

The Impact of Public Participation in Constitution Making

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- "Even a fool who keeps silent is considered wise; when he closes his lips, he is deemed intelligent."
 - Proverbs 17:28

- "We used to think of a constitution as a contract, negotiated by appropriate representatives, concluded, signed, and observed. The constitution of new constitutionalism is, in contrast, a conversation, conducted by all concerned, open to new entrants and issues, seeking a workable formula that will be sustainable rather than assuredly stable."
- "At its best, participatory constitutionalism works and counteracts the arguments in support of elite negotiation as the sole effective mode. At its worst... it provides only another guise for the exercise of raw power."
 - Vivien Hart, 2003

- Central question: what are the effects of a participatory constitutional drafting process on the text, on the polity, and on the participants?
 - At this (very early) point in the dissertation project, I am focusing on the effects of participation on the constitutional text.
- Multi-method approach
 - Cross-national dataset inclusive of all constitution-making processes since 1945.
 - The outcome variables here will be drawn from the CCP dataset.
 - This dataset includes 667 variables that record the content of the constitutional text.
 - Case studies of two cases: South Africa (1993-1997) and Brazil (1985-1988).
 - The outcome variables here are a binary coding of whether or not individual popular proposals can be matched to a change in the text of the constitution.

- We know that citizens participate in public consultations at a very low rate (at least in comparison with voting).
- We don't know if elite constitutional drafters pay any attention to comments and proposals from the general public.
- We don't know why citizens contribute to the process, nor why elites might pay attention when they do.

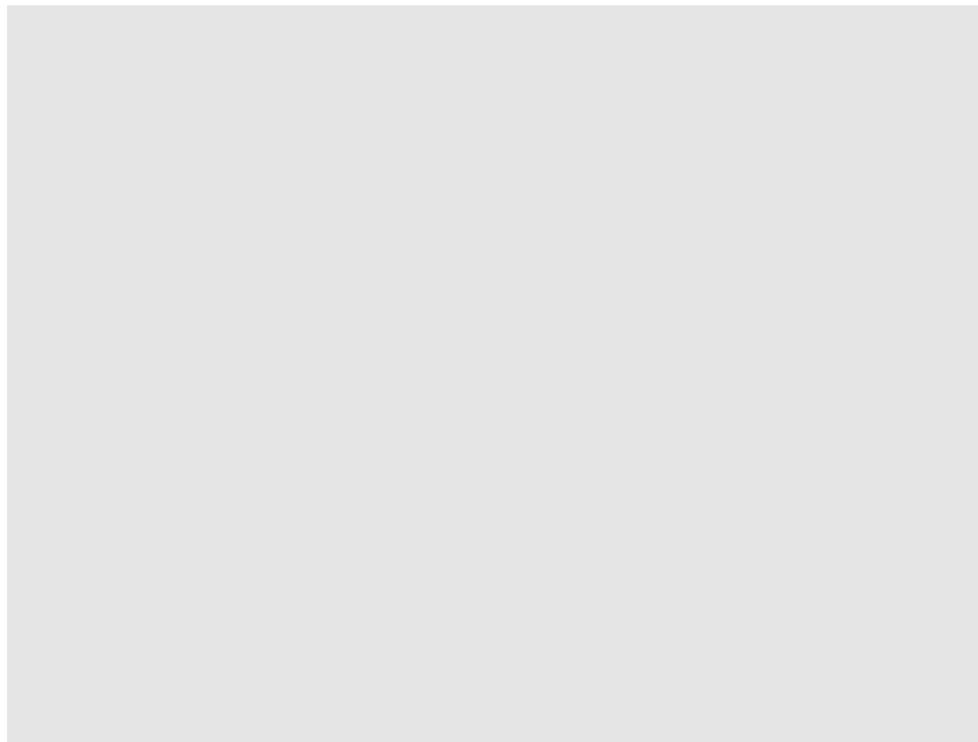
- My theory is that public participation has an effect on the content of the constitution, but only in an additive way, and only in the domain of rights.
- An alternative theory might be that public participation has an effect in "weeding out" bad ideas during the drafting process.
 - "We were running on the ideology of programming, sort of crowd-sourcing... you do things in a period and then you test it, and then you do it again, you run it again. Instead of writing a whole new program, you test it as often as you can, trying to find the bugs before they become really sort of hidden inside the whole mechanism."
(Member of the Stjórnlagaráð, Iceland, 2015)

- We should expect a longer text, or at least a text that continues to grow in response to new participation.
- We should expect that the constitution will contain more rights, definitely in comparison with the text it replaces (always true) but also relative to the global mean.
- We might also expect the constitution to include more "novel" rights.
- We should expect that there is no systematic relationship between participation and formal institutions.

- We should expect that the constitution will be amended less frequently (controlling for amendment procedures).
- We should expect higher vote shares for ratification (especially in the case of a referendum).
- We should expect more ambiguous language.
- We should not expect a systematic relationship between participation and rights or institutions.



Evidence from Iceland



	Probit Model	
(Intercept)	-1.29***	(0.38)
daycount	-0.02***	(0.00)
words	0.00**	(0.00)
fbcomms	-0.01	(0.02)
stjmems	0.20*	(0.08)
opresp	-0.25	(0.29)
totsubmits	0.04*	(0.02)
ngo	-0.13	(0.38)
institutions2	-0.91*	(0.35)
rights	0.63*	(0.26)
AIC	179.56	
BIC	219.85	
Log Likelihood	-79.78	
Deviance	159.56	
Num. obs.	415	

*** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$

- My dissertation tackles two of the paradigmatic cases of a participatory process for constitutional drafting.
- We happen to have some really interesting data for both cases.
- Brazil
 - 72,719 comments were submitted to the constituent assembly (Monclaire et al. 1991, 11)
- South Africa
 - The comparable number for South Africa is 15,292 (Gloppen 1997, 257–261).

- My biggest research problem will be matching submissions from the public to constitutional content.
- Content analysis techniques are really good at determining what each document is about, but matching that to the constitution in a causal relationship is tough.

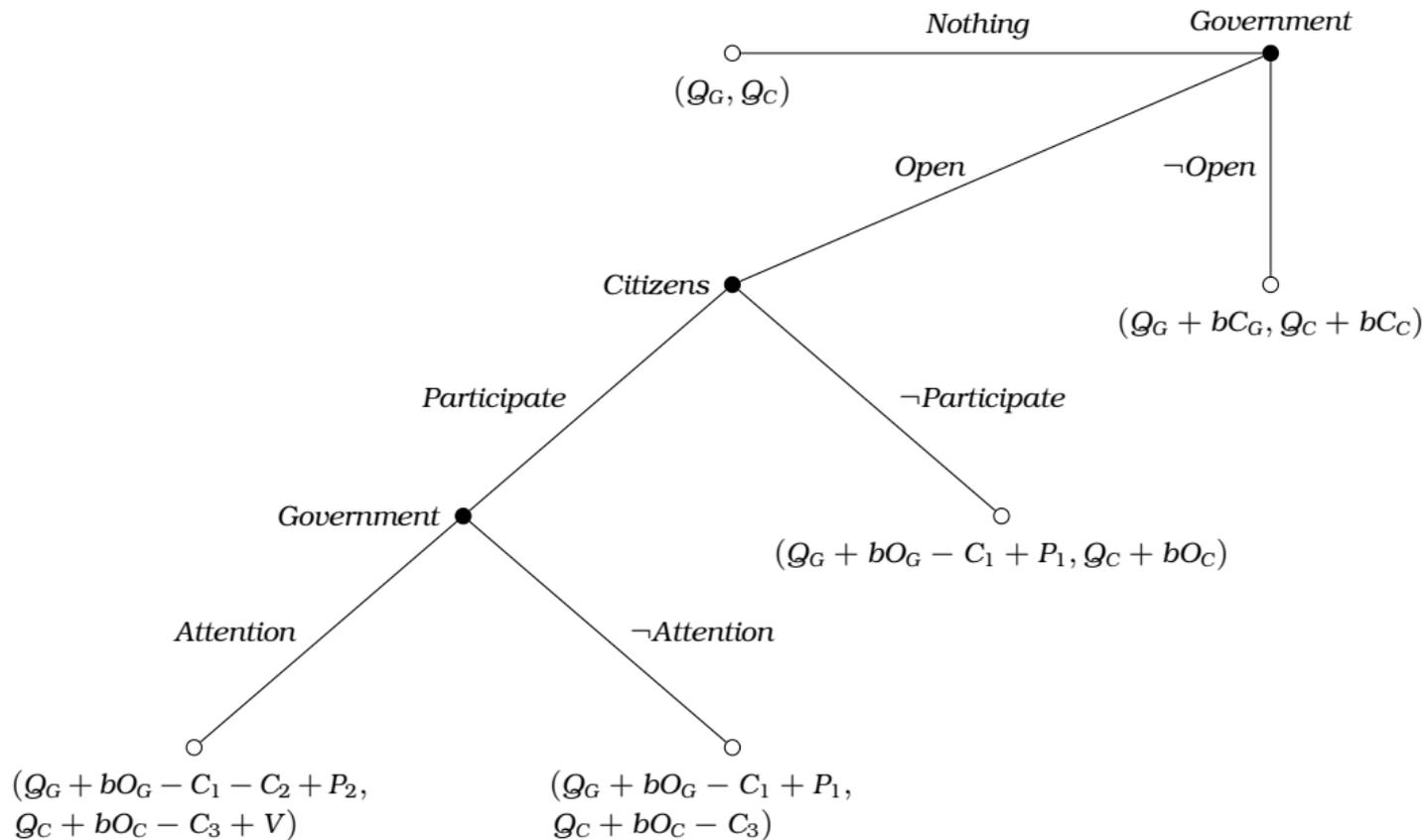
Table: Four Tests for Causation (Bennett 2010)

		Sufficient to establish causation	
		No	Yes
Necessary to establish causation	No	Straw in the Wind Passing affirms relevance of hypothesis by does not confirm it.	Smoking Gun Passing confirms hypothesis.
		Failing suggests hypothesis may not be relevant, but does not eliminate it.	Failing does not eliminate it.
	Yes	Hoop Passing affirms relevance of hypothesis by does not confirm it.	Doubly Decisive Passing confirms hypothesis and eliminates others.
		Failing eliminates it.	Failing eliminates it.

- But, there's this other thing that I hope EITM can really help with.

- Similar to the question of rationality in voting, the participation of individual citizens in constitution-making processes presents a puzzle.
- The actions of elite drafters also present an interesting puzzle.
 - Drafters (particularly as members of political parties) are likely to enter the drafting process with clear goals for constitutional content.
 - It is not immediately clear why they should devote time and energy to parsing through thousands of comments from the public for ideas about what the constitutions should include.

- In essence we have two theoretical concepts:
 - Participation
 - Attention
- The way these concepts are related can be depicted in an extensive form game describing the choices that each actor makes in the constitution-making process.



Q_G : The benefit that the government receive under the status quo.

Q_C : The benefit that citizens receive under the status quo.

bC_G : Benefit that the federal government gains from a new constitution that is approved in a closed process.

bC_C : Benefit that the voters gain from a new constitution that is approved in a closed process.

bO_G : Benefit that the government gains from a new constitution that is approved in an open process.

bO_C : Benefit that the voters gain from a new constitution that is approved in an open process.

P_1 : Populist benefit that governments can gain for agreeing to an open process.

P_2 : Populist benefit that governments can gain from giving attention to public participation.

V : Benefit to citizens from having their voice heard.

C_1 : Cost to government of opening the process to popular participation.

C_2 : Cost to government from giving attention to comments.

C_3 : Cost to citizen for participation.

- Participation

- The rate of participation is not particularly enlightening.
 - For example the participation rate in Brazil in 1987 was 0.0886% of the voting age population. In South Africa in 1996 the rate of participation was 0.0672%.
 - I will nonetheless measure this for all cases.
- Remarkably, in the case of Brazil we actually have demographic data on the majority of the participants.
 - Thought this isn't helpful statistically, during my field work I also hope to track down and interview some of these participants.
- We want to be able to explain the decision to participate or not participate at the level of individual citizens.

- Attention

- Here "attention" signifies that elite drafters implemented changes to the constitutional text in response to a comment from the public.
- As noted above, one of the most significant research challenges in this project is determining which submissions from the public received attention.
- I hope that the minutes of committee meetings and plenary sessions will also give me data at the level of the individual member of the constituent assembly.
- We want to be able to explain the decision to give attention to public comments in spite of the costs that this creates.

- I assume that both citizens and elites are interested in maximizing their utility.
- For citizens, this might include things like material gains from constitutional provisions, as well as some utility gained from the mere experience of participating in the constitution-making process.
- For elites, I assume an interest in both the content of the constitution, and in their future prospects for electoral success
 - Electoral success could be dependent on both the institutional choices made in the constitution, and on public views of their performance in representing the interests of voters.

- Discrete Choice
 - Citizens decide whether or not to participate.
 - Elites decide whether or not to pay attention.
 - Both in general terms, and for each individual comment.

- Ultimately, we want to test the theoretical equilibria with empirical data.

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