99                    | 98                    |
| Log Likelihood      | -43.755               | -48.093               | -45.509               | -46.245               |
| Deviance            | 87.511                | 96.186                | 91.018                | 92.491                |
| AIC                 | 101.511               | 110.186               | 105.018               | 104.491               |
| BIC                 | 119.747               | 128.352               | 123.183               | 120.001               |

\*\*\* $p < 0.01$ ; \*\* $p < 0.05$ ; \* $p < 0.1$

Table 6: Logistic regression. DV: provide for equality for race

|                     | Representation            | Representation           | Representation          | Representation           |
|---------------------|---------------------------|--------------------------|-------------------------|--------------------------|
| Convening (mixed)   | 0.089<br>(0.157)          |                          |                         |                          |
| Convening (popular) | 0.325<br>(0.498)          |                          |                         |                          |
| Prior conflict      | 1.000<br>(0.000)          | 1.000<br>(0.000)         | 1.000<br>(0.000)        | 1.000<br>(0.000)         |
| Ethnolinguistic     | 8.658<br>(23.377)         | 10.964<br>(30.242)       | 7.623<br>(20.496)       | 10.585<br>(29.707)       |
| Polyarchy           | 3371.625**<br>(11969.162) | 1670.384**<br>(6192.499) | 1854.992*<br>(7321.335) | 2336.102**<br>(8434.788) |
| Ideology            | 1.292<br>(0.930)          | 1.400<br>(1.015)         | 1.553<br>(1.158)        | 1.378<br>(0.985)         |
| Debating (mixed)    |                           | 0.425<br>(0.665)         |                         |                          |
| Debating (popular)  |                           | 0.399<br>(0.730)         |                         |                          |
| Ratifying (mixed)   |                           |                          | 0.424<br>(0.682)        |                          |
| Ratifying (popular) |                           |                          | 0.192<br>(0.361)        |                          |
| Aggregate           |                           |                          |                         | 0.714<br>(0.276)         |
| Observations        | 100                       | 99                       | 99                      | 98                       |
| Log Likelihood      | -13.022                   | -13.705                  | -13.709                 | -13.463                  |
| Deviance            | 26.045                    | 27.411                   | 27.419                  | 26.926                   |
| AIC                 | 40.045                    | 41.411                   | 41.419                  | 38.926                   |
| BIC                 | 58.281                    | 59.577                   | 59.584                  | 54.436                   |

\*\*\* $p < 0.01$ ; \*\* $p < 0.05$ ; \* $p < 0.1$

Table 7: Logistic regression. DV: right to representation in the central government (indigenous groups)

|                     | Internal gov.      | Internal gov.      | Internal gov.       | Internal gov.      |
|---------------------|--------------------|--------------------|---------------------|--------------------|
| Convening (mixed)   | 0.317<br>(0.472)   |                    |                     |                    |
| Convening (popular) | 0.920<br>(1.351)   |                    |                     |                    |
| Prior conflict      | 1.000**<br>(0.000) | 1.000**<br>(0.000) | 1.000***<br>(0.000) | 1.000**<br>(0.000) |
| Ethnolinguistic     | 1.461<br>(3.779)   | 1.601<br>(4.058)   | 0.780<br>(2.006)    | 1.509<br>(3.854)   |
| Polyarchy           | 9.956<br>(28.636)  | 9.873<br>(27.319)  | 15.546<br>(49.996)  | 16.066<br>(43.985) |
| Ideology            | 0.164*<br>(0.175)  | 0.178<br>(0.187)   | 0.154*<br>(0.158)   | 0.168*<br>(0.178)  |
| Debating (mixed)    |                    | 1.206<br>(1.917)   |                     |                    |
| Debating (popular)  |                    | 1.793<br>(3.254)   |                     |                    |
| Ratifying (mixed)   |                    |                    | 0.200<br>(0.371)    |                    |
| Ratifying (popular) |                    |                    | 0.106<br>(0.198)    |                    |
| Aggregate           |                    |                    |                     | 0.888<br>(0.329)   |
| Observations        | 100                | 99                 | 99                  | 98                 |
| Log Likelihood      | -13.880            | -13.882            | -13.572             | -13.887            |
| Deviance            | 27.760             | 27.763             | 27.145              | 27.774             |
| AIC                 | 41.760             | 41.763             | 41.145              | 39.774             |
| BIC                 | 59.996             | 59.929             | 59.311              | 55.284             |

\*\*\* $p < 0.01$ ; \*\* $p < 0.05$ ; \* $p < 0.1$

Table 8: Logistic regression. DV: right to internal governance (indigenous groups)

|                     | Cult. Rights              | Cult. Rights             | Cult. Rights              | Cult. Rights             |
|---------------------|---------------------------|--------------------------|---------------------------|--------------------------|
| Convening (mixed)   | 0.054<br>(0.098)          |                          |                           |                          |
| Convening (popular) | 0.569<br>(0.766)          |                          |                           |                          |
| Prior conflict      | 1.000<br>(0.000)          | 1.000<br>(0.000)         | 1.000<br>(0.000)          | 1.000<br>(0.000)         |
| Ethnolinguistic     | 3.710<br>(8.854)          | 3.895<br>(9.130)         | 2.623<br>(6.351)          | 3.167<br>(7.597)         |
| Polyarchy           | 7969.278**<br>(28673.984) | 1514.910**<br>(5280.938) | 4718.553**<br>(18990.841) | 1567.157**<br>(5059.286) |
| Ideology            | 1.282<br>(0.927)          | 1.231<br>(0.884)         | 1.746<br>(1.337)          | 1.326<br>(0.908)         |
| Debating (mixed)    |                           | 0.373<br>(0.586)         |                           |                          |
| Debating (popular)  |                           | 0.880<br>(1.435)         |                           |                          |
| Ratifying (mixed)   |                           |                          | 0.509<br>(0.777)          |                          |
| Ratifying (popular) |                           |                          | 0.126<br>(0.243)          |                          |
| Aggregate           |                           |                          |                           | 0.858<br>(0.298)         |
| Observations        | 100                       | 99                       | 99                        | 98                       |
| Log Likelihood      | -13.874                   | -15.059                  | -14.980                   | -15.326                  |
| Deviance            | 27.749                    | 30.117                   | 29.961                    | 30.651                   |
| AIC                 | 41.749                    | 44.117                   | 43.961                    | 42.651                   |
| BIC                 | 59.985                    | 62.283                   | 62.127                    | 58.161                   |

\*\*\* $p < 0.01$ ; \*\* $p < 0.05$ ; \* $p < 0.1$

Table 9: Logistic regression. DV: cultural rights (indigenous groups)

|                     | Self-determination  | Self-determination  | Self-determination  | Self-determination  |
|---------------------|---------------------|---------------------|---------------------|---------------------|
| Convening (mixed)   | 0.408<br>(0.287)    |                     |                     |                     |
| Convening (popular) | 1.865<br>(1.493)    |                     |                     |                     |
| Prior conflict      | 1.000***<br>(0.000) | 1.000***<br>(0.000) | 1.000***<br>(0.000) | 1.000***<br>(0.000) |
| Ethnolinguistic     | 3.265<br>(3.834)    | 2.761<br>(3.280)    | 2.735<br>(3.178)    | 2.739<br>(3.183)    |
| Polyarchy           | 1.065<br>(1.921)    | 1.470<br>(2.505)    | 1.985<br>(3.216)    | 1.898<br>(3.192)    |
| Ideology            | 1.174<br>(0.345)    | 1.207<br>(0.346)    | 1.115<br>(0.333)    | 1.179<br>(0.337)    |
| Debating (mixed)    |                     | 0.814<br>(0.509)    |                     |                     |
| Debating (popular)  |                     | 0.977<br>(0.803)    |                     |                     |
| Ratifying (mixed)   |                     |                     | 0.497<br>(0.329)    |                     |
| Ratifying (popular) |                     |                     | 0.370<br>(0.263)    |                     |
| Aggregate           |                     |                     |                     | 0.901<br>(0.154)    |
| Observations        | 100                 | 99                  | 99                  | 98                  |
| Log Likelihood      | -47.473             | -49.278             | -48.215             | -48.977             |
| Deviance            | 94.946              | 98.556              | 96.429              | 97.955              |
| AIC                 | 108.946             | 112.556             | 110.429             | 109.955             |
| BIC                 | 127.182             | 130.722             | 128.595             | 125.464             |

\*\*\* $p < 0.01$ ; \*\* $p < 0.05$ ; \* $p < 0.1$

Table 10: Logistic regression. DV: right of self-determination

|                     | Transfer wealth    | Transfer wealth   | Transfer wealth    | Transfer wealth   |
|---------------------|--------------------|-------------------|--------------------|-------------------|
| Convening (mixed)   | 4.671**<br>(3.313) |                   |                    |                   |
| Convening (popular) | 8.246**<br>(7.555) |                   |                    |                   |
| Prior conflict      | 1.000**<br>(0.000) | 1.000*<br>(0.000) | 1.000**<br>(0.000) | 1.000*<br>(0.000) |
| Ethnolinguistic     | 0.184<br>(0.224)   | 0.212<br>(0.252)  | 0.245<br>(0.279)   | 0.230<br>(0.266)  |
| Polyarchy           | 0.027*<br>(0.053)  | 0.252<br>(0.439)  | 0.381<br>(0.620)   | 0.175<br>(0.301)  |
| Ideology            | 0.762<br>(0.239)   | 0.707<br>(0.213)  | 0.650<br>(0.204)   | 0.708<br>(0.213)  |
| Debating (mixed)    |                    | 1.224<br>(0.790)  |                    |                   |
| Debating (popular)  |                    | 0.950<br>(0.857)  |                    |                   |
| Ratifying (mixed)   |                    |                   | 0.512<br>(0.365)   |                   |
| Ratifying (popular) |                    |                   | 0.502<br>(0.360)   |                   |
| Aggregate           |                    |                   |                    | 1.098<br>(0.188)  |
| Observations        | 100                | 99                | 99                 | 98                |
| Log Likelihood      | -43.273            | -46.599           | -46.063            | -46.358           |
| Deviance            | 86.546             | 93.199            | 92.127             | 92.717            |
| AIC                 | 100.546            | 107.199           | 106.127            | 104.717           |
| BIC                 | 118.783            | 125.365           | 124.292            | 120.227           |

\*\*\* $p < 0.01$ ; \*\* $p < 0.05$ ; \* $p < 0.1$

Table 11: Logistic regression. DV: provide for positive obligations to transfer wealth to particular groups

|                     | Tribe/Clan       | Tribe/Clan       | Tribe/Clan       | Tribe/Clan       |
|---------------------|------------------|------------------|------------------|------------------|
| Convening (mixed)   | 1.017<br>(0.903) |                  |                  |                  |
| Convening (popular) | 2.047<br>(2.790) |                  |                  |                  |
| Prior conflict      | 1.000<br>(0.000) | 1.000<br>(0.000) | 1.000<br>(0.000) | 1.000<br>(0.000) |
| Ethnolinguistic     | 2.784<br>(5.355) | 2.996<br>(5.841) | 3.945<br>(7.623) | 3.424<br>(6.714) |
| Polyarchy           | 0.016<br>(0.049) | 0.028<br>(0.082) | 0.019<br>(0.054) | 0.033<br>(0.097) |
| Ideology            | 0.557<br>(0.254) | 0.540<br>(0.251) | 0.503<br>(0.234) | 0.551<br>(0.247) |
| Debating (mixed)    |                  | 0.868<br>(0.748) |                  |                  |
| Debating (popular)  |                  | 1.577<br>(2.031) |                  |                  |
| Ratifying (mixed)   |                  |                  | 1.108<br>(0.997) |                  |
| Ratifying (popular) |                  |                  | 0.454<br>(0.451) |                  |
| Aggregate           |                  |                  |                  | 0.943<br>(0.228) |
| Observations        | 100              | 99               | 99               | 98               |
| Log Likelihood      | -25.795          | -25.788          | -25.130          | -25.510          |
| Deviance            | 51.591           | 51.575           | 50.261           | 51.021           |
| AIC                 | 65.591           | 65.575           | 64.261           | 63.021           |
| BIC                 | 83.827           | 83.741           | 82.426           | 78.531           |

\*\*\* $p < 0.01$ ; \*\* $p < 0.05$ ; \* $p < 0.1$

Table 12: Logistic regression. DV: provide for equality for tribe/clan

|                     | Political Party  | Political Party   | Political Party  | Political Party  |
|---------------------|------------------|-------------------|------------------|------------------|
| Convening (mixed)   | 0.622<br>(0.355) |                   |                  |                  |
| Convening (popular) | 0.892<br>(0.652) |                   |                  |                  |
| Prior conflict      | 1.000<br>(0.000) | 1.000<br>(0.000)  | 1.000<br>(0.000) | 1.000<br>(0.000) |
| Ethnolinguistic     | 1.145<br>(1.178) | 1.389<br>(1.464)  | 1.085<br>(1.107) | 1.106<br>(1.135) |
| Polyarchy           | 1.491<br>(2.041) | 2.203<br>(3.247)  | 1.127<br>(1.470) | 1.093<br>(1.547) |
| Ideology            | 0.661<br>(0.175) | 0.687<br>(0.188)  | 0.679<br>(0.180) | 0.674<br>(0.177) |
| Debating (mixed)    |                  | 0.389*<br>(0.223) |                  |                  |
| Debating (popular)  |                  | 0.486<br>(0.382)  |                  |                  |
| Ratifying (mixed)   |                  |                   | 0.820<br>(0.494) |                  |
| Ratifying (popular) |                  |                   | 0.969<br>(0.585) |                  |
| Aggregate           |                  |                   |                  | 0.908<br>(0.135) |
| Observations        | 100              | 99                | 99               | 98               |
| Log Likelihood      | -58.961          | -57.168           | -58.847          | -57.949          |
| Deviance            | 117.923          | 114.335           | 117.695          | 115.897          |
| AIC                 | 131.923          | 128.335           | 131.695          | 127.897          |
| BIC                 | 150.159          | 146.501           | 149.861          | 143.407          |

\*\*\* $p < 0.01$ ; \*\* $p < 0.05$ ; \* $p < 0.1$

Table 13: Logistic regression. DV: provide for equality for political party

|                     | Power Sharing      | Power Sharing      | Power Sharing        |
|---------------------|--------------------|--------------------|----------------------|
| Intercept           | 0.622<br>(0.033)   | 0.025<br>(0.034)   | 0.017<br>(0.035)     |
| Convening (mixed)   | 0.035**<br>(0.017) |                    |                      |
| Convening (popular) | 0.060**<br>(0.023) |                    |                      |
| Conflict Intensity  | -0.011<br>(0.013)  | -0.009<br>(0.013)  | -0.007<br>(0.013)    |
| Ethnolinguistic     | -0.011<br>(0.030)  | -0.012<br>(0.031)  | -0.013<br>(0.031)    |
| Polyarchy           | 0.090**<br>(0.041) | 0.109**<br>(0.044) | 0.129 ***<br>(0.041) |
| Ideology            | 0.015<br>(0.008)   | 0.011<br>(0.008)   | 0.014*<br>(0.008)    |
| Debating (mixed)    |                    | 0.023<br>(0.017)   |                      |
| Debating (popular)  |                    | 0.027<br>(0.023)   |                      |
| Ratifying (mixed)   |                    |                    | 0.007<br>(0.020)     |
| Ratifying (popular) |                    |                    | 0.017<br>(0.019)     |
| Observations        | 121                | 121                | 120                  |
| R <sup>2</sup>      | 0.173              | 0.130              | 0.122                |
| Adj. R <sup>2</sup> | 0.129              | 0.084              | 0.076                |

\*\*\* $p < 0.01$ ; \*\* $p < 0.05$ ; \* $p < 0.1$

Table 14: Logistic regression. DV: Power Sharing

|                     | Group Autonomy      | Group Autonomy      | Group Autonomy       |
|---------------------|---------------------|---------------------|----------------------|
| Intercept           | 0.116**<br>(0.050)  | 0.114**<br>(0.050)  | 0.112**<br>(0.053)   |
| Convening (mixed)   | 0.013<br>(0.025)    |                     |                      |
| Convening (popular) | 0.062*<br>(0.036)   |                     |                      |
| Conflict Intensity  | 0.024<br>(0.020)    | 0.027<br>(0.020)    | 0.027<br>(0.020)     |
| Ethnolinguistic     | 0.120***<br>(0.045) | 0.119***<br>(0.046) | 0.119***<br>(0.046)  |
| Polyarchy           | 0.219***<br>(0.062) | 0.256***<br>(0.065) | 0.255 ***<br>(0.061) |
| Ideology            | 0.013<br>(0.012)    | 0.013<br>(0.012)    | 0.013<br>(0.012)     |
| Debating (mixed)    |                     | 0.009<br>(0.025)    |                      |
| Debating (popular)  |                     | -0.015<br>(0.034)   |                      |
| Ratifying (mixed)   |                     |                     | -0.001<br>(0.029)    |
| Ratifying (popular) |                     |                     | 0.008<br>(0.028)     |
| Observations        | 132                 | 132                 | 131                  |
| R <sup>2</sup>      | 0.176               | 0.156               | 0.158                |
| Adj. R <sup>2</sup> | 0.137               | 0.115               | 0.117                |

\*\*\* $p < 0.01$ ; \*\* $p < 0.05$ ; \* $p < 0.1$

Table 15: Logistic regression. DV: Group Autonomy