



NORWAY'S ENDURING CONSTITUTION: IMPLICATIONS FOR COUNTRIES IN TRANSITION

*Produced by
International IDEA
on the Occasion of
the Bicentennial
Anniversary of the
Constitution of
Norway*

May 2014

Abstract

On the occasion of the bicentennial anniversary of Norway's Constitution, International IDEA's Constitution Building Processes (CBP) Programme^[1], funded by the Norwegian Ministry of Foreign Affairs, commissioned a project to look at what lessons Norway's Constitution, adopted on May 17 1814, offers for countries in transitions. This paper, written by Professors Tom Ginsburg of the University of Chicago Law School and James Melton of the University College of London, examines the factors behind the endurance of Norway's Constitution. It argues that Norway's Constitution, although being only the second most enduring Constitution behind that of the United States, provides a better model for how to make a constitution endure because of its flexibility.

1 Introduction

This month, Norway celebrates the bicentennial of its Constitution, a very rare achievement indeed. Only one other such document has accomplished the feat, the Constitution of the United States ratified in 1789. Out of the more than 900 constitutions written since then, only 14 (1.5%) have ever made it to age 100 (see Table 1). Two of these—New Zealand and Canada—are anomalous cases of former British colonies in which the “constitution” consists of multiple documents, and might be seen as distinct species. Research has shown that for all constitutions over the period, the average predicted age at death is 19 years (Elkins et al. 2009).

Is there anything in the Norwegian experience that is relevant for countries undergoing constitutional transitions today? The world has changed a good deal since 1814. But Norway's experience does offer some lessons for today's constitutional designers who would like their work to last. Perhaps the key lesson is that constitutions must adjust with the times. Norway's constitutional flexibility has allowed a document designed in a very different era to survive and indeed thrive.

^[1] The CBP Programme aims to raise awareness on the role constitution building plays in managing conflict and consolidating democracy. For more on the Programme's work, visit www.idea.int/cbp/ or www.constitutionNet.org

Table 1: Most Enduring Constitutions

Rank	Country	Years	Lifespan
1	United States	1789-	225
2	Norway	1814-	200
3	Netherlands	1815-	199
4	Belgium	1831-	183
5	Sweden	1809-1974	165
6	New Zealand*	1852-	162
7	Canada*	1867-	147
8	Luxembourg	1868-	146
9	Argentina	1853-1966; 1983-	c.145
10	Tonga	1875-	139
11	Liberia	1847-1980	133
12	Switzerland	1874-2000	125
13	Australia	1901	113
14	Colombia	1886-1991	105

Looking at the other enduring constitutions listed in Table 1, we see that many of these documents remain in force today; one might think that there was something about the cohort that helped ensure the survival of Norway's document. But the early age of constitution-making was a turbulent one. Of 37 constitutions written in 18 independent states between 1789 and 1814, only two survive. Indeed, by the end of 1814, France had written its 7th constitution; Haiti and the Netherlands had each written 5, and Chile was writing its 3rd. So there was nothing about the age in which it was written that predicted endurance.

Nor has Norway's history been free of conflict that might have rendered the constitution moot. Shocks—such as wars, political crises, and breakups of states—tend to induce constitutional replacement. Norway has had its share of these. Furthermore, the

circumstances of the Constitution's birth were at least as dire as those faced by many countries today. For those meeting at Eidsvoll, time was short. The country had been promised to Sweden as a reward for its role in defeating Napoleon, and Swedish troops were in the process of returning from that task. The Norwegian troops would have been outmatched in a direct fight, and the Danish prince Christian Frederik lacked military experience. Just a few months after adoption, the Constitution faced what must have seemed a dire threat, staved off only by virtue of the November 1814 union with Sweden.

2 Endurance

We identify three key features of constitutional design that can help a constitution to withstand even major shocks. We call these inclusion, flexibility and specificity, and describe each in turn. Inclusion refers to the process of making a constitution. The more citizens and interest groups are involved in the process, the more likely it is that they will know what is in the constitution, and perhaps become attached to it. This means they may be willing to join together to enforce the constitution when there are threats to it.

Indicators of inclusion are several; for example, when a constitution is produced by an elected constituent assembly or ratified by a public referendum, we treat it as inclusive. Inclusion also refers to ongoing governance: how much of the population has a say over political life? Even countries that are not formal democracies vary in terms of their level of inclusion.

Flexibility refers to the ease with which the Constitution can be adjusted over time as circumstances change. A constitution that is too rigid and cannot adjust to the times will force its subjects to replace it. Constitutions can change either through formal amendment or through reinterpretation, including by courts. We find that constitutional endurance is associated with judicial review and with a relatively low threshold of amendment.

Specificity refers to the level of detail in the constitution. While many Americans celebrate their country's constitutions for its level of abstraction and generality, we find that, across all countries, more specific constitutions are the ones that endure. This is partly because specificity means that the parties to the Constitution were able to agree with each other during negotiation, itself an indicator of political trust. Specificity also provides for clarity

during times of crisis. Furthermore, in some cases, detail involves promises of political goods to powerful interest groups. This will give groups a stake in constitutional endurance.

How does this framework apply to Norway? As mentioned above, the country has had its share of crises and challenges, including nearly a century of struggle with Swedish domination, culminating in a decision to separate. How was the Constitution able to endure? Inclusion, specificity and flexibility played a major role.

A. Inclusiveness

First, consider inclusion. The meeting at Eidsvoll consisted of representatives from around the country, elected in local parishes. While not equivalent to modern demands of universal suffrage, it was a model of inclusive production for its own era. The Constitution was not just an elite bargain – the Assembly was composed of public officials, merchants and other commercial classes as well as a significant number of peasants (37 out of a total of 112).

Importantly, Norway's Constitution included an exceptional provision in which the King was *elected* and then had hereditary succession. The origins of this provision lie in the odd fact that Denmark had been forced to give up its claim of sovereignty before the Swedes could take over. The Norwegians argued that this meant that sovereignty reverted to the people, who could not simply be transferred to Sweden like a piece of property. In electing their King, Norwegians gave popular sovereignty a distinct and concrete institutional form, and affirmed the Constitution as a kind of contract between people and monarch. Two monarchical elections were held in 1814: the first in May for the Danish Viceroy Christian Frederik and then in November for Swede Karl Johan after the personal union of the two countries was accepted by the Norwegians. In 1905, this inclusive feature of an elected monarchy was reaffirmed and strengthened when it was decided to hold a public referendum on whether to retain the monarchy. Norwegians again *chose* their King with the election of the remarkable Haakon VII.

One piece of evidence of inclusion is the level of attachment Norwegians have to their Constitution. May 17, the anniversary of the meeting to adopt the Constitution, is the national day and the *Grunnlovsdagen* (Constitution Day). The Constitution is a symbol of the country's independence to this day.

B. Specificity

Our second factor is specificity. We generally observe that constitutions are getting longer and more detailed over time. While not long by modern standards, Norway's May Constitution was quite long for its time. Of the 37 national constitutions produced through 1814, only three were longer than the 7424 words of Norway's May document.¹ Furthermore, the Constitution contained much detail on the issues important to it: the legislative process and the monarchy. Some 19 of its 110 articles are devoted to the issues of succession and regency.² These are central issues in any monarchy, and detail is helpful to avoid contests over succession. After the November 1814 amendments, more detail was added regarding the nature of the union and organization of government when the King was not present in Christiania. Similarly, great detail is devoted to the formation of parliament and technical issues such as the quorum, meeting dates, rules of impeachment, and terms. These are questions which are logically prior to the first meeting of a parliamentary body and hence properly, indeed almost necessarily, included in a constitution.

Our measure of specificity includes not only the level of detail but the number of topics included in any given constitution. We call this the "scope" of the constitution. Norway's document is about average in this regard.³ In some areas, it was ahead of its time. For example, the constitutions written by the end of 1814 contained an average of 10 rights from our list of 116 different rights included in constitutions, while Norway's had 14 (see Figure 5 below).

C. Flexibility

Flexibility is another feature that we find associated with constitutional endurance. Article 110 of the May constitution (renumbered to Article 112 in November) provided that –

“If experience shows that any part of this Constitution of the Kingdom of Norway should be amended, the proposal to this effect shall be submitted to the first, second or third Storting after a new General Election and be publicly announced in print. But, it shall be left to the first, second or third Storting after the following General Election to decide whether or not the proposed

¹ The three are Sweden 1809, Spain 1812, and France 1795. Word counts are generally drawn from English translations.

² Arts. 3-11 & Arts. 40-49 of the May 1814 version.

³ The November 1814 version, as amended, has a scope "score" of .48 while the mean for all countries is .49.

amendment shall be adopted. Such amendment must never, however, contradict the principles embodied in this Constitution, but solely relate to modifications of particular provisions which do not alter the spirit of the Constitution, and such amendment requires that two-thirds (2/3) of the Storting agree thereto.

An amendment to the Constitution adopted in the manner aforesaid shall be signed by the President and the Secretary of the Storting, and shall be sent to the King for public announcement in print, as an applicable provision of the Constitution of the Kingdom of Norway.”
(https://www.constituteproject.org/constitution/Norway_2004#362)

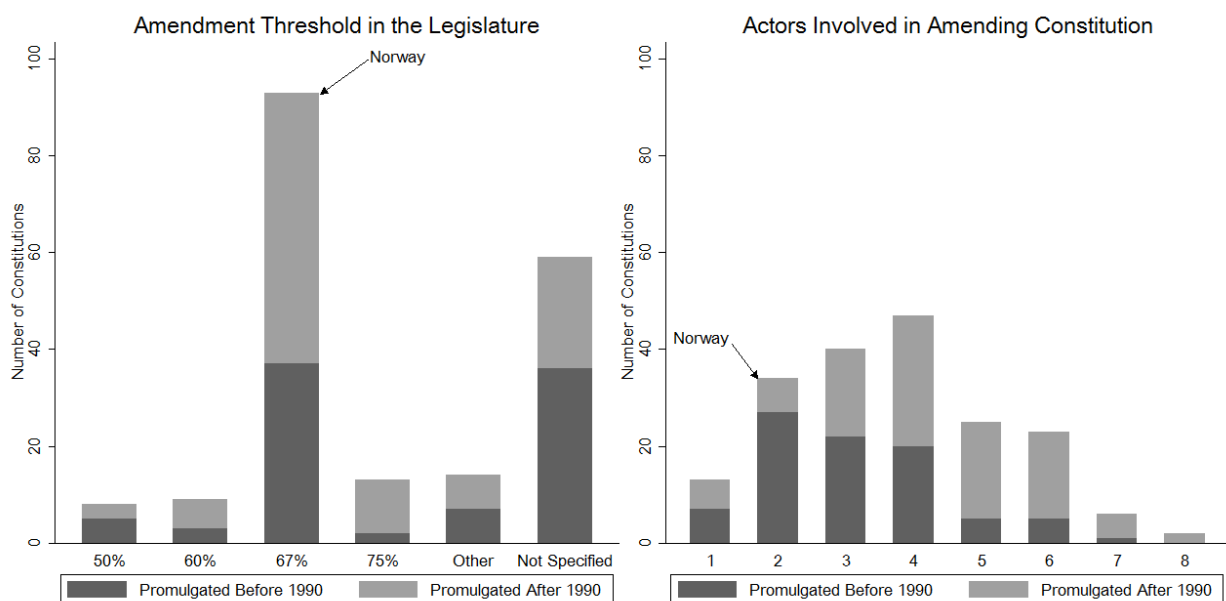
The Constitution thus introduces the idea that certain provisions of the Constitution related to its spirit may never be changed. This was a forerunner of an increasingly popular model of constitutional design, revived in the German Basic Law and more recently in court decisions in many countries, in which certain provisions can never be changed (Smith 2011). Tunisia’s 2014 Constitution included several such super-protected provisions, and Fiji’s 2013 document likewise included such protection for its immunity provisions.

Is this scheme flexible? As Bjorn-Erik Rasch (2003; see also Ginsburg and Melton 2014) has shown, measuring flexibility is a deceptively difficult enterprise. There is great variety in the kind of schemes that countries adopt. Some countries, for example, have different rules for different provisions. Myanmar’s Constitution (2008), for example, requires that 25% of members propose a bill, which is then adopted by 75% of the legislature. But amending certain clauses requires, in addition, a public referendum. Other constitutions require referenda for any amendment; Egypt’s 2014 document is an example here.

We can focus on two dimensions in particular: the threshold in the legislature to approve an amendment, and the number of actors involved. As Figure 1 shows, the threshold varies across countries, with most falling between an ordinary majority and $\frac{3}{4}$. The modal threshold is $\frac{2}{3}$, and this is the Norwegian approach. The second panel in Figure 1 provides data on the number of actors involved, with each successive legislature counting as a separate actor. Norway has, by our count, two distinct actors who must agree to a constitutional amendment – proposal in one Storting and ratification by $\frac{2}{3}$ ’s of a second

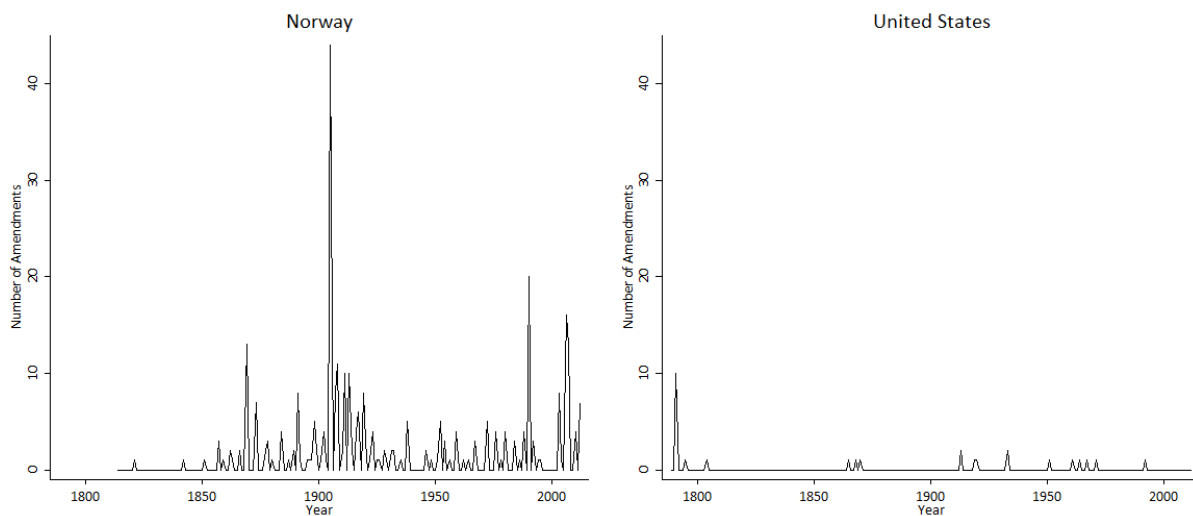
Starting (we consider the internal approval by the president of the legislature to be pro forma). This is fewer than most countries, meaning that amendments are relatively easy to pass. On its face, then, we can say the Norwegian scheme seems to lie somewhere between, say, the Estonian model in which the second parliament can pass most amendments with a 3/5 majority, and the American model which requires a 2/3 majority in both houses of parliament followed by ratification by $\frac{3}{4}$ of subnational units.

Figure 1: Cross-National Constitutional Amendment Procedures



Flexibility has been perhaps the key variable in explaining the survival of Norway's constitution. Norwegian scholars have identified 316 different constitutional amendments carried out in 67 different years after 1814. (Our analysis of this point starts with the November 1814 version). While these were rare in the early years of the Constitution, each decade since 1850 has seen at least three years in which a project of constitutional amendment has been completed (with the exception of the war years of the 1940s.) Figure 2 presents the data, along with a comparison of the United States Constitution.

Figure 2: Number of Provisions Amended Per Year



These amendments have effectively accomplished major changes, transforming the country from a constitutional monarchy to an effective parliamentary system. This has been accomplished gradually. Many of these amendments have been in the direction of greater inclusion. Some ten of them relate to the franchise. Originally only property holders and civil servants could vote (subject to restrictions, for example, for bankrupts or those with criminal convictions, spelled out in Article 52). Gradually, the right to vote was expanded: first to tax payers in 1884; to all male Norwegians over 25, unless recipient of social benefits, in 1898; to tax-paying women in 1907; to all Norwegians over 25 in 1913; and gradually lowering the voting age, finally to 18 in 1978. The limitations of Article 52 have been gradually relaxed.

It is especially worth noting that Norway was a leader in women's suffrage, achieving it in 1913, only seven years after Finland became the first independent state to have universal adult suffrage.

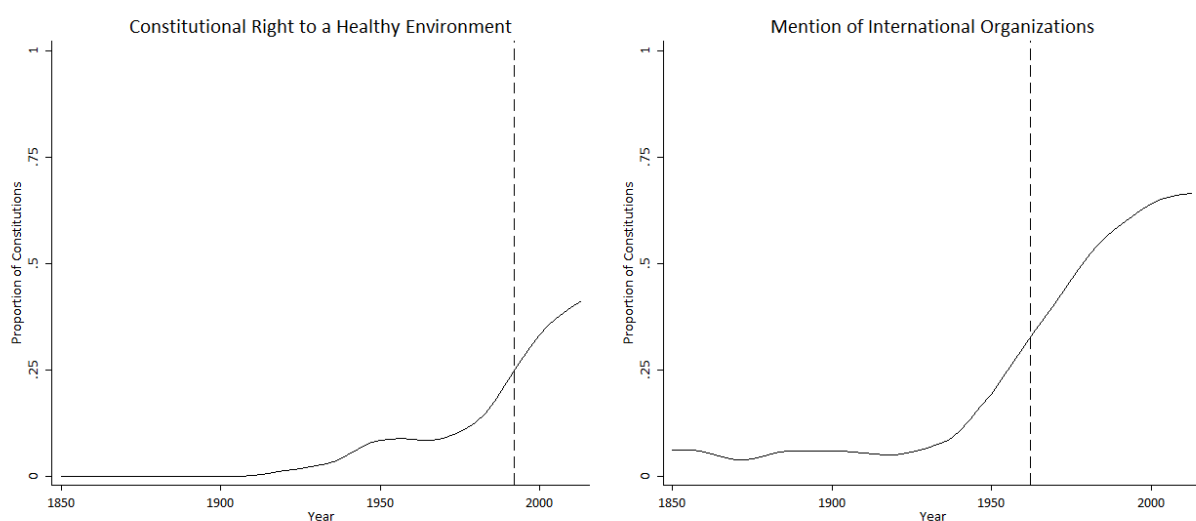
Another way in which flexibility has reinforced inclusion has been the gradual removal of the requirement that officials had to support the state religion, which remains an issue in many countries in the Muslim world. Norway has gradually achieved a separation of church and state, but in 1884, an American observer could still write that "the state has an established religion—the Lutheran—and is very intolerant" (Burgess 1884: 269). But the requirement of religious qualification was gradually removed: first for public servants in 1878; for judges in 1892; and in 1919 allowed some members of council of state to be non-adherents, though they could not deliberate on religious matters. 2012 amendments more firmly separated

church and state, and ended a requirement that half the members of the Council of State profess Lutheranism. Religious pluralism has also been recognized in the relaxation of Article 2, which was amended to allow entry into the Kingdom of Jews (1851) and Jesuits (1956).

The State has gradually come to terms with pluralism. Besides the population of indigenous Sami in the far North, immigration has begun to reshape the demographics so that about 13% of the population are immigrants or their descendants. In 1988, Article 110 was amended to provide that “It is the duty of the Government to facilitate the Sami people securing and developing their language, their culture and their society” (https://www.constituteproject.org/constitution/Norway_2004#352). And social democracy was reflected in the 1954 amendment that the state has a duty to create conditions for work. All these amendments have made the state more inclusive.

Amendments allow a constitution to be updated to reflect changing trends in society and international norms. Figure 3 illustrates two modern constitutional provisions: on the left, the right to a healthy environment; and on the right, the mention of international organizations. In each figure, the dashed line illustrates the year when Norway adopted provisions on those topics in its Constitution. For both, Norway was an early adopter, adopting a right to a healthy environment in 1992 and allowing parliament to delegate limited governmental power to international organizations in 1962.

Figure 3: Norway’s Adoption of Modern Provisions



3 Content

One broad question has to do with how we might characterize Norway's Constitution with respect to some of the basic dimensions along which scholars typically compare constitutions. Figure 4 does just this along four dimensions, each described below. In each panel of Figure 4, the Norwegian Constitution is compared to a select set of constitutions, drawn from those currently in-force in neighboring European countries as well as those most recently drafted from any region. The vertical line indicates the mean for the given dimension across *all* constitutions currently in force.

A. Executive Power

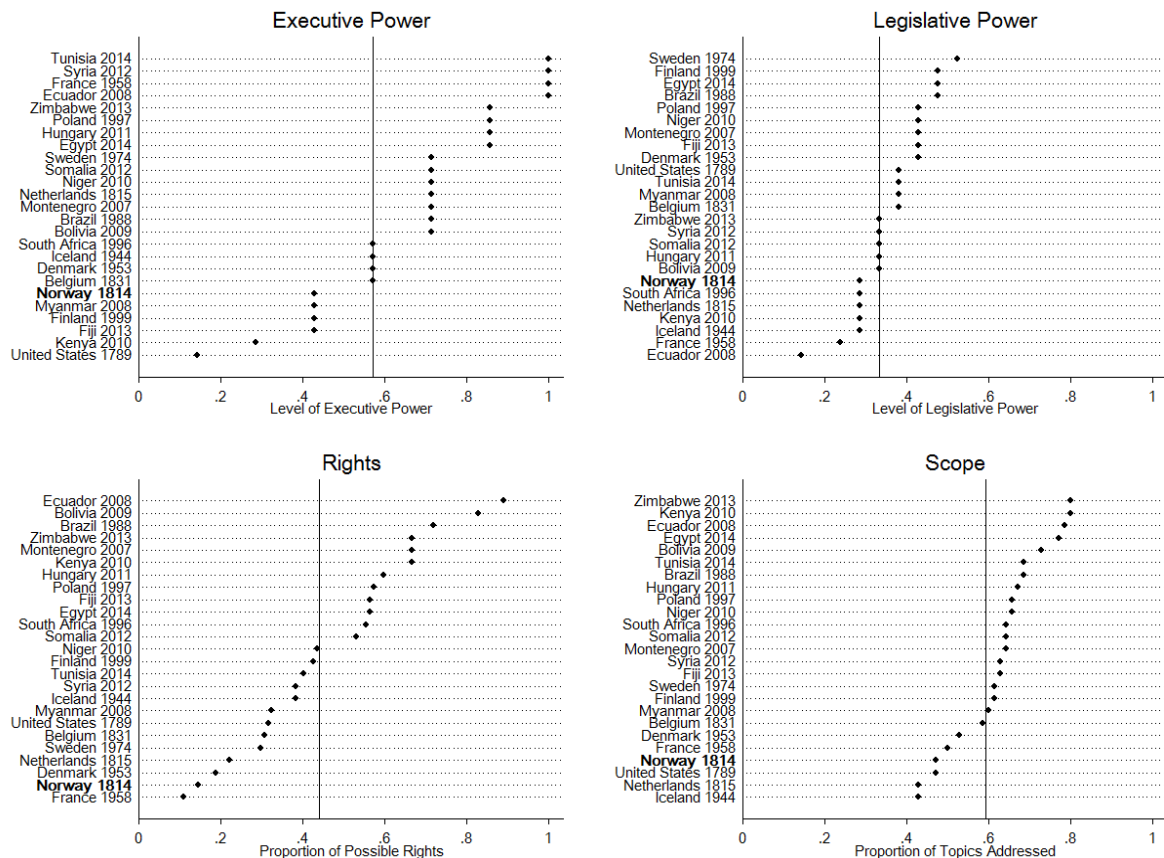
Executive power is an additive index drawn from Elkins et al. (2014). The index ranges from 0-7 and captures the presence or absence of seven important aspects of executive lawmaking: (1) the power to initiate legislation; (2) the power to issue decrees; (3) the power to initiate constitutional amendments; (4) the power to declare states of emergency; (5) veto power; (6) the power to challenge the constitutionality of legislation; and (7) the power to dissolve the legislature. The index score indicates the proportion of these seven powers given to any national executive (president, prime minister, or assigned to the government as a whole).

It is important to note that all of the attributes illustrated in figure 4 are *de jure* in nature. We rank the countries according to how each attribute is mentioned in the constitution, which may or may not conform to practice. For instance, in practice, executives may have significantly more power than what is allotted to them by the Constitution. This could be granted to them through norms and conventions or result from the fact that the President's party dominates the legislature. Take, the United States President, for example. The United States President is typically thought to be relatively strong, especially when his party controls both houses of Congress. However, as illustrated in figure 4, he is constitutionally one of the weakest executives in the world.

Executive power in Norway is relatively low compared to other countries around the world. Perhaps unsurprisingly, countries like Syria and Zimbabwe, which are ruled by dictators, rank highest in executive power. Similarly, both the French and Ecuadorian Constitutions were drafted under the influence of strong executives, so one might expect that their

Constitutions would have high levels of executive power. The constitutions more similar to Norway are traditional parliamentary systems – e.g. those of Belgium and Finland – and constitutions written in multi-ethnic states, which attempt to disperse power to reduce the stakes of politics and elections – e.g. Fiji and Kenya.

Figure 4: Four Elements of Norway's Constitution in Comparative Perspective



A. Legislative Power

Legislative power is an aggregate measure composed of thirty-two items which track the authority and autonomy of the legislature (Elkins et al. 2009). Scores closer to one indicate higher levels of legislative power. Like executive power, Norway ranks quite low on legislative power. This is a little surprising because the United States and Belgium score higher on legislative power than executive power. Meanwhile, France and Ecuador score much lower on legislative power than on executive power. Norway's institutional structure seems to look much more like Kenya's 2010 Constitution, which scores low on both measures. Perhaps this is a good sign for Kenya.

B. Rights

This is a measure of the volume of rights in the constitution, measured as the percentage of rights included in the constitution across 116 distinct rights that have been specified in constitutions since 1789. The number of rights included in national constitutions has increased steadily over the years. Early in the modern constitutional era, constitutions had, on average, only 10 rights, and this number is skewed upward by Latin American constitutions. Most European constitutions of the day had almost no rights. Since 1789, there has been a fivefold increase in the number of rights in constitutions so, today, the average constitution has upward of 50 distinct rights.

We have already noted that the Norwegian Constitution has more rights than the average constitution written in the early 19th century. However, the dramatic increase in the number of rights in constitutions over time means that Norway ranks low on our rights index. The only country ranked lower is France, which is not entirely fair because France directly incorporates the French Declaration of the Rights of Man in its Constitution. The countries that score highest on our rights scale are those that have written constitutions relatively recently: Ecuador and Bolivia.

C. Scope

Scope measures the proportion of 92 major topics from the CCP survey that are included in any given constitution (Elkins et al. 2009). This is an indicator of the comprehensiveness of the constitution. As in the discussion of rights, we observe that Norway's constitution was a product of its era, and so did not include many modern features that today's drafters might want. For example, recent constitutions tend to have a number of independent monitoring institutions, on elections, judicial appointments and corruption. Kenya's 2010 Constitution is a good example here. Since it lacks many of these modern features, Norway's constitution receives a low score on our measure of scope.

4 The Importance of Contingent Decisions to Channel Conflict through Institutions

Still, even these positive features of constitutional design would not have been enough to maintain the Constitution without some country-specific factors. There is nothing

deterministic about the argument we are making; rather, it is one of tendency. We must recognize the symbolic value associated with a constitution that was coextensive with the nation's birth, and declaration of independence. But we also need to recognize the critical role of wise decision-making at several key junctures. These are points in which the Constitution has survived several crises, that might have killed it had other decisions been made. Instead, they preserved and defended the Constitution, channeling internal political conflict through the Constitution rather than circumventing it.

The first challenge occurred in its very earliest period, when the Storting passed a bill to abolish the nobility. This was accomplished as a simple project of law. As a result, the Crown could only suspend the action using the veto power, not stop a determined parliament with the power to override a king's veto by passing the legislation three times. Karl Johan twice vetoed it, but in 1821, after the third consecutive Storting voted to approve it, the project succeeded when the King yielded to a compromise in which the nobles were indemnified. The King's subsequent proposal to give himself an absolute veto over law was rejected. So there were constraints on the King from the very beginning of the system.

The Constitution also provided a bulwark against Swedish domination. A major fight erupted in 1859 over whether a Swede could be appointed by the King as Governor General. The Swedish parliament said that Norway's parliament acted unconstitutionally, and pushed for a single union parliament to replace the separate bodies in the two countries. Norway successfully resisted this demand—the Constitution stood for the original bargain between the King and the Norwegians, and could not be set aside. Indeed, one might say it served as an instrument of resistance. Though a different context, this is consistent with what we now know about “sub-states” that become independent (Roeder 2007). The best predictor of successful secession movements is the presence of a separate administrative structure. With its own sovereign constitution and the associated instruments of governance, Norway was in a good position to articulate demands to Sweden and resist attempts to revise the arrangement.

In the late 1860s, the long fight over whether the King's ministers could be responsible to parliament was joined. In 1874, the King agreed to accept this demand, but only if the King was given the power to dissolve parliament. This demand was rejected, and the Storting passed the bill as a constitutional amendment in 1874, only to be met by a royal veto. The same occurred in the next parliament in 1877, leading to a showdown in 1880. What would be the effect of a third passage? Were constitutional amendments subject to absolute veto,

or only suspensive vetoes like ordinary law? Again, the constitution was silent on the question, but King was advised by cabinet (as well as less formally by the University's law faculty) that there was an absolute veto. He thus vetoed the amendment.

This created a major showdown. Parliamentary leader Sverdrup sought to use the Rigsret, the Court of impeachment, to impeach the ministers under articles 5 and 30, for failing to advise against unconstitutional monarchical acts. The Rigsret is composed of members of the Lagthing and the Supreme Court. The Lagthing, after the next election held in 1883, was against the King. The Supreme Court voted with King, but by showing up to participate, they reaffirmed the constitutional institutions. In the end, impeachment occurred, not only affirming a parliamentary system but setting up the Storting, through the Rigsret, as an authoritative interpreter of the constitution.

The interesting thing about this story is how central the Constitution was in its own modification. The conflicting parties each sought advantage in the text. Arguably, neither had the better textual argument. There was thus the need for some adjustment to resolve the issue. In the end, the decision of King Oskar to yield played a role in the establishment of parliamentarism. It turned out to be wise for the monarchy. Of 32 constitutional monarchies around the world, only 14 survive, and these are precisely those in which the King yielded to parliament (Przeworski 2012).

The next major challenge, in which the Monarch again played a role, came with the 1905 breakup with Sweden. With the end of the joint monarchy, the Norwegians needed a new king and again turned to Denmark, whose Prince Carl was elected the Haakon VII. Before agreeing to be elected, Haakon demanded a referendum to confirm that the Norwegian people still wanted a monarch. This was again a crucial juncture in which the basic character of the state was confirmed and reinforced; one might imagine a different set of decisions leading to a shift toward republicanism.

The choice of Haakon was wiser than anyone might have guessed. Perhaps the gravest challenge to the Constitution in its entire history came some 35 years later with the German invasion. The Germans demanded that Haakon recognize their puppet Quisling government. He steadfastly refused, telling his lawfully authorized cabinet, that he would resign if they advised him to approve Quisling. This act of resistance was seen by everyone as a heroic defense of the constitutional order.

As a thought experiment, imagine if Haakon had gone the other way and blessed the Quisling regime, or resigned. Either way, with a fascist government or a new puppet King, the continuity with 1814 might have been irreparably broken. Instead, there may have been pressure after the war for constitutional replacement, as occurred in the Axis nations. The Constitution had come full circle: a constitution designed to constrain the monarchy led a King to insist on its constraints, and so was saved by him.

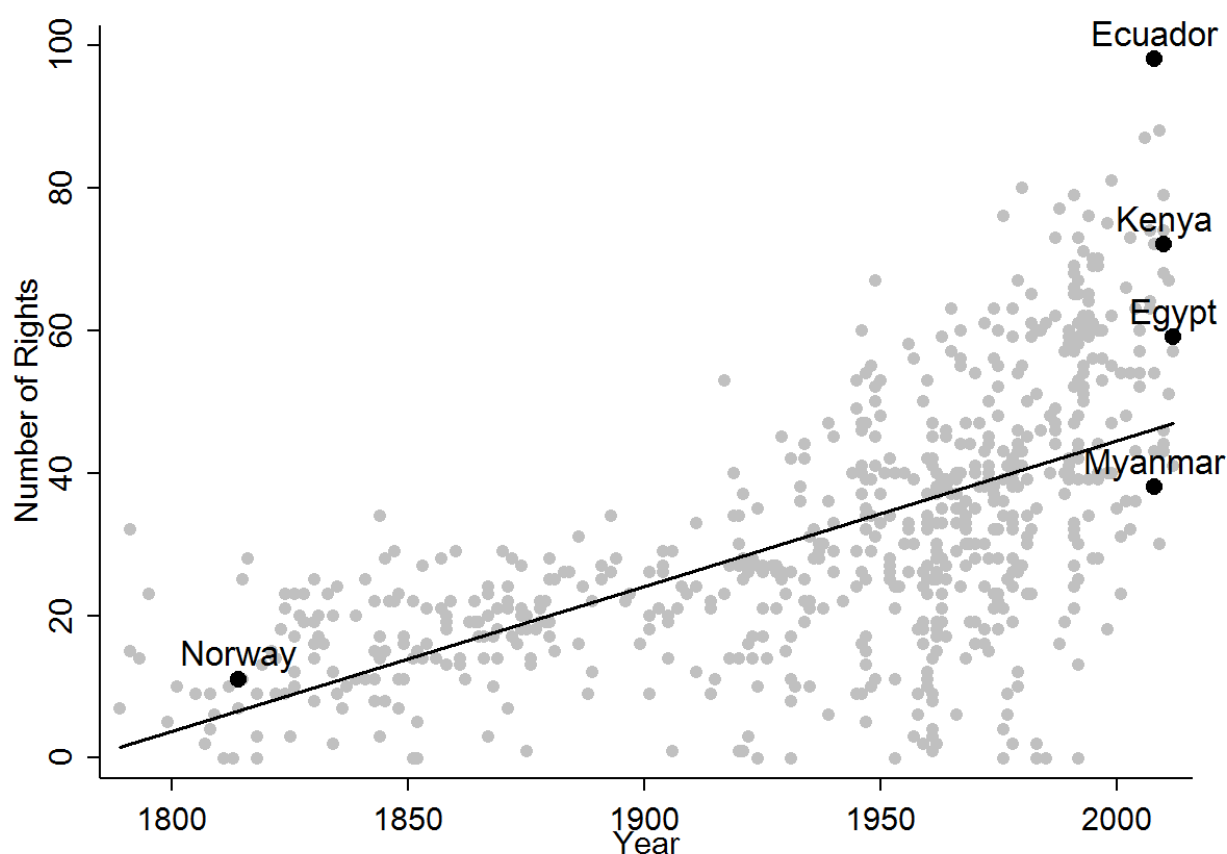
5 Risks if Endurance

Are there any costs to an enduring constitution? The Jeffersonian position was that there was a risk that the institutions might grow away from the society, and so a large gap between text and actual practice would result. This has indeed occurred in some areas.

To take one example, consider constitutional rights. As mentioned above, Norway included only a small number of rights in its 1814 draft. (The country is in the process of greatly expanding its rights provisions.) Although the number was high relative to others in its cohort, the notion of what counts as a right has evolved significantly over time and there are now many more rights on the world stage. Figure 5 illustrates the number of rights found in constitutions promulgated at different points in time, and clearly indicates a trend toward more rights.

Yet is this really a cost? Norway scores at the top of every index of human rights protection. It has been able to adopt *practices* that protect rights, perhaps involving subconstitutional law but also informal institutions and international law: many of the more modern rights were included in the European Convention of Human Rights, to which Norway is a signatory. The result is that the country has a very large gap between the promises articulated in the Constitution and its actual performance; but the gap is in the direction of over-performance. This is characteristic of other countries with old and stable constitutions. While there may be aesthetic reasons to want to align text and practice, there is no inherent need for perfect alignment. Perhaps there is expressive value in having a somewhat standard set of rights in the Constitution, and it might make a difference in practice for certain things at the margin. But the Constitution will not die or fall into disuse simply by virtue of a gap.

Figure 5: Rights in National Constitutions



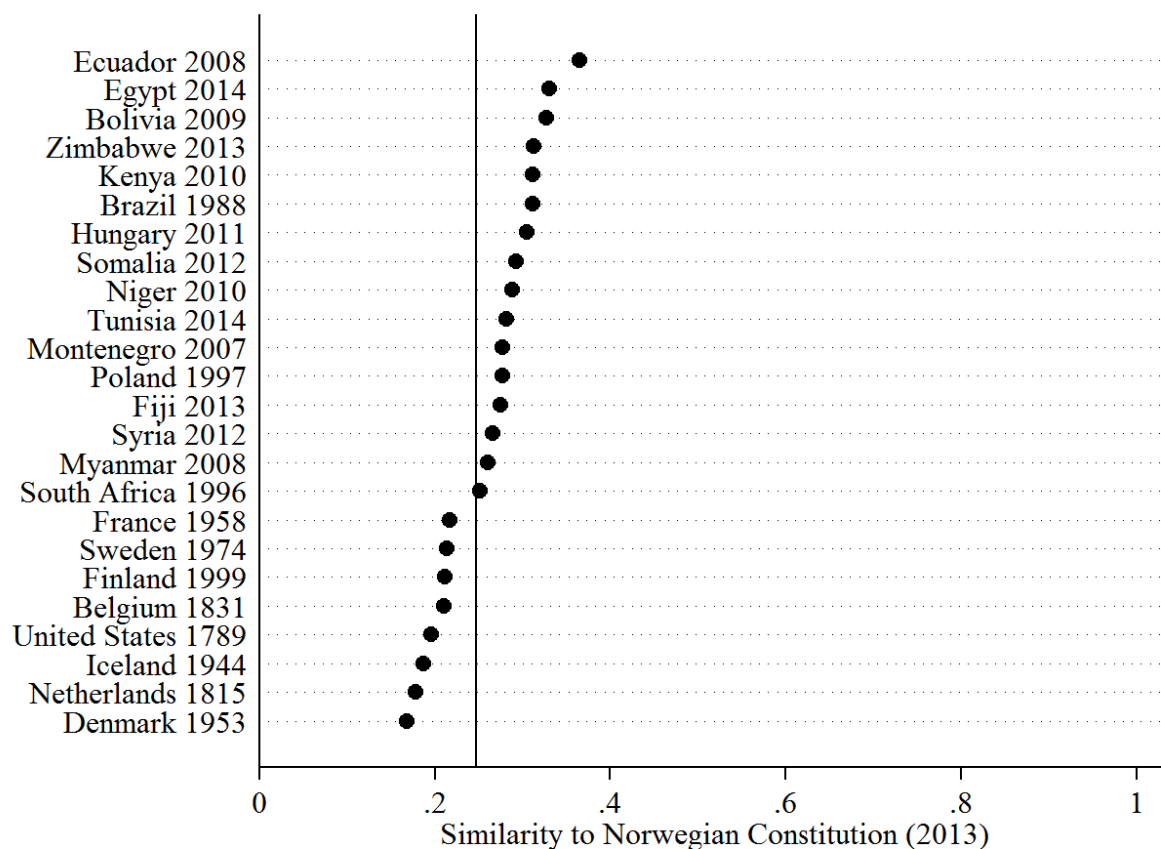
More importantly, when we look at other aspects of the Constitution, we see that Norway is not much of an outlier. Using a more recent text of the Constitution (as amended through 2004), we can calculate a metric of similarity between Norway's Constitution and others currently in force. (The similarity metric is basically driven by the number of questions in our survey in which the two documents in question share answers.⁴) Figure 6 presents this information. In the figure, each dot represents a constitution's similarity to the Norwegian Constitution and the solid reference line indicates the average level of dyadic similarity for any two constitutions, which is about .23. The similarity of Norway's document to most of the world's constitutions in force is much higher than the worldwide average. One also observes that the levels of similarity rise with time. Constitutions drafted in the 1990s and 2000s are more similar to Norway's than are the American, Dutch and Belgian Constitutions drafted in the same cohort.

This confirms the argument about flexibility. The Norwegian constitutional amendment process has been used to update the formal text in ways that keep it modern and

⁴ For more on the technical calculations, see Elkins et al. 2009, pp. 24-26.

contemporary. There are, to be sure, some exceptions. The United States Constitution has endured even without frequent amendments. But this is an exceptional case and has worked only because the courts have taken on a major role in updating the constitutional rules. Most countries do not have courts that are able and willing to play such a major role. Instead, the Norwegian model of a relatively flexible amendment rule is more appropriate.

Figure 6: Similarity to Norway's Constitution



6 Conclusion

Norway's Constitution has been exceptionally enduring. In some sense it provides a better model for how to make an enduring constitution than does the only older constitution, that of the United States. To begin with, the U.S. Constitution scores poorly on the dimensions that we believe make a constitution endure: inclusion, specificity and flexibility. It was adopted by a small group of men who ignored their mandate; it is not particularly detailed; and it is exceedingly hard to change. In our 2009 book, we analogized it to Jeanne Calment, the oldest recorded human being, who died in 1997 at the age of 122. She is shown below,

enjoying a cigarette on her 100th birthday; she did not give up the habit until 117. She also enjoyed port wine and chocolate. The point is that just because the U.S. Constitution endured does not mean that others should follow its model.



Photo credit: http://zigaretz.com/zigaretz/jeanne-calment-cigarettes-1609?img_id=4830

Norway's Constitution, in contrast, was adopted with the voice of the people, and served as a symbol of their independence thereafter. It has some level of detail about certain things but not others. However, most importantly, it has provided a vehicle for institutional change. The relatively easy amendment procedure created the opportunity to update its provisions, an opportunity frequently used since 1850. This has allowed the Constitution to avoid the potential risks of endurance, namely falling out of touch with the society around it. Perhaps an appropriate analogy is Tao Porchon-Lynch, the world's oldest yoga teacher at the age of 95, who is pictured below.



Photo: credit: <http://www.99healthplus.com/2012/guinness-world-records-a-93-year-old-woman-named-the-worlds-oldest-yoga-teacher/>

While Norway is an exceptional country, with an exceptional Constitution, it may offer lessons for countries that are drafting new constitutions today. Most importantly, constitutions need to be able to be updated as circumstances change over time. This means that Norway's very old document is nevertheless contemporary in many ways.

7 Sources

- Braekstad, H.L. *The Constitution of the Kingdom of Norway: An Historical and Political Survey*. London: David Nutt. 1905.
- Burgess, John W. The Recent Constitutional Crisis in Norway. *Political Science Quarterly* 1(2):259-94 (1886).
- Elkins, Zachary, Tom Ginsburg and James Melton. *The Endurance of National Constitutions*. New York: Cambridge University Press. 2009.
- Elkins, Zachary, Tom Ginsburg and James Melton. "Constitutional Constraints on Executive Lawmaking." Unpublished Manuscript. 2014
- Elkins, Zachary, Tom Ginsburg and Beth Simmons, Getting To Rights. *Harvard International Law Journal*. 2013.
- Ginsburg, Tom and James Melton, Does the Constitutional Amendment Rule Matter at All? Amendment Cultures and the Challenges of Measuring Amendment Difficulty, manuscript, 2014.
- Mestad, Ola and Dag Michalsen, Historical Commentary on the Constitution [Historisk kommentarutgave til Grunnloven.] Oslo, 2014 forthcoming Universitetsforlaget [Norwegian]
- Przeworski, Adam, Tamar Asadurian, and Anjali Thomas Bohlken. The Origins of Parliamentary Responsibility. In Tom Ginsburg, ed. *Comparative Constitutional Design*. New York: Cambridge University Press, 2012.
- Rasch, Bjorn Erik, Rigidity in Constitutional Amendment Procedures, in Eivind Smith, ed., *The Constitution as an Instrument of Change*, SNS Verlag (2003).
- Roeder, Phillip. *Where Nation-States Come From*. Princeton: Princeton University Press. 2007.
- Smith, Eivind, ed., *Constitutional Justice under Old Constitutions*. The Hague: Kluwer Law International. 1995.
- Smith, Eivind, Old and Protected? On the "Supra-Constitutional" Clause in the Constitution of Norway. *Israel Law Review* 44(3): 369-88. 2011.

