

Widner, Jennifer

Working Paper

Constitution writing and conflict resolution

WIDER Research Paper, No. 2005/51

Provided in Cooperation with:

United Nations University (UNU), World Institute for Development Economics Research (WIDER)

Suggested Citation: Widner, Jennifer (2005) : Constitution writing and conflict resolution, WIDER Research Paper, No. 2005/51, ISBN 9291907340, The United Nations University World Institute for Development Economics Research (UNU-WIDER), Helsinki

This Version is available at:

<https://hdl.handle.net/10419/63431>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.



Research Paper No. 2005/51

Constitution Writing and Conflict Resolution

Jennifer Widner*

with the assistance of Michael Kellerman, Jean-Paul Chaine,
Leanne Powner, and others

August 2005

Abstract

Over 1975-2003 nearly 200 new constitutions were drawn up in countries at risk of conflict, as part of peace processes and the adoption of multiparty political systems. The process of writing constitutions is considered to be very important to the chances of sustaining peace, and The Commonwealth and the US Institute for Peace have developed good practice guidelines in this area. These emphasize consultation, openness to diverse points of view and representative ratification procedures. But assessing the impact of constitution-writing processes on violence is methodologically difficult, since there are many channels of influence in the relationship. This paper reports on preliminary findings from an ongoing research project into the effects of processes in constitution-writing. Regression analysis is used to control for important contextual features such as differences in income levels and ethnic diversity across countries. A key finding is that differences in the degree of participation in the drafting of constitutions has no major effect on post-ratification levels of violence in some parts of the world, such as Europe, but does make a difference in Africa, the Americas, and the Pacific together.

Keywords: constitutions, Commonwealth, democracy, governance

JEL classification: K19, N40

Copyright © UNU-WIDER 2005

* Woodrow Wilson School, Princeton University, Princeton; email: jwidner@princeton.edu

This is a revised version of the paper originally prepared for the WIDER Conference Making Peace Work, 4-5 June 2004, Helsinki.

UNU-WIDER acknowledges the financial contributions to its research programme by the governments of Denmark (Royal Ministry of Foreign Affairs), Finland (Ministry for Foreign Affairs), Norway (Royal Ministry of Foreign Affairs), Sweden (Swedish International Development Cooperation Agency—Sida) and the United Kingdom (Department for International Development).

ISSN 1810-2611 ISBN 92-9190-734-0 (internet version)

Acknowledgements

Michael Kellerman is in the graduate program of the Department of Government, Harvard University; Jean-Paul Chaine now works with the Department of Defence; Leanne Powner is in the Department of Political Science, University of Michigan. All were graduate students during the period they helped develop one of the central databases that is a part of this study. In addition, the project has drawn on the assistance of David Backer, Carolina Segovia, Mariely Lopez-Sanatana, Roel van Lanen, Daniel Corstange, Lindsay Benstead, Beth Katz, Ellora Puri, Ifeoma Okwuje, Kirsten Carlson, Tiffiany Howard, and Joel Simmons.

The World Institute for Development Economics Research (WIDER) was established by the United Nations University (UNU) as its first research and training centre and started work in Helsinki, Finland in 1985. The Institute undertakes applied research and policy analysis on structural changes affecting the developing and transitional economies, provides a forum for the advocacy of policies leading to robust, equitable and environmentally sustainable growth, and promotes capacity strengthening and training in the field of economic and social policy making. Work is carried out by staff researchers and visiting scholars in Helsinki and through networks of collaborating scholars and institutions around the world.

www.wider.unu.edu

publications@wider.unu.edu

UNU World Institute for Development Economics Research (UNU-WIDER)
Katajanokanlaituri 6 B, 00160 Helsinki, Finland

Camera-ready typescript prepared by Liisa Roponen at UNU-WIDER

The views expressed in this publication are those of the author(s). Publication does not imply endorsement by the Institute or the United Nations University, nor by the programme/project sponsors, of any of the views expressed.

1 Introduction

Between 1975 and 2003, nearly 200 new constitutions appeared in countries at risk of internal violence. Internationally brokered peace accords entailed the development of constitutions not only in the Balkans but also in Cambodia, East Timor, Rwanda, Chad, Mozambique, and the Comoros. New fundamental laws featured in the adoption of multiparty systems from Albania to Zambia.

The Commonwealth, the US Institute of Peace, and other organizations have started to develop good practice guidelines for the conduct of constitution writing. Implicit in these initiatives is a belief that the process used to develop a new constitution exercises both an indirect effect on violence, by shaping who has a voice in choosing the substantive terms, and a direct effect, by influencing senses of inclusiveness or levels of compromise, for example. Procedural choices help decide who has a chance to speak, the range of community interests taken into account, feelings of trust and inclusion, the balance between quiet persuasion and grandstanding, and the willingness to compromise. In the initial years of the life of a new constitution, when politicians are still exploring what the terms mean, process may influence levels of conflict more strongly than content. While it takes time for people to learn about the incentive structures new constitutions create, the drafting process itself sends signals that have an immediate impact on attitudes.

It is not hard to think of examples of constitution-writing processes that have aggravated levels of conflict. For example, Africa specialists often contrast the divergent experiences of countries that held national conferences as part of the move to multiparty rule. In Congo-Brazzaville, the organization and tone of the conference intensified ethnic conflict and distrust among political elites, precipitating civil war. In Chad, the 1996 conference helped worsen a Francophone/Arab rift. In Togo, the military held delegates hostage. By contrast, the design and management of the national conferences in Benin and Mali instilled higher levels cooperation among political elites and established models for resolving problems well after the transition had ended. Venezuela and Colombia join the list of countries where drafting did little to ease tensions, although government respect for human rights improved, post-ratification, in Colombia. Spain, South Africa, and Namibia attract attention as happier stories, although they left important issues unresolved and although violence diminished only very slowly in the Spanish case.

It is plausible to think that certain kinds of features affect subsequent levels of violence, however. Along with some of the participants in the US Institute of Peace working group, the Commonwealth has posited that the character of public participation—representativeness and consultation—influences the degree to which constitution drafting dampens violence. When the Commonwealth developed best practice guidelines for constitution making in 1999, it stressed the need for public consultation, openness to diverse points of view, and representative ratification procedures.¹ In particular it emphasized the need to engage the ordinary citizen in the drafting process. For example, the proposals include the following (emphasis by the author):

¹ See the Durban statement of 1999, www.humanrightsinitiative.org/programs/const/practices.htm

- ‘...Governments must adopt credible constitution making; that is, *a process that constructively engages the majority of the population*’.
- ‘[Governments ‘are encouraged to ensure that ...’] ... the public is informed and involved at all stages ...’
- ‘The process is made receptive and open to the diverse views existing in society’.
- ‘[Governments ‘are encouraged to ensure that ...’] ... *ordinary people are empowered to make effective contributions ...*’
- ‘Governments should *assist and empower civil society groups to effectively participate in the constitution-making process* and in the promotion of constitutionalism’.
- ‘The public should be regularly informed at every reasonable stage about the progress of the constitutional process’.
- ‘Mechanisms used for adopting or ratifying constitutions should be credible and truly representative of the peoples’ views’.

A number of very serious challenges bedevil the ability to give a social science answer to the question the Commonwealth and the US Institute of Peace have asked. One of the obvious problems for anyone who strives to offer an empirical answer is that constitution writing embraces a bundle of procedures, not a single identifiable decision rule. It generally covers a number of functions, organized in stages: negotiation of ground rules; development of interim documents or immutable principles; preparation of an initial text; deliberation and adoption of a final draft; ratification and promulgation. There are several formal ways to assemble these tasks. In one common model, a commission prepares a text on the request of the executive, which then submits the recommendations in whole or in part to a regular legislature or constituent assembly for deliberation, adoption, and ratification. Another approach begins with a national conference or convention to develop guidelines and elects a transitional legislature from its members. The transitional legislature then appoints a commission to prepare the text. It debates, modifies, and adopts the draft, and it sends the final version to a referendum. Still other processes are executive-driven or include combatants in an agenda-setting role. In practice, countries have experimented with a wide range of approaches and within these they have varied dramatically with respect to the representativeness of key assemblies, decision rules, publicity, public consultation, and other matters. The number of permutations and combinations makes identification of like cases for comparison quite difficult.

The second major challenge arises from the fact that an important outcome of interest to policymakers, internal conflict, especially violent conflict, is not proximate to procedural choice. That is, many things affect internal conflict, and it may prove difficult to pinpoint how much of the variation in violence, before and after, results from constitution writing, compared to post-ratification events, underlying sources of tension, the legacy of tension from prior periods of violence, etc. Although it is possible to control for the most obvious of these influences, as the period under

consideration lengthens there is a greater chance that idiosyncratic events specific to a given country or features of the substantive terms of a particular constitution will complicate the analysis and make broad generalizations difficult. Further, past a certain point, the greater the number of such influences we try to take into account, the harder it is to draw clear causal inferences.

Finally, the relationship between process and violence flows through multiple lines of influence. Some of these are direct. For example, process may shape public perceptions of fairness, make key players feel included, set a model for subsequent interaction among political elites, or enhance the members of the interested public to monitor official adherence to substantive constitutional terms. Others are indirect; drafting procedures affect who has a say in choosing substantive terms, which in turn shapes willingness to comply with agreements. Measures of post-ratification violence at best capture only the net effects of these various causal stories. Discerning which lines of influence are most important is something we can do only with respect to small numbers of cases, if at all.

The claims that underlie the Commonwealth's best practice guidelines are really about the effects of complex procedures taken as a whole, and to put these kinds of claims to an empirical test requires some way to identify and evaluate constitution-writing processes writ large with respect to the general qualities the Commonwealth privileges. Thus, this chapter tries to summarize important aspects of participatoriness in a variety of ways. First it classifies constitution-writing episodes by the character of the main deliberative body. Using regression analysis it asks whether elected assemblies and broadly representative national conferences are associated with lower levels of violence in the post-ratification period, controlling for important elements of context and the use of various consultative strategies. Second, it uses a statistical tool called latent class analysis to identify styles of constitution making differentiated from one another with respect to eight key procedural features. This paper reports very tentative initial results from this research and suggests that in some contexts the Commonwealth's recommendations may have empirical support. Finally, the chapter presents some evidence about the use of public consultation.

2 The question and underlying theory

The claim that more open drafting processes are more conducive to peace has several real-world referents. These include cases like the process in Uganda in 1995, and in Kenya between 1997 and 2005, where a broadly representative commission held public hearings in the country's districts before completing the initial text and delivered its recommendations to a large national conference, whose delegates were partly elected and partly nominated by civic associations and other groups. Throughout the process, civic groups and newspapers entertained extensive discussion of proposals. Brazil, Nicaragua, Eritrea, Trinidad, and a number of other countries have at various times sponsored similarly participatory constitution-writing exercises.

The concept of participatory constitution drafting embraces some conventional ideas about the importance of broad representation in deliberative bodies as well as some

more unconventional claims about the need for popular involvement. In the abstract, there are several broad ways in which participatory procedures might shape violence.

- Process influences the range of interests considered, not only through delegate selection rules, but also through the incentives it offers for players to adopt long versus short time-horizons.
- Process influences the balance between quiet persuasion, compromise, and grandstanding. For example, rules that lock delegates into positions or encourage public campaigning for subsequent political office are generally counterproductive.
- Process influences enforcement of terms after ratification. If citizens are engaged in the process through public consultation and civic education, they are more likely to know the rough parameters of accepted behaviour under the new constitution, monitor the behaviour of officials, and impede those who transgress. Where leaders are aware that citizens are better able to monitor boundary lines, they may be more likely to refrain from actions that transgress, anticipating that they will meet resistance.²
- Process influences sense of inclusion and trust (social capital). The tone of proceedings shapes whether political elites and ordinary citizens feel included or excluded, forward-thinking or vengeful.
- Procedures that are congruent with underlying cultural norms of fairness may signal information about the future behaviour of decisionmakers, instil higher levels of trust, and reduce the likelihood that differences of opinion will resolve themselves violently.
- Process can create a model for subsequent behaviour of political elites in resolving problems in non-violent ways.

The enthusiasm for participatory processes may be well founded, but there are also reasons to exercise caution in assuming that participation brings happy outcomes. Despite their many attractions, participatory processes can prove very difficult to organize and manage. For instance, delays in translation, combined with slowness in moving deliberations forward, can sow distrust and discord as they did at Chad's national conference in 1996. Or, to take another example, the method of canvassing local opinion may lead to concerns about fairness, as happened during the development of Nicaragua's 1987 constitution. Instead of a linear relationship between popular participation and conflict reduction, we might instead anticipate that

² The 'monitoring theory' often raises eyebrows, but it is not as implausible as it may first appear. After new constitutions ushered in a new multiparty rule, several African leaders sought passage of amendments to eliminate term-limits or grant themselves immunity. These bids to hold onto power have often encountered popular resistance where drafting was highly consultative but appear to have won out where the prior drafting process was executive-centered or highly elite-driven. For example, Mali's Konare backed away from an amendment designed to grant him immunity from prosecution, and Malawi's Muluzi conceded that he would not win permission for a third term as president.

the effects are conditioned by the way these functions are carried out. Where there are no concerns about fairness and/or there is little polarization, these processes may reduce violence but where management problems—delays, translation disputes, grandstanding—cause significant groups to make charges of bias, public consultation and broadly representative assemblies may each aggravate the level of conflict.

Moreover, officially organized channels for participation by ordinary citizens may prove less important in some settings than in others. Where there is a history of free and fair elections, and a reasonably high regard for politicians as representatives, it is possible that measures to solicit popular opinion or to engage a more diverse group of delegates to the main deliberative body in constitution writing may prove inconsequential for overall levels of conflict. Devices to ensure high levels of popular consultation may be more influential in areas without much history of electoral politics, and where the legitimacy of delegates may be in question.

3 The data

The information used in the analysis comes from a new database constructed with the support of the US Institute of Peace and from a modified version of a database on internal conflict prepared by the PRS group. The ‘drafting database’ records roughly 130 procedural and contextual features of over 194 constitution-writing cases carried out since 1975. The cases include new constitutions and regime-changing amendments where there was at least a minimal chance that those who disagreed with the incumbents could take up arms. Regime-changing amendments include provisions that affect participation and contestation (e.g., shifts from authoritarian rule to multiparty systems or vice versa), civil and political liberties, property rights, regional or ethnic autonomy, and significant efforts to re-allocate power among the branches of government. In most cases, these modifications reflect what ancient philosophers might have termed a change in the sense of political good. That is, they imply new standards of political virtue.

For inclusion in the dataset, there must also be a minimal chance that a dissatisfied party could take up arms. Here, the dataset errs in favour of a generous definition. Ability to take up arms is hard to assess. In most developing countries, limited territorial control by the state has meant that even under highly authoritarian governments it is possible for a faction of the elite or the populace to use violence. Therefore, on this criterion the dataset excludes only constitutions drafted in the USSR pre-Gorbachev, the PRC, and North Korea.

The dataset imposes an income threshold, but that threshold is quite high and is designed only to exclude cases in an upper income category where there are few cases in the past 35 years and thus no real opportunities for systematic comparison. The countries excluded by the income threshold are Canada, the Netherlands, and Belgium. A provisional regional distribution of the cases for 1975-2002 appears in Table 1.

The information in the database comes from documentary sources and from interviews with drafters. The sources used include *Constitutions of the Countries of the World*, the *Inter-Parliamentary Union Chronicle*, *Keesings Archive*, the Lexis-

Nexis World News backfile, and a wide variety of regionally specific yearbooks, personal accounts, and academic articles.

In this research, violence is the main indicator of ‘success’, although that is certainly not the only important metric. The study uses a range of measures, including pre/post-ratification differences in average level of violence over five-year periods, pre/post-ratification differences in average level of violence that subsume the ratification year into the ‘pre-ratification’ period, comparison of the level of violence in the worst years pre/post, the trend in violence in the five years after ratification, the rate of suspension or replacement of the new constitution, and ‘strict’ versions of these measures that take into account ‘degree of democracy’.³ The study focuses on the short-term, the five years after ratification, for two practical reasons. First, if ‘process’ has an effect at all, we are most likely to observe its impact in the immediate aftermath of ratification, before the incentives built into the substantive terms themselves overwhelm any memory of what transpired. The second reason is that not much time has yet elapsed since the most recent wave of constitution drafting.

The information about violence takes the form of monthly, country-centred internal conflict data. The data come from a political risk resource developed by the PRS Group (ICRG Table 3-B), expanded to include a wider range of countries and earlier years. The database assigns each country a score on a scale of 0-12, with 0 signifying intense civil conflict resulting in high levels of deaths on a broad geographic scale and 12 indicating complete calm. The ICRG data on military involvement (coups, coup attempts, mutinies, etc.) are less reliable than the internal conflict dataset in the author’s view. Therefore, the study re-computed the military data for many cases. Unless otherwise stated, the conflict data used in this project are the sum of the scores on the internal conflict and military variables, with low scores indicating high-intensity conflict and high military involvement. The scores range from 0 to 18.⁴

Table 1
constitutions adopted, by decade and region
(cases in current database)

Decade	Region						Total
	Africa	Americas	Asia East/South	Asia West/Central	Europe	Pacific Islands	
1970s	11	5	6	5	6	1	34
1980s	19	7	2	4	6		38
1990s	50	11	13	11	14	9	108
2000s	4	2	1	3	3	1	14
Total	84	25	22	23	29	11	194

³ The measures of post-ratification trend in violence and the strict measure of ‘success’ that records improvement only if it takes place in a ‘free’ political environment do not appear in the preliminary results reported in this paper.

⁴ It is important to exercise caution in using this information. In the author’s view, comparisons of absolute levels of violence across countries are not highly reliable, although yearly averages are more reliable than monthly figures. As a result, this research project compares trends and differences, not absolute levels.

3 Conceptualizing and measuring ‘participatoriness’

The first analytic challenge is to distinguish constitution-writing processes by their ‘level of participatoriness’. The authors of the Commonwealth guidelines do not tell us much about the norms or considerations that shaped them, but the aim of participation is at least partly to ensure the representation of popular points of view in the decisions made and political philosophers have made useful contributions on this point. For example, in her book, *The Concept of Representation*, Pitkin (1967) sketched several alternative definitions of representation that are potentially useful in understanding variations in public engagement in the preparation of new constitutions. These alternatives help shape this project’s attempt to translate the Commonwealth’s suggestions into operational measures.

One definition of representation focuses exclusively on whether there was an act by which members of the public authorized delegates to make decisions on their behalf, without specifying any standards for subsequent delegate behaviour. This view is rooted in the work of Thomas Hobbes. It is an important sub-current in thinking about the design of constitution-making processes and draws attention to the methods used to select decisionmakers at each stage of the drafting process. It draws attention to the use of elections, selection by interest group representatives, executive appointment, etc. in the choice of those who design the ground rules, frame immutable principles, develop the draft, and exercise the power to ratify.

Pitkin elaborates a second approach to the definition of representation and participation that shares the formalistic character of the first but also considers whether there is a mechanism for making decisionmakers accountable. In addition to asking what role ordinary people play in selecting delegates, this approach requires that we consider whether the grant of authority implicit in the act of selecting delegates was unlimited or whether the public retained power to comment prior to adoption and to decline to accept the results. It focuses attention on the ability of the public to check the behaviour of delegates—for example, through referenda (Pitkin 1967).

A less formalistic understanding emphasizes the importance of the information provided to the deliberative process by people who mirror the population as a whole. Inclusiveness matters in this view because it provides data about a larger range of concerns. In this approach it is important to consider whether the bodies with decisionmaking power are highly representative and whether there are mechanisms for consulting with a broad range of social groups in the development of the initial text and in the final draft. It also encompasses concern for consultation of the ‘interested public’ (civil society organizations, political parties) and ordinary citizens. This approach taps a special concern behind the Commonwealth principles.

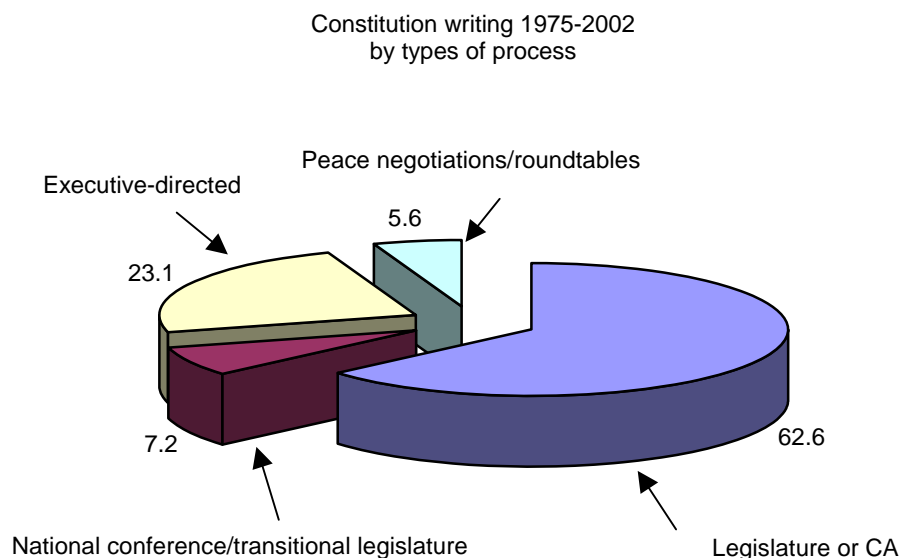
A fourth approach to categorizing processes focuses on procedures that help place decisionmakers behind a ‘veil of ignorance’ (Vermeule 2001: 399). That is, it focuses on use of procedures that increase any given delegate’s uncertainty about his future position or the future position of his constituents. Veil rules introduce prospectivity, generality, and durability into decisionmaking. That is, they structure deliberation in a way that increases the likelihood that a broader range of interests will be considered. One might include in this category rules that reduce the dominance of current interests

by setting limits on eligibility, by forcing recusal of some kinds of incumbents (e.g., the military), or by restricting conflicts of interest in other ways, especially through mediation. Underlying this approach is the idea that resources for active participation are not uniformly distributed and influence in deliberative bodies may also privilege some kinds of people over others. This approach captures the Commonwealth's interest in ensuring that the strongest or most vocal interests do not outweigh broader community concerns.

3.1 Character of the main deliberative body as shorthand for participatoriness

In practice, most of us, especially lawyers, are quick to point out that we rarely rest our judgements about the participatory character of a constitution drafting process on only one element of the bundle of procedures that any drafting process entails. However, as a shorthand we often distinguish between processes according to the character of the main deliberative body. Thus, in Iraq, Grand Ayatollah Sayyid Ali Husaine al-Sistani insisted on an elected constituent assembly or legislature, a body putatively more democratic or representative than an indirectly elected legislature, an appointed national conference, a roundtable of key parties, or an executive-directed process. The following chart shows the distribution of constitution-making episodes defined by the character of this feature.

In the analysis it is possible to arrange types of deliberative bodies on a scale of representativeness, such that executive-directed constitution making and roundtables or peace negotiations among warring parties anchor the low end and elective bodies, elected constituent assemblies and legislatures, anchor the high end. Bodies that afford representation through indirect election or appointment by corporate groups, such as unions, appear in the middle. Of the 125 cases for which we have the most adequate data on violence (post-1983 cases), there is a rough correlation between the representativeness of the main deliberative body and a reduction in violence over the five years post-ratification. That is, where the main body was elected, levels of



violence remained the same in 35 per cent of country cases and improved in 42.6 per cent of cases. By comparison, among the executive-appointed bodies, a reduction in violence took place in only 24 per cent of cases and in 40 per cent of instances violence worsened.

Of course, when pressed most would want to consider the methods used to choose a drafting committee, the voting rules of the several bodies involved in the development of the initial language and the subsequent debate, etc., in addition to veil rules and other features. For the purposes of the kind of comparison necessary to distil ‘lessons’ or guidelines, this more complex notion of participatoriness poses serious challenges.

3.2 Defining participatoriness across multiple dimensions: in search of style

To capture multiple procedural dimensions at once, it is possible to borrow some statistical tools from medicine, market research, and the social sciences. The approach used here sorts country cases into distinctive classes of like processes and helps identify *styles* of constitution making, where ‘style’ is a function of features that shape authorization and accountability. Latent class analysis is a statistical method for finding subtypes in multivariate categorical data using maximum likelihood estimation. Market researchers use it to identify like-minded consumers or ‘market segments’. Medical researchers use the technique to identify diagnostic categories. Here it is helpful for identifying constitution-writing cases with similar authorization and accountability procedures when there are many possible procedural permutations and combinations and more instances than the human mind can easily juggle at once.

There are several possible dimensions on which one could define classes. Table 2 shows the ingredients used in sorting cases into classes or styles and the main models considered. The determination of the ‘best’ model is based in part on the CAIC statistic (the lower the better). Because the technique always finds some cases hard to situate and allocates some cases partly to one class and partly to another, the degree of overlap matters too, although it is in acceptable bounds for all of the models tried here. The intuitiveness of the results is another factor that figures in the selection of the best model. Some models, that are plausible *a priori*, group cases in a manner slightly out of line with the intuitions of those who have studied them closely.

The styles defined by the chosen model have real-world meanings:

- *Style 1*: In most of these cases there were no initial negotiations to establish a process. Warring parties created immutable principles or an interim constitution in about a quarter of these cases. In about half, the main deliberative body was appointed by the executive, the military, or a departing colonial authority. About a quarter of these bodies had over 500 members. About half of these cases had referenda, while half did not.
- *Style 2*: There were initial negotiations to establish a process in about half of these cases. In all, the main deliberative body was popularly elected by SMP decision rules. There were multiple committees or commissions involved in the preparation of the initial text. A referendum took place in almost all instances.

- *Style 3*: In most of these cases there were no initial negotiations to establish a process. In all of these cases, the main deliberative body was popularly elected by SMP decision rules. In most of these cases there was no referendum.
- *Style 4*: The drafting process followed rules set out in the previous constitution in about half these cases but entailed negotiations in the other half. Most of the main deliberative bodies in this group were elected via a proportional representation system or mixed member system. In most of these cases there was no referendum.
- *Style 5*: There were initial negotiations to establish a process in all of these cases and in about half these conversations embraced a wide range of political groups or social and economic groups. In almost half of these cases, the delegates to the main deliberative body were elected from the ranks of the legislature or otherwise indirectly elected. This category is less distinctive than the others and may embrace some cases that are not participatory, as well as embrace many that are. Further refinements in the latent class models will aim to remove these ambiguities.
- *Style 6*: In most of these cases, there were no initial negotiations to establish a process, but in over a third an elected body or highly representative appointed group developed immutable principles. The main deliberative body was appointed by a national conference or representatives of economic and social groups in almost half of these cases, but in just under a quarter the executive or military appointed the delegates. About a quarter of these bodies numbered over 500 delegates. In almost all of these cases there was a referendum.
- *Style 7*: In most of these cases, there were no initial negotiations to establish a process. In almost all, the main deliberative body was appointed by the executive, the military, or a departing colonial authority. In no case were delegates elected. In most of these cases, there were fewer than 15 key decisionmakers. In almost all of these cases there was a referendum.
- *Style 8*: In most of these cases there were no initial negotiations to establish a process. The delegates to the assembly were selected by warring parties in most of these cases or selected through indirect election. In none of these cases was there a referendum.

Although the styles are not ordinal (that is, style 8 is not higher or better than styles 1-7 with respect to participatoriness), a careful look at the relationship between component variables and classes suggests that styles 2 through 4 are more participatory than styles 1, 7, and 8. Beyond this distinction all we can say is that the styles are different but not a priori better or worse with respect to participatoriness. Styles 2 through 4 include direct elections to select the main deliberative body. Styles 5 and 6 are more ambiguous. Style 5 includes some processes where the main deliberative body was indirectly elected. Style 6 embraces most of the national conferences or national conventions, which typically entail no elections but are often

broadly representative. Because the function or role of the conference itself has varied enormously across the cases that we often consider part of this group, some of the national conferences turn up in other style categories as well.

The styles of constitution writing are not distributed uniformly across regions, countries with different colonial heritages, or countries with different levels of economic development. Table 3 suggests that only in Africa and West/Central Asia have countries experimented with a full range of styles or nearly so, including those that are less participatory with respect to authorization and accountability. Style 4 accounts for 56 per cent of the cases in the Americas. Style 3 predominates in East/South Asia and Europe. Half the drafting processes in formerly British areas have style 3, while 41 per cent of formerly French areas are style 7. Post-coup cases are also style 7.

Table 2
Composition of models used to generate latent classes

Composition	Model					
	1	2	3	4	5	6
Representativeness of body that chose ground rules	X	X	X	X	X	X
Authorization of body that developed immutable principles, form of	X	X	X	X	X	X
Whether body as whole, committee, or separate commission formulated initial text	X	X				
Whether more than one body helped develop the initial text	X	X		X	X	X
Authorization of main deliberative body, form of	X	X	X	X	X	X
Type of electoral system, if any, used to select main deliberative body	X	X	X	X	X	X
Size of main deliberative body	X	X	X	X	X	
Executive recusal from deliberative body			X	X		
Whether executive had right to amend text before submission	X	X				
Whether vote of an elected or highly representative body required for ratification	X	X	X	X	X	X
Whether national referendum required for ratification	X	X	X	X	X	X
Whether process internationally mediated	X					X
Classes	8	8	8	8	8	8
CAIC	5189.4	4857	4038.4	4389.6	3978	3588.7
% overlap	4.6	2.9	4.9	4.8	6.7	8.7
Intuitively plausible classes?	no	partial	yes	yes	yes	partial
Run	26	28	21	20	44	

Table 3
 Style of participation, by region
 (frequency; column percentage except for total)

Style	Region					
	Africa	Americas	Asia East/South	Asia West/Central	Europe	Pacific Islands
1	10 11.9%		5 22.7%	2 8.7%		
2	4 4.8%	3 12.0%		3 13.0%	4 13.8%	3 27.3%
3	16 19.0%	4 16.0%	10 45.5%	9 39.1%	15 51.7%	3 27.3%
4	8 9.5%	14 56.0%	1 4.5%	3 13.0%	7 24.1%	
5	5 6.0%		1 4.5%	1 4.3%	1 3.4%	3 27.3%
6	10 11.9%	1 4.0%	2 9.1%		2 6.9%	1 9.1%
7	24 28.6%	3 12.0%	3 13.6%	5 21.7%		
8	7 8.3%					1 9.1%
Total	84 43.3%	25 12.9%	22 11.3%	23 11.9%	29 14.9%	11 5.7%

When grouped by multi-dimensional ‘style’, country cases display some of the anticipated correlations with levels of violence, though not all. The less representative processes (styles 1, 7, and 8) were associated with a reduction of violence in 31.4 per cent of cases, while the more representative styles 2 and 3 were associated with a reduction in violence in about 40 per cent of instances and style 4 was associated with a reduction in violence 64 per cent of the time. Style 5 was also associated with improvement, but it encompassed only 4 cases overall. Style 6 was associated with a reduction of violence only 9 per cent of the time.

3.3 Participation as public consultation

Because an important interest of the US Institute of Peace and the Commonwealth lies in the impact of public consultation, measures of this form of participation do not appear in the latent class models but are presented instead as separate scores. One score assesses consultation during the preparation of the initial text. A second score assesses consultation during deliberations about the draft, prior to adoption and ratification. A composite score helps identify cases in which there was consultation prior to the development of the draft as well as after the initial draft. A fourth score assesses the extent of opportunities for involvement by the interested public—civic groups, unions, political parties, professional associations. It reflects invitations to submit written contributions, meetings with civil society groups and unions, interviews, and a variety of other fairly standard mechanisms for consultation. A fifth

score assesses opportunity for participation by ordinary people, using consultation in remote rural areas as a proxy.

This step makes it possible to identify cases in which various forms of consultation occurred, over and above the type of authorization/accountability mechanisms in place. Table 4 shows the frequency distribution of public consultation scores by region.

Some aspects of consultation stand out. For example, in the Pacific Islands, Latin America and the Caribbean, and Africa drafters make frequent use of public consultation prior to or during the preparation of the initial text, compared to Europe and Asia. Constitution writing that has entailed consultation both in the development of the initial text and in the development of the final draft is more common in Latin America and Africa than in other regions. Elite consultation has proven most extensive in Latin America and the Caribbean, where multiple devices for soliciting opinion from civic groups, unions, and political parties have been in effect in over half of all cases. In 46.7 per cent of cases in Latin America and the Caribbean, 41.3 per cent of African cases, and the overwhelming majority of Pacific Island cases, drafters have sought opinion in remote rural areas as well as in the capital. Broad-based consultation of this sort is least common in Europe.

Simple crosstabulations suggest that there is no clear relationship between levels of consultation and patterns of violence post-ratification within the pool of country cases as a whole (that is, not broken out by region or type of conflict). One reason may be that in many Central and East European countries flourishing media and better individual access to television and radio provided many with a window on the proceedings, and the absence of explicitly consultative procedures in these cases may understate the amount of public involvement that actually existed, thus interfering with the ability to draw inferences about the effects of consultation more generally. Looking at sub-sets of the data, expected correlations do appear between extensive grassroots efforts to consult ('Scope' in the table above) and reduction in violence in the Americas and Asia. Elite consultation correlates with a reduction in violence in the Americas and in some parts of Asia as well.

Table 4
Consultation, by region
(frequency; column percentage)

Extent of consultation	Region					
	Africa	Americas	Asia East/South	Asia West/Central	Europe	Pacific Islands
Prior	43.2	50.0	21.1	15.6	13.0	66.7
Post	17.3	25.0	22.2	47.4	26.1	33.3
Prior & Post	12.2	20.0	5.6	5.3	8.7	11.1
Elite	7.6	35.3	13.3	6.7	5.3	22.2
Scope	41.3	46.7	37.5	20.0	12.5	75.0

4 Findings: testing theory against evidence

What do we find, using these three approximations of representativeness and participatoriness? A very rough and preliminary exploration of the data is suggestive in its support for at least some aspects of the Commonwealth claims, though it is far from conclusive and the analysis requires considerable refinement. The outcome is the difference between the average monthly level of violence in the five years prior to the ratification year and the five years after ratification. A negative pre and post violence score indicates that conflict intensified and a positive score implies improvement.

The causal factor of particular interest is measured in three ways. In the first test, the measure used is the character of the main deliberative body. *Process* distinguishes among cases very roughly according to whether constitution writing was executive-directed (low score), brought key leaders together in a roundtable or related process, or centred upon an elected assembly or a representative national conference. In the second test, the measure used is the multi-faceted *style* designation that picks up eight different dimensions of representativeness. The *style* variables in the model help us compare the effect of the most representative approaches to the effect of the least representative approaches (this latter comparison group is left out of the model and constitutes the reference for the coefficients on the more participatory styles). The third test shows the additional influence of public consultation, captured by the variable *consult*.

Regression analysis makes it possible to control for contextual features that may influence the outcome. The first is *income* level. The second is *ethno-linguistic fractionalization*, a somewhat imperfect measure of the level of ethnic diversity. The closer the index is to 1, the higher the level of diversity. Level of respect for *political rights* in the year of ratification appears in the model as a proxy for relative respect for the rule of law on the part of government (Freedom House data). A high score on political rights indicates high respect for basic political rights.

Finally, because the intensity of violence undoubtedly influences the performance of different processes and perhaps even the choice of process, the tests include a score for the worst level of violence in the five years prior to ratification, *intensity*. The cases used for this portion of the study include the 83 in which levels of violence were significant in

The first finding is that differences in the representativeness or participatoriness of the drafting process have no major effect on post-ratification levels of violence in some parts of the world, such as Europe, but do make a difference in Africa, the Americas, and the Pacific Islands. The tables below present results for Africa and for Africa, the Americas, and the Pacific together. Although the models themselves do not capture a high proportion of the variance observed, the coefficients and their significance levels can help us gain a rough sense of whether the correlations our theories lead us to expect are actually present.

A quick glance at the information in the tables provides some support for the idea that some forms of representativeness contribute to a reduction in violence in the five years after ratification in Africa. The coefficient on the *process* variable, which

Africa
 Dependent variable: Change in the level of violence,
 5 years pre-ratification compared to 5 years post-ratification

Model	Unstandardized coefficients	Standard error	Standardized coefficients	Significance
Constant	1.931	0.667		0.007
Process	0.356	0.162	0.400	0.035
Consult	-0.412	0.228	-0.354	0.081
Income level	-0.342	0.171	-0.341	0.054
Rights	0.222	0.255	0.140	0.391
Ethnic diversity	-0.179	0.799	-0.039	0.842
Intensity	-0.034	0.097	-0.061	0.730

R square=0.307

Africa, the Americas, and the Pacific
 Dependent variable: Change in the level of violence,
 5 years pre-ratification compared to 5 years post-ratification

Model	Unstandardized coefficients	Standard error	Standardized coefficients	Significance
Constant	1.631	0.598		0.009
Process	0.267	0.153	0.270	0.088
Consult	-0.212	0.186	-0.180	0.260
Income level	-0.049	0.126	-0.069	0.700
Rights	0.273	0.235	0.204	0.252
Ethnic diversity	0.382	0.648	0.089	0.559
Intensity	-0.152	0.080	-0.288	0.065

R square=0.232

captures the representativeness of the reform model as described above, is positive and statistically significant. Public consultation, *consult*, does not appear to play a strong role (because the coefficient is not statistically significant it would probably be a mistake to draw any inferences from the negative sign or the size of the effect). When we test the same model against evidence from the Americas and the Pacific as well as Africa, the results are weaker but they are roughly consistent, although the weak significance level might make one sceptical of drawing a strong inference.

The method of selection of the main deliberative body appears to make more of a difference than the overall ‘participatory style’. In Africa alone and in Africa plus the Americas and the Pacific, more executive-directed drafting processes are negatively associated with reduction in violence, while more participatory styles display a possible beneficial effect, although the results are not statistically significant.

Of course even with refinements, even the most conscientiously constructed regression model should not rest on this kind of analysis alone. Although this project employs a variety of techniques to identify comparable cases and explore whether expected correlations are present, to get at the real causal linkages it is important to use carefully targeted case studies. Because violence is not a proximate outcome, it is important to establish causal relationships through ‘process tracing’, a fancy term for careful history. Where there is a correlation between a procedural style or a particular

procedural choice, on the one hand, and ‘success’ or ‘failure’, on the other, the aim is to show that there is a causal connection by describing the sequence of impacts of procedural choice on the outcome. The case studies arising from the UNU-WIDER conference on Making Peace Work are especially valuable in helping us attain this ambition.

References

Pitkin, H. F. (1967). *The Concept of Representation*. Berkeley: University of California Press.

Vermeule, A. (2001). ‘Veil of Ignorance Rules and Constitutional Law’. *Yale Law Journal*, 111(2): 399–433.