Small-c Constitutional Rights

Adam Chilton
Mila Versteeg

Follow this and additional works at: https://chicagounbound.uchicago.edu/law_and_economics

Part of the Law Commons
Small-c Constitutional Rights*

Adam Chilton & Mila Versteeg

— July 30, 2020 —

Abstract. Although constitutions lay out the fundamental principles by which countries are governed, identifying exactly which legal materials are considered constitutional is not a straightforward task. This is for two reasons. First, there is no systematic evidence about the relative importance of countries’ formal, written constitutions—the “Large-C” constitution—versus their broader body of constitutional law derived from sources like judicial decisions, treaties, and conventions—the “small-c” constitution. Second, it is often difficult to establish which legal materials are definitively part of a country’s small-c constitution. We investigated the nature and relative importance of small-c constitutional rights protections by fielding a global expert survey to 220 experts from 123 countries. The results illustrate that although the Large-C constitution is the primary source of constitutional rights in a majority of countries, the small-c constitution also plays a significant role, especially in older constitutional systems. Perhaps surprisingly, whether a country has a civil law or a common law tradition is only weakly associated with the shape and form of the small-c constitution in most countries.

* Adam Chilton is a Professor of Law and the Walter Mander Research Scholar at the University of Chicago Law School (adamchilton@uchicago.edu). Mila Versteeg is the Martha Lubin Karsh and Bruce A. Karsh Bicentennial Professor of Law at the University of Virginia Law School (versteeg@virginia.edu). We thank Ros Dixon and Ran Hirschl for providing feedback on our survey. We thank Richard Albert for facilitating posting our survey on the I-Connect blog. We thank Ian Baize, Patrick Berning-O’Neill, Victor Cedeno, Mauricio Guim, Jacob Hamburger, Tinashe Hofisi, Brigid Larkin, Joseph Ludmir, Billi Jo Morningstar, Monica Norzagaray Pedraza, Camilo Sanchez, Nathan Tschehak, and AJ Wu for helping us identify experts. We thank the Carnegie Foundation for financial support. And most importantly, this paper would not exist without the country-expert that volunteered their time to take our survey. All errors, of course, are our own.
1. Introduction

What is constitutional law? At first glance, the answer might seem obvious: it is the body of law that relates to the constitution. But upon closer inspection, there can be remarkable disagreement over exactly what makes certain legal materials constitutional. For instance, in the United States, scholars are notoriously divided over whether the U.S. Supreme Court can update the meaning of the written Constitution. They also are divided over whether some statutes, like the Civil Rights Act of 1964, have acquired constitutional status¹ and whether conventions are a source of constitutional law.² Such disagreements over sources of constitutional law spill over into disagreement over constitutional substance. As Jack Goldsmith and Daryl Levinson describe the U.S.: “[l]awyers, judges, political officials, and citizens disagree about whether women have a right to an abortion; . . . whether affirmative action is permitted; . . . whether Congress’s commerce power is effectively unlimited . . . ; whether independent agencies and other incursions on the ‘unitary’ executive are permitted; whether the modern administrative state is a wholesale constitutional violation; and innumerable other fundamental questions.”³ Some U.S. scholars have even gone as far as to suggest that constitutional law is not law, because there is no rule-of-recognition that allows experts to identify which rules are constitutional ones.⁴

Of course, the U.S. may be unusual; after all, it does have a particularly old constitution that is remarkably short and ambiguous by global standards.⁵ But similar questions arise around the world. For example, are the constitutional interpretations by China’s National People’s Congress (NPC) Standing Committee, a legislative body, part of Chinese constitutional law?⁶ Similarly, in Austria—what is the constitutional status of formally entrenched provisions in ordinary law?⁷ In the United Kingdom, how should statutes—those deemed “constitutionally significant” by courts and which can only be expressly repealed by parliament—be treated? Likewise, how do we treat constitutional conventions in the U.K. that are politically binding but not enforceable in court?⁸ And how should we evaluate treaties in the Netherlands, which are not directly incorporated into the constitution but nonetheless form the basis for judicial review?⁹ As

¹ See William N. Eskridge, Jr. & John Ferejohn, Super-Statutes, 50 DUKE L. J. 1215, 1237-42 (2001) (explaining how the Civil Rights Act of 1964 is a super-statute due to its great principle, its adoption after an intense political struggle along with its everlasting effect which has been well-entrenched, and its integration into federal laws).
⁴ For a discussion, see id. at 1815-16.
these questions illustrate, determining the content of a country’s constitution is more complicated than merely consulting a single document.

Given this complexity, the field of comparative constitutional law has only a limited understanding of which legal materials comprise constitutional law in different countries. This lack of agreement might bias different types of comparative analyses. To illustrate, a growing body of quantitative (or Large-N) research uses the text of constitutions to make claims about a constitution’s social and political foundations,\(^{10}\) historical trajectory,\(^{11}\) and the effectiveness of particular constitutional provisions.\(^{12}\) The data for these studies are commonly drawn from the Comparative Constitutions Project,\(^{13}\) but may include data from other datasets, such as the Versteeg dataset on constitutional rights\(^{14}\) and a number of smaller-scale efforts.\(^{15}\) While these empirical studies have become more common, they risk providing an incomplete picture—especially for those jurisdictions where the importance of the written constitution is relatively small.\(^{16}\) As another example, many studies focus on judicial decisions as their main source of comparison.\(^{17}\) While such an approach might be appropriate for countries where most constitutional law is developed through judicial interpretations,\(^{18}\) it runs the risk of mischaracterizing jurisdictions where the constitution is given meaning through organic laws, treaties, conventions, or legislative interpretations.

Evaluating the severity of these potential biases, however, requires better insights into what comprises constitutional law in different systems. Assessing the extent of the shortcomings of Large-N studies requires better knowledge on the relative importance of countries’ formal, written constitutions—or, the “Large-C” constitution—versus the broader body of constitutional rules

---


14 See Law & Versteeg, supra note 11; Goderis & Versteeg, supra note 10.


18 David A. Strauss, *Common Law Constitutional Interpretation*, 63 U. CHI. L. REV. 877, 877 (1996) ("[W]hen people interpret the Constitution, they rely not just on the text but also on the elaborate body of law that has developed, mostly through judicial decisions, over the years.").
derived from sources such as judicial decisions, treaties, conventions, and super-statutes—or, the “small-c” constitution.\(^\text{19}\) Similarly, evaluating the appropriateness of studying judicial decisions (or other small-c sources), requires better knowledge regarding what legal sources make up the small-c constitution in any given country.

In this Article, we provide novel insights into these questions by presenting the result from a global expert survey we administered from July 2017 to July 2020. We received responses from 220 constitutional law experts in 123 different countries. Among other things, the survey asked experts to characterize the relative importance of the Large-C and small-c constitution and to identify what legal materials comprise the small-c constitution in the area of constitutional rights. In addition to asking a series of general questions on constitutional rights protection, it also asked about the protection of twelve specific rights.

Our survey reveals a number of new findings about the relationship between Large-C and small-c constitutional rights. First, we find that for the majority of countries in our sample, the experts believe that the written constitution is the main source of constitutional rights. Notably, in 62% of the countries, experts believe that the Large-C constitution is the “exclusive” or “primary” source for constitutional rights. Experts for another 35% of the countries believe that constitutional rights were protected through a “mixed” regime comprised of both the Large-C constitution and small-c sources. In only 3% of the countries, experts believe that rights were “exclusively” or “primarily” protected in the small-c constitution. We also find that the relative importance of small-c constitutional sources increases with constitutional age. That is, experts assigned a larger role to the small-c constitution in countries with older Large-C constitutions.

Second, we find that judicial interpretations are the most common legal basis for small-c constitutional rights. Experts for a little less than half (48%) of the countries identify judicial decisions as a legal basis of constitutional rights. Yet, our survey also revealed that there are other common legal bases of small-c constitutional rights. Experts reported that: treaties are a legal basis of constitutional rights in 34% of the countries; constitutional conventions are a legal basis of constitutional rights in 26% of the countries; laws with quasi-constitutional status are a legal basis of constitutional rights in 25% of the countries; and common law precedents are a legal basis of constitutional rights in 8% of the countries. Perhaps surprisingly, whether a country is has a common law or civil law tradition has only limited impact on the relative importance of these small-c sources. Instead, judicial interpretations of constitutional texts are just as prevalent a legal basis for small-c constitutional rights in common law systems as they are in civil law systems. The same is true for constitutional conventions and laws with quasi-constitutional status. The only exceptions are treaties and common law precedents; civil law systems are more likely to recognize treaties as a basis of constitutional rights, while common law systems are more likely to recognize common law precedents as a basis for constitutional rights. Overall, however, the role of the common law-civil law divide is surprisingly small. Instead, we again find that the main predictor

\(^{19}\) See David S. Law, Constitutions, in THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH 376, 377 (Peter Cane & Herbert M. Kritzer eds., 2010) (“A Large-C constitution is a legal document, or set of legal documents, that (1) proclaims its own status as supreme or fundamental law, (2) purports to dictate the structure, contours, and powers of the state, and (3) may also be formally entrenched, in the sense of being harder to amend or repeal than other laws. A small-c constitution, by contrast, consists of the body of rules, practices, and understandings, written or unwritten, that actually determines who holds what kind of power, under what conditions, and subject to what limits.”); see also ZACHARY ELKINS ET AL., THE ENDURANCE OF NATIONAL CONSTITUTIONS 39 (2009) (“A more subtle, but still parallel, labeling approach is to use the “big-C” and “small-c” versions of the word, in which the proper noun Constitution is reserved for the text and the lower-case spelling refers to the broader constitutional order.”) (citation omitted).
for the prevalence of these small-c sources is the age of the constitution: the older the constitutional order, judicial interpretations, conventions, super-statutes, and common law precedents (though not treaties) are more likely to be a source of rights.

Third, for the countries where multiple experts took the survey, there is substantial agreement amongst those experts, but the agreement is, of course, not complete. For example, for most of the countries, most of the experts agreed that the Large-C constitution itself has a substantial role to play, but there is expert disagreement over whether, and to what extent, the Large-C constitution is supplemented by small-c constitutional sources. But despite there being some disagreement among the experts, it appears that constitutional law is not so indeterminate that experts cannot agree at all. Having said that, the country where expert disagreement is largest is the United States, where experts are unable to agree over whether the written constitution has any role to play. This finding further solidifies the status of the U.S. as a constitutional outlier.20

Before continuing, it is important to note that we designed our survey with two objectives in mind. Our primary objective was to provide insights into the overall nature and importance of small-c constitutions, based on expert characterizations of the nature of constitutional rights protection in general. It is our hope that the findings related to this objective can help better guide future comparative analyses of all kinds. Our secondary objective was to evaluate the methodological challenges involved in coding small-c constitutions. While existing Large-N studies have exclusively analyzed Large-C constitutions, the extension of these methods to small-c constitutions is an obvious next step for this growing field. Our survey can be viewed as a first attempt to code small-c constitutions, by requesting that experts characterize the constitutional order in general, and by inquiring whether and how twelve specific rights were protected in the small-c constitution. The study thus produces data on whether twelve specific rights are protected in the small-c constitution. However, our study has limitations: it only covers a handful of rights, is not comprehensive in its country coverage, and does not have multiple experts for every country. Yet, our approach could potentially be extended to additional areas of constitutional law, countries, and experts. It can therefore be viewed as a “pilot” for coding small-c constitutions that also allows us to identify and evaluate methodological challenges.

The remainder of this Article proceeds as follows. Part 2 conceptualizes the problems associated with identifying constitutional law across national jurisdictions. It suggests that there are at least three different approaches for doing so, each of which could yield different answers on the scope of countries’ constitutional laws. Part 3 introduces the survey we administered to constitutional law experts from around the world. Part 4 details the results of the survey, exploring the relative importance of the Large-C and small-c constitution (Part 4.A); the nature of the legal materials that comprise the small-c constitution (Part 4.B); the nature of constitutional protections for twelve different rights (Part 4.C); and the extent of expert agreement on these questions (Part 4.D). Part 5 concludes by reflecting upon whether our approach could be extended to more systematic coding of small-c constitutions.

---

2. IDENTIFYING CONSTITUTIONAL LAW

2.1. Identifying Large-C Constitutions

It is relatively easy to identify most countries’ written, Large-C, constitutions. Virtually all countries have promulgated a document that they designate to be their “Constitution.” These documents tend to share important similarities: they set out the basic functions of the government, separate powers, and grant rights to citizens. Moreover, they are typically more difficult to amend than ordinary laws, which signifies and entrenches their status as higher law.21 In addition, most countries empower the judiciary to invalidate legislation and acts that contradict the constitution.22

Of course, not all countries fit this mold: a handful of countries lack a designated constitutional document (e.g., Israel and the United Kingdom); a few countries have constitutional texts that are not entrenched (e.g., New Zealand’s Constitution Act of 1986); and some countries do not grant courts the power of judicial review (e.g., the Netherlands23). But despite these exceptions, true disagreements over a country’s Large-C constitution are fairly minor.

Given the rarity of these exceptions, systematic efforts to analyze constitutions have mostly examined the documents that countries designate as their constitution. Indeed, both the Comparative Constitutions Project and Versteeg’s dataset on constitutional rights use the constitutional label as guiding principle for which documents to include and code.24 This admittedly results in including a few odd documents, but most comparativists agree that treating these documents as constitutions is justified because scholars should not bring a preconceived notion of what qualifies as a constitution to the study of foreign legal systems. In the handful of cases where there is no formally designated constitution, scholars have typically treated the texts that govern functionally constitutional matters, such as separation of powers and rights, as constitutions.25 Overall, when identifying Large-C constitutions, the universe of instances where there is any disagreement is minor.

2.2 Identifying small-c Constitutions

Systematically identifying what is considered part of a country’s small-c constitution is not as easy. Imagine that someone wanted to identify—and perhaps even quantify—all of the world’s small-c constitutions for a particular area of constitutional law, such as free speech. The most obvious starting point for such an inquiry may be to study judicial interpretations of constitutional free speech provisions. Indeed, some existing projects have done exactly that. For example, the National Science Foundation (NSF) funded “Free Speech Repository” compiles free speech jurisprudence from a wide range of courts from around the world, and then codes different aspects

23 Grondwet voor het Koninkrijk der Nederlanden (Constitution of the Kingdom of the Netherlands), art. 120 (1983).
24 See Law & Versteeg, supra note 11, at 1188.
25 Examples of such functionally defined constitutional documents include Israel’s Basic Laws and the United Kingdom’s 1998 Human Rights Act.
of these decisions. But while coding judicial decisions may be a convenient starting point, even a major effort to code them would provide a woefully incomplete picture of the full scope of many countries’ treatment of the right to free speech in their small-c constitutions.

Unfortunately, there is not a single, obvious way to identify constitutional sources across countries. Instead, there are at least three possible approaches for doing so, and each approach would yield different findings about the nature of small-c constitutions. These three approaches are: (A) an essential approach, which emphasizes constitutional entrenchment; (B) an external approach, which emphasizes exogenously defined core constitutional functions; and (C) a nominal approach, which emphasizes local understandings of the constitution and constitutional law.

A. The Essential Approach. One approach to identifying small-c constitutions would be to rely on what may be the essential and defining feature of constitutions: legal entrenchment. Entrenchment, or the ability to create “temporally extended commitments,” is widely seen as a defining feature and central goal of constitutions. By entrenching commitments, constitutions serve as a mechanism for overcoming the inconsistency of preferences over time and are a way to make legal and political commitments credible. Entrenchment can occur through the erection of formal barriers to amendment, as well as through establishing political practices that render constitutional law arduous to change in practice.

Using entrenchment as the criteria to establish which laws are constitutional requires identifying laws that are difficult to change. This includes laws that are formally entrenched through heightened amendment rules. For instance, the Austrian legislature can enact entrenched statutes as “Federal Constitutional Acts,” which are passed by a two-third majority and can only be changed by the same super-majority. The Austrian legislature is also able to insert entrenched


32 See e.g., MEDIENKOOPERATION UND MEDIENFÖRDERUNG [Federal Constitutional Act on Media Cooperation and Media Funding] BUNDESGESETZBLATT [BGBl] No. 125/2011 (Austria); BUNDESVERFASSUNGSGESetz ÜBER DIE NACHHALTIGKEIT, DEN TIERSCHUTZ, DEN UMFASSENDEN UMWELTSCHUTZ, DIE SICHERSTELLUNG DER WASSER- UND LEBENSMITTELVERSORGUNG UND DIE FORSCHUNG [Federal Constitutional Act on Sustainability, Animal Protection,
provisions into ordinary statutes. Similarly, in Israel, some Basic Laws are entrenched while others are not, which has spurred debate among Israeli scholars over whether this distinction affects their constitutional status. A more difficult question is whether laws are constitutional when they are entrenched de facto. William Eskridge and John Ferejohn argue that in the U.S., some federal statutes have acquired the status of “super-statutes” because they have become “stuck” in the public culture and are unlikely to be legislatively repealed or overturned by the Supreme Court. As another example, courts in the U.K. have held that some statutes are constitutionally significant and therefore can only be expressly repealed by parliament (as opposed to “implied repeal,” whereby a later conflicting statute takes precedence over an earlier statute). While de facto entrenchment is harder to identify, an essential approach would likely treat such statutes as constitutional.

Under the essential approach, constitutional interpretations by a country’s highest court can also be part of the small-c constitution. Specifically, where court decisions have the force of stare decisis (typically in common law countries), these decisions are harder to overturn, which effectively entrenches them. And even when the decisions of the highest courts do not have the force of stare de cisis, they are entrenched de facto when they are widely followed and not overturned in practice.

Likewise, treaties can become part of the small-c constitution when they are entrenched. This is most clearly the case when they are formally incorporated into the constitution. For instance, a growing number of constitutions specifically incorporate human rights treaties. In other countries, courts have deemed certain treaties to be part of the constitutional order. For example, a number of Latin American courts have regarded certain treaties as part of what they refer to as the “the block of constitutionality.” If court decisions are entrenched, then so are treaties that were given constitutional status through judicial interpretations.

33 One example of an entrenched provision in an ordinary statute can be found in the Parteiengesetz 2012 [PartG] [Political Parties Act 2012] Bundesgesetzblatt [BGBl] No. 56/2012.
38 Without explicitly being given constitutional status, treaties are rarely entrenched. In fact, withdrawal is typically the executive’s prerogative even when ratification occurred through parliamentary involvement.
39 See, e.g., Constitución Política de Colombia [C.P] art. 93 (Colombia); Constitución Nacional [Const. Nac.] art. 75, para. 22 (Arg.).
Another possible source of constitutional law under the essential approach are “constitutional conventions”; that is, “certain rules of constitutional behaviour which are considered to be binding on those who operate the Constitution, but which are not enforced by the law courts.” Writing about Britain, Albert Venn Dicey characterized these conventions as “constitutional morality,” enforced through popular opinion rather than the courts. While not justiciable, such conventions are entrenched; violating them, according to Dicey, would amount to an act of revolution. Constitutional conventions are not unique to Britain; in the United States, many legal commentators have recognized their existence. Examples include the longstanding practice (constitutionalized in the Twenty-second Amendment in 1951) that the President may serve no more than two terms and the independence of the Federal Reserve. Some scholars of the U.S. Constitution have even suggested that some conventions are judicially enforced, and perhaps even more constitutionally salient than those described by Dicey. While less is known about conventions comparatively, many countries’ small constitutions may also include conventions, whether justiciable or not.

Yet even if scholars agreed that entrenchment is a defining feature of conventions that should guide comparative inquiries, there is not an obviously feasible way of identifying entrenched legal materials across jurisdictions. Regarding statutes, the difficulty lies in statutes that have effectively obtained constitutional status but are not formally entrenched. Moreover, merely looking at the extent to which such statutes are amended is unlikely to capture their status as super-statutes. For example, the False Weather Reports Act (18 U.S.C. § 2074) has remained largely un-amended, but it is hardly due to status as a super-statute. Yet any other objective criteria to reliably identify super-statutes is not obvious. For judicial interpretations, likewise, it is not always easy to establish whether they are entrenched. When both higher and lower courts interpret the constitution, it would be necessary to decide whether the lower court interpretations are sufficiently entrenched to be part of the small constitution. Additionally, some decisions may be overturned more quickly than others. To illustrate, while there is no doubt that U.S. Supreme Court decisions set precedent, U.S. constitutional law has also witnessed episodes of dramatic constitutional change, such as the New

43 DICEY, supra note 42, at 439.
44 Id. at 439.
46 DICEY, supra note 42, at 27-30.
48 See Bradley & Morrison, supra note 2 (suggesting that such conventions featured in Youngstown Sheet & Tube Co. v. Sawyer, in which Justice Frankfurter defers to a “systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned.”).
49 See MARSHALL, supra note 42.
Deal “switch in time.”50 Such episodes make it difficult to categorically treat judicial decisions as entrenched. And if judicial decisions are not entrenched, the same thing could be true of treaties that were elevated to constitutional law through judicial interpretations.

For constitutional conventions, similar problems exist. When entrenchment is the sole criterion for coding conventions, this easily takes us outside the realm of constitutional law. To illustrate, most would agree that it is a convention for the U.S. government to light fireworks on the 4th of July in Washington, D.C.; yet, few would agree that this practice is constitutionally mandated. Thus, it is hard to determine which conventions are constitutional ones without further substantive criteria. Another option is to count as constitutional only those conventions that seem to be followed out of a sense of legal obligation. This appears to be the approach of scholars who characterize some constitutional conventions as “historical gloss”; that is, conventions which the judicial branch defers to and enforces, thus giving those conventions a legal character.51 Yet, as international lawyers know, determining which customs are legally binding international law because they are followed from “a sense of legal obligation” is notoriously difficult.52 Identifying constitutional conventions thus raises a set of difficult questions that are not easily resolved by reference to entrenchment alone.

B. The External Approach. Another approach to identifying small-c constitutions would be to externally define certain functions as constitutional. The central idea here is that, at their essence, constitutions and constitutional law perform a set of standard functions and that legal materials that fit this definition are therefore constitutional. While there is no single list of these standard functions, most constitutional scholars would likely agree that stipulating the basic structure of government and defining individual rights fall within the realm of constitutional law.53

While the essential approach requires identifying legal materials that are entrenched, an external approach requires identifying substantive areas that are functionally constitutional. To illustrate, if one were to decide that the abolition of the death penalty is a constitutional issue, one could study when and how countries legally abolished it. One would find that in many countries, this is done in the constitution (e.g., Colombia54), while in others, this is done by a statute (e.g., New Zealand55), treaty (e.g., Benin56), or court decision interpreting the constitution (e.g., South

50 See Goldsmith & Levinson, supra note 3, at 1814.
51 See Bradley & Morrison, supra note 2, at 418.
53 DICEY, supra note 42, at 22 (noting that the constitution comprises “all rules which directly or indirectly affect the distribution or the exercise of the sovereign power in the state”); Dieter Grimm, Types of Constitutions, in OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW 98, 103-04 (Rosenfeld & Sajó eds., 2012) (offering a list of functional characteristics of constitutions, which includes regulating the establishment of power and the idea that constitutions emanate from the people).
54 CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 11.
Africa). The point is that if one assumes that abolition is part of constitutional law, all of these countries have used constitutional law to abolish the death penalty.

One example of a data collection effort that takes the external approach to identifying and quantifying the small-c constitution is a project by Pierre Verdier and Mila Versteeg on how countries deal with international law in their domestic legal orders. The project collects over fifty variables relating to treaty-making and the reception of treaties and customary international law in the domestic legal order. To collect this information, they rely on a variety of legal sources that deal with these issues, including case law and executive and administrative documents. Their project reveals important cross-national differences in the legal basis for these issues. For example, they find that in most current and former commonwealth countries, courts typically decide whether international law applies directly in the domestic legal order, but in Eastern European countries, laws that implement the constitution decide the same issue. The project further reveals that, increasingly, constitutional texts directly address the status of ratified treaties, which confirms observations in the literature that constitutions have grown more specific.

The main downside of the external approach is that it might designate issues as constitutional that are not considered constitutional by the scholars and practitioners in a given country. For example, if we decided that the right to healthcare is constitutional in nature, an external approach would classify the legal materials that provide access to healthcare as constitutional, even when some of these materials might not be considered constitutional in the country itself. In the U.S., different laws—including the Social Security Amendments of 1965, Patient Protection and Affordable Care Act, and Emergency Medical Treatment and Active Labor Actarguably provide a limited right of access to affordable health care and to essential medical treatment. The external approach thus might conclude that a right to healthcare exists in U.S. constitutional law. Yet nearly all American constitutional law scholars, practitioners, and citizens would likely object to that conclusion because those laws are not in the U.S. Constitution (nor are they super-statute for that matter, as witnessed by the continued efforts to repeal the Affordable Care Act). While the external approach might be useful for some inquiries, the fact that the same issue might be considered constitutional in some countries and not in others makes it less useful for understanding the nature of constitutional law across national jurisdictions.

57 S v Makwanyane 1995 (3) SA 391 (CC) (S. Afr.).
59 See, e.g., AG v Joseph [2006] CCJ 1 (AJ) at 55.
63 42 U.S.C. § 1395dd.

Electronic copy available at: https://ssrn.com/abstract=3490919
C. The Nominal Approach. A third approach to identifying small-c constitutions would be to accept the premise that there is no uniform definition of what constitutes constitutional law that works across countries.\textsuperscript{65} It would therefore emphasize local understandings: what matters is what the relevant polity believes to be constitutional law.

A nominal approach thus identifies small-c constitutions based on what local experts believe to be constitutional law. It differs from the essential approach in that it would only include entrenched legal materials when local experts treat them as constitutional (and conversely, might include materials that are not entrenched, but are nonetheless considered to be constitutional in nature). It differs from the external approach in that substantive issues that may seem functionally constitutional to an outsider are only treated as constitutional when local experts treat them as such. Of course, it may be the case that in some countries, local experts identify legal materials as constitutional because they are entrenched (as in the essential approach) or because they deal with certain functions (as with the external approach). But the point is that this can differ from country to country. It is for this reason that the nominal approach treats local understandings as the only valid way to identify a constitution.

Because the nominal approach does not require a preconceived notion of constitutional law, it may reveal new constitutional sources that are not widely recognized in the literature. For example, when responding to our survey experts reported that: customary law is a source of constitutional law in Malawi; judicial interpretations of ordinary statutes are a source of constitutional law in Colombia;\textsuperscript{66} customary international law is a source of constitutional law in Colombia;\textsuperscript{67} the Venezuelan constitution has an open human rights clause that allows courts to bring in natural law-like principles;\textsuperscript{68} a statutory bill of rights is a source of constitutional law in Norway;\textsuperscript{69} the Czech “constitutional order” includes all sources of law that deal with functionally constitutional matters, such as the 1991 Charter of Fundamental Rights and Freedoms, and

\textsuperscript{65} Versteeg & Zackin, Exceptionalism, supra note 5, at 1652.

\textsuperscript{66} The Japanese expert explained why “interpretations of regular law” are a source of law: “Since Japan has the incidental constitutional review system, constitutional issues are brought before courts in criminal law suits or civil law suits. As a result, the legal issue of recognizing newly emerging rights is primarily involved with the manners of interpretations of "regular" laws (as in those that in general have no quasi-constitutional status). Those rights are later elevated to a constitutional right through academic works or cases. For instance, a right to privacy was first contested under the question of whether an infringement of this right deserves compensation under a tort law provision (which stipulates one has to prove that his "right" has been infringed). When the court acknowledged that a right to privacy should also be recognized as a "right" to be protected in tort law, the court drew various instances in laws that protect one's privacy to prove that a right to privacy is embedded in Japanese law (e.g., a criminal law that punishes illegal entry to a private residence, a civil law provision that stipulates that one has to put up a shade on a window of his house, if the house stands close to another house).”

\textsuperscript{67} The Colombian experts referred to decision C-1189 of the 2000 Colombian Constitutional Court. See Corte Constitucional [C.C.] [Constitutional Court], septiembre 13, 2000, Sentencia C-1189/00 (Colom.), http://www.corteconstitucional.gov.co/relatoria/2000/c-1189-00.htm.

\textsuperscript{68} The Venezuelan expert noted that article 22, the “Rights inherent to human beings” is an open clause used to incorporate new rights. See CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [CONSTITUTION], art. 22 (1999).

\textsuperscript{69} One Norwegian expert explained that constitutional rights are protected through “[a] Human Rights Act that is regular legislation, but with a provision stating that the international human rights implemented therein will prevail over other law" which is a “de facto "super statute", but parliament may at any time amend it etc.” See Lov 21. mai 1999 nr. 30 om styrking av menneskerettighetenes stilling i norsk rett [Act 21 May 1999, no. 30, Relating to the Strengthening of the Status of Human Rights in Norwegian Law], translation available at https://www.refworld.org/docid/5d4ad50a4.html.
legislation dealing with elections, political parties, and the constitutional court; and because the Saudi Basic Law stipulates that it upholds and enforces the Quran and the Sunnahs, these religious texts are a primary source of small-c constitutional rights in Saudi Arabia.

Additionally, in some countries, parts of prior constitutions may retain constitutional status. For example, when the French Constitutional Council declared the preamble of the 1958 Constitution justiciable, it also made the preamble of the 1946 Constitution and the 1789 French Declaration of the Rights of Man part of French constitutional law (the “bloc de constitutionnalite”), since the 1958 preamble refers to these documents. Thus, the nominal approach to identifying the small-c constitution can reveal a variety of constitutional sources, some of which are not well-recognized in the often Anglo-American-oriented comparative constitutional law literature.

While the nominal approach has great potential to enhance our understanding of the nature of constitutional law around the world, its main downside is that it less useful for anyone interested in substantive areas of constitutional law. For example, if a researcher is interested in knowing whether the death penalty is unconstitutional in different countries, knowing that Colombia, New Zealand, Benin, and South Africa all abolished the death penalty would not be enough. The researcher would also have to have detailed knowledge of whether things like the abolishing statute in New Zealand or the abolishing treaty in Benin are considered constitutional sources of law in those countries.

Another downside of this approach is that if experts do not agree, it might simply be impossible to identify a country’s small-c constitution. One possible reason for disagreement is that different experts within a country might use different approaches to identifying constitutional law; some might rely on some external definition, others might use the essentialist approach, and yet others might have a different understanding entirely. Another reason might be that courts and other interpreters fail to interpret the constitution in a coherent or systematic manner and the constitution is routinely used to serve political objectives. That said, a finding that experts fail to agree on the nature of constitutional law would be interesting in its own right, as it would mean that constitutional law lacks a rule of recognition that allows officials to consistently agree on what

---

70 The expert described the Czech constitutional order as follows:

“First of all, the Czech constitutional system comprises the Constitution and other parts of the so-called "Constitutional Order" (which could be understood as a "constitution" with small c). On the other hand, we understand as a constitution (with small c) all other sources of law which deal with "constitutional" matters (e.g. electoral acts, act on political parties, act on the Constitutional Court, etc.). The primary source of constitutional rights is the Charter of Fundamental Rights and Freedoms (adopted in 1991), which is separate from the Constitution but which is part of the "Constitutional Order" (Art. 112/1 of the Constitution). Apart from rights enshrined in the Charter, some rights appear in the text of the Constitution. Also, human rights treaties which are incorporated into the Czech law, are important sources of human rights in the Czech legal system (and they are, pursuant to the case-law of the Constitutional Court, also part of the "Constitutional Order", even though this is not stipulated in the enumeration of parts of the "Constitutional Order" in the Constitution. Examples of rights that are found outside the text of the Constitution would indeed cover most constitutional rights such as the right to life, physical integrity, prohibition of torture, freedom of expression, socio-economic rights and many others which appear in the Charter and/or in the human rights treaties ratified by the Czech Republic.” See Listina základních práv a svobod [Charter of Fundamental Rights and Freedoms], Ústavní zákon č. 2/1991 Sb. (Czech), translation available at https://www.refworld.org/docid/3ae6b5144.html.

71 Basic Law of Governance Royal Order No. (A/91) 27 Sha’ban 1412H – 1 March 1992, Article 7 (“Governance in the Kingdom of Saudi Arabia derives its authority from the Book of God Most High and the Sunnah of his Messenger, both of which govern this Law and all the laws of the State.”).

72 See Decision of Conseil Constitutionnel No. 44-71 (1971) (Fr.).
the constitution mandates. Ultimately, how common it is for there to be no consensus on the content of constitutional law is an empirical question on which there is currently little evidence. For instance, while the profound disagreement over the nature of U.S. constitutional law may suggest that disagreement is common, the U.S. is unique for its remarkably brief text and its relatively infrequent resort to formal amendments.73

Indeed, one research project—the CONREASON project by András Jakab, Arthur Dyevre, and Giulio Itzcovich74—gives some cause for optimism. The CONREASON project involved asking scholars from 40 countries to identify their country’s most significant constitutional law decisions and to answer a standardized set of questions on the reasoning styles of judges. When it came to identifying decisions, multiple experts were asked to evaluate each other’s choices. Jakab and his co-authors found that there was remarkable agreement amongst the experts: in only 6% of all cases did three or more experts disagree with each other.75 The experiences from the CONREASON project suggest that the indeterminacy of constitutional law might not be an insurmountable obstacle for the nominal approach.

3. GLOBAL EXPERT SURVEY

Our expert survey is based on the nominal approach. We opted for this approach because we are interested in the nature of small-c constitutions across different jurisdictions, and we believe that one can only explore this without a preconceived notion of what constitutional law is or should be, as with the essential and external approaches. This does not mean that the other approaches are not valid for other inquiries. For instance, the essential approach may appeal to researchers studying entrenchment, while the external approach may appeal to researchers studying a particular area of constitutional law that they deem functionally constitutional. But, for our effort to explore the role that small-c constitutions play in as many jurisdictions as possible, the nominal approach is the most promising.

While the nominal approach could be applied to any area of constitutional law, we limit our inquiry to rights. We do so because focusing on one specific area improves the chances that experts have the same substantive constitutional rules in mind when answering our questions. We also believe there are two reasons that constitutional rights are a particularly appropriate focus for an initial inquiry. First, the scope of rights usually cannot be inferred from the written constitutional text alone, which means it is a good area to discover the range of other sources that supplement the Large-C constitution. Second, rights are an area of constitutional law that most constitutional law experts have some familiarity with, which enlarges the pool of possible experts we can draw from. Of course, the trade-off of focusing on rights is that our findings may not generalize to other areas of constitutional law.

73 Versteeg & Zackin, Exceptionalism, supra note 5, at 1644-46.
74 Information about the project can be found on its website. See CONREASON: Constitutional Reasoning in a Comparative Perspective, CONREASON PROJECT, http://www.conreasonproject.com (last visited Sept. 6, 2019).
75 ANDRÁS JAKAB ET AL., COMPARATIVE CONSTITUTIONAL REASONING 29 (2016).
3.2. Expert Recruitment

We recruited experts for our survey in three ways. First, we posted information about the survey on the prominent “I-CONnect” Blog. Second, we recruited participants from the University of Chicago Law School’s Summer Institute in Law & Economics. The Summer Institute attracts professors, judges, prominent practitioners, and graduate students from around the world to spend two weeks studying law and economics. We sent a request to past participants from the institute to participate in the survey if they felt they had expertise on constitutional rights in their country. Third, we directly emailed experts and asked them to participate in the survey. These were either experts that were our own existing professional contacts or experts identified by our graduate students. We did not offer experts payment, but offered to acknowledge their expertise on our website, www.constitutions.org.

Through these processes, we recruited 220 experts for 123 different countries to complete our survey. We received 1 expert response for 73 countries, 2 responses for 31 countries, 3 responses for 8 countries, 4 responses for 6 countries, and 5 or more responses for 5 countries. Figure 1 shows the geographical distribution of the experts that participated in our survey. Appendix 3 provides a list of all the experts that contributed to our study (although it omits experts who requested to keep their identity confidential). We should note that we gave experts the option to skip questions they did not feel comfortable answering, so not all of the questions have

---


77 For more information, see About the Summer Institute, U. CHI. L. SCH., https://www.law.uchicago.edu/lawecon/summerinstitute (last visited Jan. 24, 2019).

78 We asked experts to provide their name and institutional affiliation, but gave them the option to either remain anonymous or be listed as an expert that contributed to the project. Out of the experts that completed the survey, 19 requested to remain anonymous. Appendix 3 lists the name and affiliations respondents that chose to be listed as an expert contributor to the project.
220 responses. The median amount of time that respondents spent on the survey was 24 minutes (there were significant outliers, however, for respondents that started the survey and then completed it a day or two later).

Despite spending three years trying to recruit participants from every country in the world, we simply were unable to recruit experts from 71 of the world’s 194 widely recognized countries. Admittedly, these countries are not random. Instead, they are countries that have dramatically smaller populations and economies than the 123 countries for which we have responses. For instance, the 71 countries for which we do not have experts only comprise roughly 11% of the world’s population and 5% of the world’s GDP. These countries also likely have weaker constitutional traditions. That said, because our sample is incomplete and non-random, we recognize the need to be careful in making universal statements about the role of small-c constitutions in rights protection.

3.2. Survey Design

Our survey had two main parts. The first part of the survey asked about the nature of the small-c constitution in the area of rights in general, and the second part asked about twelve specific rights. In the first part, we began by asking experts about the primary legal source of constitutional rights in their country. Specifically, we asked, “What is the legal source of constitutional rights in [your country]?” and to answer “on a scale from 1 (exclusively the ‘Large-C’ constitution) to 5 (exclusively the ‘small-c’ constitution).” We provided an explanation of these terms in an introduction to the survey. The answer choices were as follows:

1. Exclusively the Large-C Constitution
   The rights that are considered constitutional are exclusively enumerated in the written constitution.

2. Primarily the Large-C Constitution
   The rights that are considered constitutional are primarily enumerated in the written constitution—but there are exceptions.

3. A Mix of Large-C Constitution and small-c Constitution
   The rights that are considered constitutional are found roughly equally in the written constitution and the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status (“super statutes”), treaties that have been incorporated into the constitution, or conventions.

79 These estimates are based on calculations using 2010 data with the variables “pop” and “rgdpe” from the Penn World Tables. Robert C. Feenstra, Robert Inklaar, & Marcel P. Timmer, The Next Generation of the Penn World Table, 105 Am. ECON. REV. 3150 (2015).

80 Appendix 2 provides the text of our survey instrument.

81 We developed these categories in consultation with leading constitutional law experts from around the world. We particularly thank Rosalind Dixon and Ran Hirschl for their feedback.
4. Primarily the small-c Constitution
The rights that are considered constitutional are primarily found in the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status (“super statutes”), treaties that have been incorporated into the constitution, or conventions—but there are exceptions.

5. Exclusively the small-c Constitution
The rights that are considered constitutional are exclusively found in the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status (“super statutes”), treaties that have been incorporated into the constitution, or conventions.

Next, we asked those experts that did not select “Exclusively the Large-C Constitution” to identify what are the primary legal bases for the rights in their small-c constitution. Here, we provided the following six options:

1. Judicial interpretations of express constitutional guarantees
2. Common law precedents
3. Laws with quasi-constitutional status (super statutes or laws that implement constitutional guarantees)
4. Treaties that have been incorporated into the constitution
5. Conventions
6. Other, please specify

We provided the first five options because they have all been singled out as important bases for rights in comparative literature. The sixth option was provided to acknowledge that different systems may include other sources not captured here. Moreover, because the larger body of constitutional law in any given country may be comprised of multiple sources, respondents were given the option to select more than one answer to this question. For each of the answers that the experts selected, we also asked whether they believed that the majority of experts in their country would agree with them. We did so because this offers one way to gauge perceived agreement on particular small-c sources.

After these general questions, the second part of the survey asked respondents a set of standard questions for twelve specific constitutional rights: (1) freedom of speech; (2) prohibition of torture; (3) freedom of movement; (4) right to education; (5) right to housing; (6) right to social security; (7) right to healthcare; (8) freedom of religion; (9) freedom of association; (10) gender equality; (11) right to unionize; (12) right to establish political parties. We selected these rights because they represent a good mix of civil, political rights, and social rights (or first- and second-generation rights), as well as a mix of individual and organizational rights (a distinction that we develop in our own prior work).

For each right, we first gave an example of a typical constitutional provision enshrining the right. We then asked the experts “What is the main legal source of the constitutional right to [specific right] in [your country]?”, whereby we gave the following options:

82 ADAM CHILTON & MILA VERSTEEG, HOW CONSTITUTIONAL RIGHTS MATTER (2020).
1. **The Right is in the Large-C Constitution**
   This constitutional right is the written constitution.

2. **The Right is not in the Large-C Constitution, but it is in the Small-c Constitution**
   This right is not in the written constitution, but this right is part of the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status ("super statutes"), treaties that have been incorporated into the constitution, or conventions.

3. **Not Applicable**
   There is no such constitutional right in [Your Country].

4. **I Don't Know**
   I'm not sure if this is a constitutional right.

We next asked those experts who believed that the right could be found in the small-c constitution to identify the legal bases for the right (we gave the same six options as our questions on legal bases from the first part of the survey: judicial interpretations; common law precedents; laws with quasi-constitutional status; treaties; conventions; and other). We did not ask the same question for those who answered that a right was protected in the Large-C constitution, based on the assumption that when a right is explicitly enumerated, the Large-C constitution is the main legal basis for that right.83

**4. RESULTS**

4.1. **Legal Source of Constitutional Rights**

One notable finding from our survey is that most experts believe that constitutional rights are exclusively or primarily found in the Large-C constitution. Panel A of Table 1 reveals that 36% of experts located rights “exclusively” in the Large-C constitution, while 32% of respondents located them “primarily” in the Large-C constitution. Combined, this means that roughly two-thirds of experts believe that the written constitution is the exclusive or primary source of constitutional rights. Another 28% of experts indicated that constitutional rights were protected through a mixed regime of Large-C and small-c sources. Only about 5% of experts believe that constitutional rights are “primarily” or “exclusively” found in the small-c constitution: 5 experts indicated that rights were found “primarily” in the small-c constitution (these experts answered the survey for Australia, Israel, the U.K., and the U.S. (2x)) and another 5 indicated that they were

---

83 That assumption might be challenged however, and in hindsight, we possibly should have given respondents an option to identify additional legal bases for the right. At the same time, we were worried that doing so might introduce confusion about what we are most interested. The purpose of our survey was to understand the main legal source of protection for the right, not the basis for understanding its exact contours. For each of the twelve rights, we also asked several other questions. First, to get a sense of expert agreement, we asked whether they think most constitutional lawyers in their country would regard the right to be constitutionally protected. Second, we asked for the expert to identify, if possible, the year that the right was first protected. Third, we asked whether there was anything else the expert would like to share about the small-c basis for the right, and if, so, to provide a narrative answer. Fourth, we asked whether the expert believed that the government generally respected the right in practice. And fifth, we asked whether courts have enforced the right, based on either the Large-C constitution or small-c constitution.
found “exclusively” in the small-c constitution (these experts answered the survey for Brunei, New Zealand, the U.K. (2x), and the U.S.).

Table 1: Source of Constitutional Rights

<table>
<thead>
<tr>
<th></th>
<th>A. By Expert</th>
<th>B. By Country</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>#</td>
<td>%</td>
</tr>
<tr>
<td>Exclusively Large-C</td>
<td>77</td>
<td>36.2</td>
</tr>
<tr>
<td>Primarily Large-C</td>
<td>67</td>
<td>31.5</td>
</tr>
<tr>
<td>Mix</td>
<td>59</td>
<td>27.7</td>
</tr>
<tr>
<td>Primarily small-c</td>
<td>5</td>
<td>2.4</td>
</tr>
<tr>
<td>Exclusively small-c</td>
<td>5</td>
<td>2.4</td>
</tr>
</tbody>
</table>

Panel B of Table 1 report these results aggregated at the country level and Figure 2 depicts these categories on a world map. Because the difference between “exclusively” and “primarily” is somewhat subjective, we group these same results in three buckets: (1) Large-C countries, where constitutional rights are “exclusively” or “primarily” found in the Large-C constitution; (2) mixed regime countries, where constitutional rights are found in both and Large-C and small-c sources; and (3) small-c countries, where constitutional rights are “exclusively” or “primarily” found in the small-c constitution. When grouping countries, we address expert disagreement as follows: countries are categorized as Large-C if all the experts for a country said constitutional rights were “exclusively” or “primarily” Large-C and as small-c if all the experts for a country said constitutional rights were “exclusively” or “primarily” small-c. All other countries are categorized as mixed-regimes. Notably, this results in more countries’ being classified as mixed regimes than when the data was aggregated at the expert level. (Part 4.4. explores the extent of expert disagreement in more detail.) Using this grouping, there are 75 countries classified as Large-C regimes, 42 countries classified as mixed-regimes, and 4 countries classified as small-c regimes (those three are Australia, Brunei, New Zealand, and the U.K.).

Figure 2: Source of Constitutional Rights by Country
We also investigate whether several constitutional and legal variables are associated with the relative importance of the Large-C constitution. Specifically, we investigate the relationship between having a Large-C constitutional system and three variables that capture features of a country’s constitutional system—(1) the age of the constitution, (2) the extent to which a constitution has witnessed infrequent amendment, or is entrenched as measured by its “entrenchment score,” and (3) the length of the constitution as measured by its word count—and four variables that capture features of countries’ broader legal systems—(4) if they are common law systems, (5) the level of respect for the rule of law, (6) the level of judicial independence, and (7) the level of democratization.

Of these seven features of countries’ constitutional and legal systems, we find that the only one with a statistically significant association with constitutional regime type is the age of the constitution. Figure 3 illustrates this relationship by plotting the age of the constitution for Large-C countries and mixed/small-c countries (we combined small-c countries with mixed countries because there are only 4 small-c countries). Figure 3 reveals that every constitution which has been around for at least a century is a mixed regime. By contrast, for younger constitutions, there is no clear pattern in regime classifications. This finding reflects, perhaps unsurprisingly, that building a constitutional order comprised of multiple constitutional sources takes time.

Appendix 1 provides complete regression results for all seven of these variables; in the text, however, we present our results graphically to make them easier to interpret by a wide audience of constitutional law scholars and we focus on highlighting the more interesting aspects of the results.

Data on the age of the constitution was created based on the timeline from the Comparative Constitutions Project.

To measure amendment rates, we used the entrenchment score created by Versteeg & Zackin, Constitutions Un-entrenched, supra note 28, at 661. The entrenchment score captures “the total number of years a democratic polity has existed divided by the total number of years in which it witnessed constitutional change (either through replacement or amendment).” Id. at 661.

To measure the length of the constitution, we used word count data, which Versteeg and Zackin describe as “specificity.” Versteeg & Zackin, Constitutions Un-entrenched, supra note 28, at 661.

Data on whether a country is a common law system was taken from Rafael La Porta, Florencio López-de-Silanes & Andrei Shleifer, The Economic Consequences of Legal Origins, 46 J. ECON. LIT. 285 (2008). We define common law countries as those identified by La Porta et al. as having British common law traditions, and civil law countries as those identified by La Porta et al. as having French, German, or Nordic civil law traditions.


Figure 3: Age of Constitution and Constitution Regime Type

The two other features of countries’ constitutional systems we examined do not appear to have a statistically significant association with particular constitutional regime types. It would be reasonable to think that frequent amendment and constitutional development through small-c sources might serve as substitutes, but entrenchment does not have a statistically significant relationship with mixed or small-c regimes. Moreover, it would also be reasonable to hypothesize that when the constitution itself contains more detail—or is “code-like”—there is less of a need to develop constitutional law through other sources. But, perhaps surprisingly, we find no evidence that countries with longer constitutions are less likely to be mixed or small-c regimes. The first row in Figure 4 shows the results for entrenchment and word count graphically.

---


93 Appendix Table A1-1 shows these same findings in a regression framework.
We also find no evidence that the four features of countries’ broader legal system—common law, rule of law, judicial independence, and democracy—correlate with constitutional regime types. Perhaps most surprisingly, we find no evidence that common law legal traditions are a statistically significant determinant of constitutional regime type. Because scholars have often speculated that judicial interpretations play a special role in the development of common law constitutions, while civil law constitutions are more code-like, it would reasonable to think that common law systems are more likely to be mixed-regimes. But our data does not support this hypothesis. Instead, our finding lends support to the claim that the differences between common law and civil law systems are not nearly as pronounced for constitutional law as they are for other areas of law. We do not find that judicial independence is correlated with having a mixed regime;

---


respect for the rule of law is correlated with mixed regimes; or democracy is correlated with mixed regimes. Panels 3 through 6 in Figure 4 show these findings graphically.96

4.2. Legal Bases of small-c Constitutional Rights

Another notable finding from our survey is that judicial interpretations of constitutional provisions are the most commonly cited legal basis of small-c constitutional rights. Panel A of Table 2 shows that 94 experts indicated that judicial interpretation are part of the small-c constitution. That said, treaties are also important: 67 experts identified treaties as a basis of small-c constitutional rights. In addition, 42 experts singled out quasi-constitutional statutes; 38 experts identified conventions; and 16 experts pointed at common law precedents. And 17 experts noted there were other legal bases for small-c rights not listed by us. These included: “customary law” (Malawi); “international custom and principles” (Colombia); “interpretations of ‘regular’ laws” (Japan); “rights inherent to human beings” (Venezuela); and “the Quaran and the Sunnahs” (Saudi Arabia).

<table>
<thead>
<tr>
<th>Table 2: Legal Bases of small-c Constitutional Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. By Experts</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>Judicial Interpretations</td>
</tr>
<tr>
<td>Treaties</td>
</tr>
<tr>
<td>Conventions</td>
</tr>
<tr>
<td>Quasi-constitutional Laws</td>
</tr>
<tr>
<td>Common Law Precedents</td>
</tr>
<tr>
<td>Other</td>
</tr>
</tbody>
</table>

Panel B of Table 2 shows the prevalence of each of these legal bases for small-c rights by country, whereby we consider a country’s recognition of a given small-c source whenever at least one expert identified it as such. This demonstrates that, in roughly 48% of countries, judicial interpretations form a legal basis for constitutional rights, followed by treaties (34%), conventions (26%), quasi-constitutional laws (25%), and common law precedents (10%). Figure 5 shows the same information on a world map.

96 Appendix Table A1-2 shows these same results using regression analysis.

97 Table 2 may actually underestimate the importance of treaties, since a number of countries declare certain treaties (usually international human rights treaties) to be part of the constitution, and we do not know whether experts treated this approach as treaties being part of the small-c or large-C constitution. If they treated treaties as part of the Large-C Constitution, this would not be captured here.
Another finding is that the majority of experts who said rights were not exclusively found in the Large-C constitution identified more than one source of small-c constitutional rights. Specifically, as Table 3 reveals, 83 experts pointed at more than one source, while 5 experts (from the U.K., Israel, Nicaragua, South Sudan, and Uganda) identified 5 or 6 different sources.

Table 3: Number of Legal Bases for small-c Constitutional Rights Identified by Experts

<table>
<thead>
<tr>
<th># of Bases</th>
<th># of Experts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>53</td>
</tr>
<tr>
<td>2</td>
<td>48</td>
</tr>
<tr>
<td>3</td>
<td>22</td>
</tr>
<tr>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>6</td>
<td>1</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=3490919
We also explored the relationship between legal bases and the same three constitutional characteristics examined in Part 4.1: (1) the constitution’s age, (2) the constitution’s entrenchment score, and (3) the constitution’s word count. Of those variables, age is the only one that consistently has a statistically significant relationship with the prevalence of different legal bases of small-c rights. Specifically, jurisdictions with older constitutions are more likely to recognize judicial interpretations, conventions, laws with quasi-constitutional status, and common law precedents. Figure 6, Panels 1, 3, 4, and 5 show these results graphically. Indeed, the only source not associated with age are treaties (shown in Panel 2), as these are found in younger and older systems alike. It is possible that this results from the fact that Large-C Constitutions are often

---

98 See Appendix Table A2-1.
99 See Appendix Table A4-1.
100 See Appendix Table A5-1.
101 See Appendix Table A6-1.
102 See Appendix Table A3-1 and Figure 6 Panel 2.
explicit about the status of international treaties, but not about the other small-c sources.\textsuperscript{103} We further find that jurisdictions with older constitutions recognize a larger total number of small-c sources.\textsuperscript{104} These findings are consistent with the results in Figure 3 suggesting that older constitutions are more likely to be associated with mixed constitutional regimes.

We did not find that the constitution’s entrenchment score or length were systematically associated with particular constitutional regime types. An exception is the relationship between constitutions’ length and judicial interpretations: in countries with longer constitutions, judicial interpretations are more likely to play a role.\textsuperscript{105} This is perhaps somewhat counterintuitive, as one might expect that constitutions that provide more detail require less interpretation.\textsuperscript{106} On the other hand, longer and more detailed constitutional texts might also create ambiguities that need resolving through judicial interpretation.\textsuperscript{107} Our findings tentatively provide support for this latter hypothesis, although it warrants further exploration.

We also examined the same four features of countries’ broader legal systems from Part 4.1: (1) if they have common law systems, (2) their level of respect for the rule of law, (3) their level of judicial independence, and (4) their level of democratization. Figure 7 depicts the prevalence of each of the small-c sources among common law and civil law systems. Perhaps most surprisingly, it reveals that judicial interpretations are just as likely to serve as the legal basis of small-c constitutional rights in civil law countries as they are in common law countries. This finding suggests, again, that the importance of the divide might not be as salient for constitutional law as it is for other areas of law. Likewise, Figure 7 shows that there is no difference in the prevalence of super-statutes and constitutional conventions among these two different systems.

However, a country’s legal tradition is related to the prevalence of treaties and common law precedents. Perhaps unsurprisingly, experts from civil law countries were dramatically less likely to say that common law precedents are a legal basis for small-c constitutional rights: 3\% of experts from civil law countries said common law precedents are a legal basis for rights compared to 20\% for common law countries. More notable is that treaties are more significant as a source of constitutional law in civil law countries than in common law countries: 40\% of civil law experts indicated treaties to be a legal basis of small-c rights, compared with 23\% of common law experts. This finding likely reflects the fact that civil law countries almost universally possess monist systems of international law (that is, systems where international treaties apply in the domestic legal order directly).\textsuperscript{108} While having a monist systems does not automatically mean that treaties obtain constitutional status,\textsuperscript{109} it seems likely that courts and constitution-makers in monist systems feel more comfortable elevating treaties to constitutional law than those in countries

\begin{itemize}
\item \textsuperscript{104} See Appendix A7-1 and Figure 6 Panel 6.
\item \textsuperscript{105} See Appendix Table A2-1. Appendix Table A3-1 also reveals a relationship between treaties and entrenchment and word count, but these relationship does not hold up when controlling for other constitutional features.
\item \textsuperscript{106} Versteeg & Zaehin, \textit{supra} note 28 (hypothesizing that constitution-makers draft constitutional detail to prevent courts from changing the meaning of the constitution through interpretation).
\item \textsuperscript{107} Dixon, \textit{supra} note 93.
\item \textsuperscript{108} See Verdier & Versteeg, \textit{supra} note 58, at 515-16.
\item \textsuperscript{109} In fact, this is a contested question. See Hans Kelsen, \textit{Sovereignty and International Law}, 48 Geo. L. J. 627 (1960).
\end{itemize}
where treaties require incorporation into domestic law. These differences notwithstanding, the average total number of small-c sources was similar for both types of systems: 1.51 for common law countries and 1.43 for civil law countries (see Figure 7, bottom row). Taken together, these findings suggest that the differences between common law and civil law systems in the realm of constitutional rights are small.

**Figure 7: Prevalence of small-c Sources by Common Law / Civil Law Traditions**

- Judicial Interpretations
- Treaties
- Conventions
- Quasi-Constitutional Laws
- Common Law Precedents
- Total Sources

When examining if the other features of countries’ broader legal systems were associated with the prevalence of particular small-c sources, our results reveal that these legal characteristics have little bearing on the nature of the small-c constitution. Two notable exceptions are that countries that are more democratic and countries with more independent judiciaries are increasingly likely to recognize judicial interpretations as a source of constitutional rights.

---

110 These results are presented in Appendix Tables A2-2, A3-2, A4-2, A5-2, A6-2, and A7-2.

111 See Appendix Table A2-2.
4.3. Specific Rights

In addition to these general questions about constitutional rights, our survey also asked about twelve specific rights. For 12 different rights, we asked experts whether the rights are protected in: (1) the Large-C constitution; (2) the small-c constitution; or (3) are not constitutionally protected at all.\textsuperscript{112} When analyzing specific rights, we find that the Large-C constitution becomes even more important. As Panel A of Table 4 shows, for the vast majority of countries, experts indicated that the right was protected by the Large-C constitution (ranging from 94% for free speech to 49% for the right to housing). In Panel B of Table 4, we omit the countries where these rights are not constitutionally protected at all. Doing so reveals that the importance of the Large-C constitution increases even further, ranging from 95% for free speech to 72% for the right to housing.

Table 4: Source of Specific Constitutional Rights (% of Countries)

<table>
<thead>
<tr>
<th>A. All Responses</th>
<th>B. Responses Agreeing Right Exists</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Large-C</td>
</tr>
<tr>
<td>Free speech</td>
<td>94.0</td>
</tr>
<tr>
<td>Right to form political parties</td>
<td>80.7</td>
</tr>
<tr>
<td>Right to unionize</td>
<td>75.7</td>
</tr>
<tr>
<td>Freedom of religion</td>
<td>92.2</td>
</tr>
<tr>
<td>Freedom of association</td>
<td>91.4</td>
</tr>
<tr>
<td>Gender equality</td>
<td>84.2</td>
</tr>
<tr>
<td>Freedom of movement</td>
<td>86.5</td>
</tr>
<tr>
<td>Prohibition of torture</td>
<td>82.3</td>
</tr>
<tr>
<td>Right to education</td>
<td>83.2</td>
</tr>
<tr>
<td>Right to healthcare</td>
<td>69.6</td>
</tr>
<tr>
<td>Right to housing</td>
<td>49.1</td>
</tr>
<tr>
<td>Right to social security</td>
<td>67.0</td>
</tr>
</tbody>
</table>

At first glance, these numbers suggest that there is a discrepancy between respondents’ general assessment of the constitution order and their assessment of specific rights, in that the small-c constitution appears to be more salient for the bill of rights as a whole than for these 12 specific rights. Upon closer inspection, however, this finding might not be so surprising. Notably, the 12 rights we selected for inclusion in our survey are widely enumerated in written constitutions. According to Versteeg’s coding of constitutional texts: free speech is found in 96%; the right to form political parties is found in 65%; the right to unionize is found in 75%; the freedom of religion is found in 95%; the freedom of association is found in 94%; gender equality is found in 86%; the freedom of movement is found in 89%; the prohibition of torture is found in 86%; the

\textsuperscript{112} Note that the numbers may not add to 100% due to rounding. The percentages are calculated after excluding countries where all respondents did not answer for a specific right or where all respondents answered that they did not know. In cases of disagreement between experts, we coded the right as being from the small-c constitution if any expert held that view; if no expert held that view, we coded the right as being from the Large-C constitution.
right to education is found in 82%; the right to healthcare is found in 71%; the right to housing is found in 42%; and the right to social security is found in 65\%.

For most rights, expert assessments thus tracks the coding of Large-C text fairly closely. Moreover, once we analyze expert responses across all 12 rights, the expert assessments on specific rights becomes closer to the general question on the bill of rights as a whole. Specifically, in 69 countries (57\%), at least one expert claimed that at least one of the 12 rights was found in the small-c constitution. For comparison, in their general assessment of the bill of rights, at least one expert in 46 countries (38\%), claimed that the country was mixed or small-c. Overall, it is likely that experts asked to evaluate the nature of constitutional rights protection in general made a general assessment of the prevalence of unenumerated rights to classify the bill of rights as a whole.

<table>
<thead>
<tr>
<th>Table 5: Number of small-c rights found in Large-C constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td># of Countries Experts Reported Source is small-c</td>
</tr>
<tr>
<td>Free speech</td>
</tr>
<tr>
<td>Right to form political parties</td>
</tr>
<tr>
<td>Right to unionize</td>
</tr>
<tr>
<td>Freedom of religion</td>
</tr>
<tr>
<td>Freedom of association</td>
</tr>
<tr>
<td>Gender equality</td>
</tr>
<tr>
<td>Freedom of movement</td>
</tr>
<tr>
<td>Prohibition of torture</td>
</tr>
<tr>
<td>Right to education</td>
</tr>
<tr>
<td>Right to healthcare</td>
</tr>
<tr>
<td>Right to housing</td>
</tr>
<tr>
<td>Right to social security</td>
</tr>
</tbody>
</table>

In some cases, we found that experts located a right in the small-c constitution even when it was explicitly enumerated in the Large-C constitution. Although relatively few experts located specific rights in the small-c constitution, in 48\% of instances where at least one country expert did so, the right actually also appeared in the Large-C constitution. Table 5 breaks down these numbers for each right. Table 5 shows that 6 experts said that free speech was found in the small-c constitution, but the constitution explicitly enumerates the right to free speech in 4 of those countries. Likewise, 13 experts noted that gender equality was found in the small-c constitution, but the Large-C constitution explicitly enumerates the right to gender equality in 11 of those countries. The reasons that experts claimed that the source of rights that are enumerated in the written constitution is actually the small-c constitution warrants probing in future research. The

113 These numbers use 2016 data from Versteeg’s coding of the constitutional rights in all 194 widely recognized countries. For more information, see CHILTON & VERSTEEG, supra note 82.

114 Some of the discrepancy might be due to the fact that we framed the question for each of the twelve rights differently than for the general question. Specifically, we asked respondents whether the right was found in: (1) the Large-C constitution, (2) the small-c constitution, or (3) not protected at all. We thus provided respondents with a less granular classification than for the overall questions and forced a choice between Large-C and small-c.
most likely explanation is that, in these countries, even though the right is enumerated in the written constitution, it is given meaning through the larger body of constitutional law. That is, even though the right is enumerated, its full scope is not defined in the text but in other constitutional sources. It might also be the case that experts answered the question without giving it sufficient thought. It is also possible that experts may have varying conceptions of what it means for a right to be constitutionally protected when answering such a question.

Conversely, in some instances, experts said that a right was protected in the Large-C constitution, even though Versteeg’s database does not include it. Such discrepancies may again reflect error of judgment on the part of the expert, but they may also reflect different understandings of what it means for a right to be protected in the Large-C constitution. To illustrate, an Australian expert said that the Large-C constitution protects right to free speech, even though the Australian Constitution does not contain a free speech provision. Yet, the Australian High Court has found that free speech is constitutionally entrenched by deriving it from another constitutional provision (in this case, representative democracy). Thus, it is not unreasonable for the Australian expert to locate free speech in the constitutional text; but it is also reasonable for Versteeg’s database not to code democracy protections as a right to free speech. At the same time, in Israel, where the Supreme Court derived free speech from the Basic Law’s human dignity provision, all three experts agreed that the basis for free speech was the small-c constitution, even though they could have followed the Australian expert’s logic and locate it in the Large-C constitution (assuming that we can treat the Basic Laws as a Large-C constitution). Again, such discrepancies merit exploration in future research.

4.4 Expert Disagreement

One important question for a survey like ours is to what extent experts disagree with each other. If experts provide dramatically different answers, then the nominal approach for identifying constitutional law may simply not be viable. Our general interpretation of our results is that, for the most part, experts were able to agree with each other, although agreement was not perfect.

<table>
<thead>
<tr>
<th>Response Range</th>
<th># of Countries</th>
<th>% of Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>16</td>
<td>32.0</td>
</tr>
<tr>
<td>1</td>
<td>19</td>
<td>38.0</td>
</tr>
<tr>
<td>2</td>
<td>14</td>
<td>28.0</td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>2.0</td>
</tr>
</tbody>
</table>

As a first exploration of this issue, Table 6 shows the range of disagreement for the general question about the main sources of constitutional rights, on a five-point scale (ranging from “exclusively” Large-C to “exclusively” small-c), which we analyzed in Panel A of Table 1. Table 6


116 Stone, supra note 115, at 406.
specifically analyzes the results for the 50 countries of which multiple experts took the survey. It reveals that, for 16 countries with multiple experts (32%), all experts were in agreement and gave the same answer. For 19 countries, experts were at most 1 answer apart. Of these 19 countries, experts agreed that the Large-C constitution was the most important source of constitutional rights in 9 countries, but stood divided over whether constitutional rights were “primarily” or “exclusively” found in the Large-C constitution; disagreement was over whether small-c constitutional rights were “primarily” Large-C or “mixed” in 8 cases. Thus, in these cases, experts agreed that both the Large-C constitution and small-c sources have a role to play, but stood divided over whether the Large-C constitution was the primary source. For 14 countries, there was a range of 2 in the responses: Burundi, Cameroon, China, Costa Rica, France, Ghana, Laos, Nicaragua, Nigeria, Norway, South Africa, Turkey, Uganda, and Zimbabwe. In these instances, experts still agreed that the text of the written constitution matters, but disagreement over how much is more substantial. Finally, in just 1 country, the United States, experts were three responses apart. There were 7 responses from the U.S., and one expert believed that U.S. constitutional law was “primarily Large-C” and another believed that U.S. constitutional law was “exclusively small-c.” These two experts, then, were entirely unable to agree whether the written constitution has any role to play at all. Of the other 5 U.S. experts, 3 responded that America was a “mixed” regime and 2 responded that the U.S. was “primarily small-c.”

The 14 countries for which experts were two or more points apart merit further exploration in future research. But since it is possible that these disagreements reflect error in expert judgement, it is reasonable to downplay the findings for these countries for now. We therefore replicate our basic findings from Table 1 when excluding these 15 countries and present the results in Appendix Table A8. The findings reveal that the role of the Large-C constitution actually increases. Specifically, in Table 1, 62% of countries were coded as Large-C regimes. But after excluding the 15 counties with disagreement of 2 points or more, this increases to 71%. This is because, by treating countries where there is disagreement as mixed, we downplayed the importance of the Large-C constitution.

When we analyze disagreement on the three-point scale (“exclusively or primarily Large-C”; “mixed”; or “exclusively or primarily small-c”), expert agreement increases. For 26 countries, there was no disagreement; for 23 countries, there was disagreement by one-point on the scale; and for just 1 country (again, the U.S.), there was disagreement across two-points on the scale. For the 23 countries with a 1-point disagreement, 18 involved cases where respondents disagreed over whether the constitution was Large-C or mixed, while in just 1 country (Israel), the disagreement concerned whether the constitution was mixed or small-c. Taken together, these findings reveal that most of the disagreement occurs regarding the question of whether the constitution is Large-C or mixed. In other words, the disagreement is over the extent to which other sources supplement the constitutional text (with the U.S. as the notable exception).

When we analyze the same question for specific constitutional rights, expert agreement also increases. Table 7 reports the percentage of countries where multiple experts all agreed on the source of each specific right (e.g., all said Large-C, all said small-c, or all said the right doesn’t exist). Table 7 shows that agreement is 75% or higher for 9 of the 12 rights. The rights for which agreement is lower are those less commonly found in the written constitution: the right to

---

117 In one instance, disagreement concerned whether small-c constitutional rights were “mixed” or “primarily” small-c. In another single instance, disagreement concerned whether the source of constitutional rights was “primarily” or “exclusively” found in the small-c constitution.
unionize, the right to housing, and the right to social security. Overall, these findings reveal, perhaps unsurprisingly, that once a right is enshrined in the constitution, experts are better able to agree on its source.

**Table 7: Agreement on Source of Specific Constitutional Rights**

<table>
<thead>
<tr>
<th>Right</th>
<th>% of Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Free Speech</td>
<td>97.8</td>
</tr>
<tr>
<td>Right to form political parties</td>
<td>75.0</td>
</tr>
<tr>
<td>Right to unionize</td>
<td>69.8</td>
</tr>
<tr>
<td>Freedom of religion</td>
<td>100.0</td>
</tr>
<tr>
<td>Freedom of association</td>
<td>95.5</td>
</tr>
<tr>
<td>Gender equality</td>
<td>81.0</td>
</tr>
<tr>
<td>Freedom of movement</td>
<td>81.8</td>
</tr>
<tr>
<td>Prohibition of torture</td>
<td>86.4</td>
</tr>
<tr>
<td>Right to education</td>
<td>86.7</td>
</tr>
<tr>
<td>Right to healthcare</td>
<td>79.1</td>
</tr>
<tr>
<td>Right to housing</td>
<td>61.0</td>
</tr>
<tr>
<td>Right to social security</td>
<td>70.7</td>
</tr>
</tbody>
</table>

Another way to gauge expert agreement is to explore the extent to which experts agreed on the different legal bases for small-c constitutional rights. Table 8 shows the number of countries (out of the 50 with multiple respondents) in which all experts agreed that a particular source was part of the small-c constitution (that is, all experts said “yes” or “no” when asked whether a particular source was part of the small-c constitution). It reveals that the most common source, judicial interpretations, is also the most contested: in only 46% of countries with multiple respondents did the experts agree that judicial interpretations are a basis for small-c rights. By contrast, agreement is higher for common law precedents (with 86% of experts agreeing), laws with quasi-constitutional status (58% agreement), conventions (60% agreement), and treaties (56% agreement).

**Table 8: Countries Where All Experts Agreed on Legal Basis of small-c Rights**

<table>
<thead>
<tr>
<th>Legal Basis</th>
<th>% of Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial Interpretations</td>
<td>46.0</td>
</tr>
<tr>
<td>Treaties</td>
<td>56.0</td>
</tr>
<tr>
<td>Conventions</td>
<td>60.0</td>
</tr>
<tr>
<td>Quasi-constitutional Laws</td>
<td>58.0</td>
</tr>
<tr>
<td>Common Law Precedents</td>
<td>86.0</td>
</tr>
<tr>
<td>Other</td>
<td>78.0</td>
</tr>
</tbody>
</table>

A final way to gauge expert agreement is to explore their perceptions of whether other experts agree with their evaluation. For each of the legal bases of small-c constitutional rights they identified, we asked experts whether they believed that other experts would agree with them. Here, our findings reveal that experts’ self-assessment of agreement differs substantially from actual agreement. Notably, the experts were particularly confident that other experts would agree that judicial interpretations were a legal basis for small-c rights. Indeed, as Table 9 shows, 91% of experts believed that other experts would agree that judicial interpretations of constitutional provisions were part of the small-c
constitution; yet, in reality, only 46% did. Likewise, 88% of experts believed that other experts would agree that treaties are a source of constitutional law; in reality, only 56% agreed. For less common sources, however, the gap between self-assessment on agreement and actual agreement became smaller. For example, 73% of experts believed that other experts would agree that laws with quasi-constitutional status are a source of constitutional law; in actuality, 58% agreed.

Table 9: Experts That Said Other Experts Would Agree with Their Assessment

<table>
<thead>
<tr>
<th>Source</th>
<th>% of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial Interpretations</td>
<td>91.4</td>
</tr>
<tr>
<td>Treaties</td>
<td>87.9</td>
</tr>
<tr>
<td>Conventions</td>
<td>73.7</td>
</tr>
<tr>
<td>Quasi-Constitutional Laws</td>
<td>73.2</td>
</tr>
<tr>
<td>Common Law Precedents</td>
<td>68.8</td>
</tr>
<tr>
<td>Other</td>
<td>66.7</td>
</tr>
</tbody>
</table>

Overall, we believe it is fair to say that for most countries, there is a reasonable level of agreement over the nature of constitutional law. To the extent disagreement exists, it relates to the extent to which the Large-C constitution is supplemented by small-c sources, not whether the Large-C constitution has a role to play at all. What is more, agreement is larger for broadly framed questions that relate to the entire bill of rights than for questions more narrowly tailored to specific rights. At the same time, the level of expert agreement is an important topic for future exploration. It is clear that agreement is larger in some countries than others, and future research could explore the causes for uncertainty about the nature of constitutional law.

5. CONCLUSION

Our expert survey yielded several novel insights into the nature of constitutional law across national jurisdictions, including that Large-C constitutions are relatively important; that the small-c constitution becomes more important as the written constitution matures; and that the common law/civil law divide has only a limited relationship with the shape and form of constitutional systems. It is our hope that these findings will help guide future research.

Our findings also raise the question of whether more comprehensive coding of small-c constitutions is possible. As noted, the specific questions on twelve constitutional rights allow us to effectively “code” these rights in small-c constitutions for over 100 countries. Further expert surveys could potentially be employed to more comprehensively quantify small-c constitutions, thereby enabling Large-N studies of small-c constitutions. But at the same time, some of our experiences and findings give us some pause about the feasibility of coding small-c constitutions. While coding small-c constitutions might be possible, our experience with this initial expert survey reveals several major logistical and methodological challenges that need to be resolved before such an enterprise could be undertaken in earnest.

First, we learned that the recruitment of experts is difficult. We spent substantial time and resources identifying and contacting constitutional law experts from different countries. Further, the response rate was fairly low; roughly 20% of experts responded to our email correspondence. We are also unsure whether the experts that participated hold views that are representative of constitutional experts in their respective countries. We acknowledge that they may not be, since the experts that took our survey all spoke English and, in many cases, have professional
connections to elite American universities. Future attempts at coding of small-c constitutions should thus find better ways to identify experts, possibly by compensating them for their time.

Second, we learned that, although expert agreement was not complete, it was perhaps larger than we had expected. However, any future attempt at coding small-c constitutions should try to find ways to ensure that experts have similar concepts in mind when answering questions (for example, by asking anchoring questions and explaining constitutional concepts in detail). It would also need an estimation strategy to deal with uncertainty, created by the fact that some experts may hold unrepresentative views or may simply get certain answers wrong.

Third, we found that most experts were unable to answer our historical questions on when each right first received constitutional protection. It is likely that they did not answer these questions because doing so would require them to do further research (which was more than we could ask for in an unpaid survey). But constitutional protections are not static, and evolve over time. Any future attempt to code small-c constitutions would thus have to find a way to get experts to evaluate changes in the nature of constitutional protections over time.

Fourth, we acknowledge that we have no insight into whether our findings on constitutional rights are representative of constitutional law as a whole. Any future attempt to code small-c constitutions would have to decide which areas of constitutional law to focus on. Unlike for Large-C coding, it is likely impossible to code small-c constitutions for all areas of constitutional law in a single project. This is because experts consider themselves knowledgeable only in certain areas of constitutional law. Yet, if choices need to be made, it is not obvious which areas of constitutional law are most suited to small-c coding.

Despite these challenges, we believe that a nominal approach which relies on local experts is the best method for a small-c constitution coding project. Indeed, our findings reveal that coding small-c constitutions without consulting experts would likely be impossible—most countries’ constitutions include multiple sources that may be incredibly hard for outside coders to access and identify. We therefore believe that reliance on experts is necessary, and that making real progress in coding small-c constitutions will require a team of researchers, substantial time and resources, and the development of innovative solutions to these problems. A definitive coding of small-c constitutions may thus remain elusive.
Small-c Constitutional Rights

Online Appendix

These appendices provide three pieces of additional information on our expert survey. Appendix 1 provides additional analyses and results that were discussed in the body of the manuscript. Appendix 2 provides the text of the survey instrument. Appendix 3 provides the list of experts that participated in this research.
### Appendix 1: Additional Results

#### Table A1-1: Source of Constitutional Rights – Constitutional Variables

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Age</td>
<td>-0.004***</td>
<td>-0.004***</td>
<td>(0.001)</td>
<td>(0.001)</td>
</tr>
<tr>
<td>Entrenchment Score</td>
<td>0.009</td>
<td>0.009</td>
<td>(0.006)</td>
<td>(0.006)</td>
</tr>
<tr>
<td>Constitution Word Count</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>-0.003</td>
<td>-0.003</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.003)</td>
<td>(0.003)</td>
</tr>
<tr>
<td>Observations</td>
<td>121</td>
<td>121</td>
<td>119</td>
<td>119</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.108</td>
<td>0.018</td>
<td>0.012</td>
<td>0.121</td>
</tr>
</tbody>
</table>

-- OLS estimates with standard errors in parentheses
-- *** p<0.01, ** p<0.05, * p<0.1
--DV = 1 if country is coded as having Judicial Interpretations as a source of small-c rights
-- Unit of observation is the country level

#### Table A1-2: Source of Constitutional Rights – Legal Variables

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Law</td>
<td>-0.022</td>
<td></td>
<td>-0.128</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.099)</td>
<td>(0.130)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rule of Law</td>
<td></td>
<td>0.102</td>
<td></td>
<td>0.364</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(0.386)</td>
<td>(0.706)</td>
</tr>
<tr>
<td>Judicial Independence</td>
<td></td>
<td></td>
<td>-0.084</td>
<td></td>
<td>0.038</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(0.156)</td>
<td>(0.604)</td>
</tr>
<tr>
<td>Polity Score</td>
<td></td>
<td></td>
<td></td>
<td>-0.009</td>
<td>-0.013</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(0.008)</td>
</tr>
<tr>
<td>Observations</td>
<td>117</td>
<td>78</td>
<td>119</td>
<td>110</td>
<td>75</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.000</td>
<td>0.001</td>
<td>0.002</td>
<td>0.012</td>
<td>0.030</td>
</tr>
</tbody>
</table>

-- OLS estimates with standard errors in parentheses
-- *** p<0.01, ** p<0.05, * p<0.1
-- DV = 1 if country is coded as having Judicial Interpretations as a source of small-c rights
-- Unit of observation is the country level

Electronic copy available at: https://ssrn.com/abstract=3490919
Table A2-1: Basis of small-c Rights – Judicial Interpretations – Constitutional Variables

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Age</td>
<td>0.002**</td>
<td>0.003**</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.001)</td>
<td>(0.001)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entrenchment Score</td>
<td>-0.004</td>
<td>-0.001</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.007)</td>
<td>(0.007)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constitution Word Count</td>
<td></td>
<td>0.007**</td>
<td>0.007***</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.003)</td>
<td>(0.003)</td>
<td></td>
</tr>
<tr>
<td>Observations</td>
<td>121</td>
<td>121</td>
<td>119</td>
<td>119</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.033</td>
<td>0.004</td>
<td>0.054</td>
<td>0.103</td>
</tr>
</tbody>
</table>

-- OLS estimates with standard errors in parentheses
-- *** p<0.01, ** p<0.05, * p<0.1
-- DV = 1 if country is coded as having Judicial Interpretations as a basis of small-c rights
-- Unit of observation is the country level

Table A2-2: Basis of small-c Rights – Judicial Interpretations – Legal Variables

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Law</td>
<td>-0.014</td>
<td></td>
<td></td>
<td>-0.004</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.102)</td>
<td></td>
<td></td>
<td>(0.127)</td>
<td></td>
</tr>
<tr>
<td>Rule of Law</td>
<td></td>
<td>0.226</td>
<td></td>
<td>-0.377</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.384)</td>
<td></td>
<td>(0.690)</td>
<td></td>
</tr>
<tr>
<td>Judicial Independence</td>
<td></td>
<td></td>
<td>0.447***</td>
<td></td>
<td>0.088</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.156)</td>
<td></td>
<td>(0.591)</td>
</tr>
<tr>
<td>Polity Score</td>
<td></td>
<td></td>
<td></td>
<td>0.021***</td>
<td>0.020</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(0.008)</td>
<td>(0.021)</td>
</tr>
<tr>
<td>Observations</td>
<td>117</td>
<td>78</td>
<td>119</td>
<td>110</td>
<td>75</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.000</td>
<td>0.005</td>
<td>0.066</td>
<td>0.066</td>
<td>0.044</td>
</tr>
</tbody>
</table>

-- OLS estimates with standard errors in parentheses
-- *** p<0.01, ** p<0.05, * p<0.1
-- DV = 1 if country is coded as having Judicial Interpretations as a basis of small-c rights
-- Unit of observation is the country level
Table A3-1: Basis of small-c Rights – Treaties – Constitutional Variables

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Age</td>
<td>0.001</td>
<td></td>
<td>0.001</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.001)</td>
<td></td>
<td>(0.001)</td>
<td></td>
</tr>
<tr>
<td>Entrenchment Score</td>
<td>-0.013**</td>
<td>-0.011</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.006)</td>
<td></td>
<td>(0.006)</td>
<td></td>
</tr>
<tr>
<td>Constitution Word Count</td>
<td></td>
<td>0.005*</td>
<td>0.004</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.003)</td>
<td>(0.003)</td>
<td></td>
</tr>
<tr>
<td>Observations</td>
<td>121</td>
<td>121</td>
<td>119</td>
<td>119</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.007</td>
<td>0.034</td>
<td>0.030</td>
<td>0.058</td>
</tr>
</tbody>
</table>

-- OLS estimates with standard errors in parentheses
-- *** p<0.01, ** p<0.05, * p<0.1
-- DV = 1 if country is coded as having Treaties as a basis of small-c rights
-- Unit of observation is the country level

Table A3-2: Basis of small-c Rights – Treaties – Legal Variables

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Law</td>
<td>-0.174*</td>
<td></td>
<td></td>
<td>-0.229*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.096)</td>
<td></td>
<td></td>
<td>(0.127)</td>
<td></td>
</tr>
<tr>
<td>Rule of Law</td>
<td>-0.211</td>
<td>-0.728</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.387)</td>
<td></td>
<td>(0.688)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judicial Independence</td>
<td>0.178</td>
<td>0.003</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.152)</td>
<td></td>
<td>(0.589)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Polity Score</td>
<td>0.012</td>
<td>0.022</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.008)</td>
<td></td>
<td>(0.021)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Observations</td>
<td>117</td>
<td>78</td>
<td>119</td>
<td>110</td>
<td>75</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.028</td>
<td>0.004</td>
<td>0.012</td>
<td>0.022</td>
<td>0.085</td>
</tr>
</tbody>
</table>

-- OLS estimates with standard errors in parentheses
-- *** p<0.01, ** p<0.05, * p<0.1
-- DV = 1 if country is coded as having Treaties as a basis of small-c rights
-- Unit of observation is the country level
### Table A4-1: Basis of small-c Rights – Conventions – Constitutional Variables

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Age</td>
<td>0.002**</td>
<td>0.002**</td>
<td>(0.001)</td>
<td>(0.001)</td>
</tr>
<tr>
<td>Entrenchment Score</td>
<td>0.003</td>
<td>0.004</td>
<td>(0.006)</td>
<td>(0.006)</td>
</tr>
<tr>
<td>Constitution Word Count</td>
<td>0.002</td>
<td>0.003</td>
<td>(0.002)</td>
<td>(0.002)</td>
</tr>
<tr>
<td>Observations</td>
<td>121</td>
<td>121</td>
<td>119</td>
<td>119</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.043</td>
<td>0.003</td>
<td>0.005</td>
<td>0.048</td>
</tr>
</tbody>
</table>

-- OLS estimates with standard errors in parentheses
-- *** p<0.01, ** p<0.05, * p<0.1
-- DV = 1 if country is coded as having Conventions as a basis of small-c rights
-- Unit of observation is the country level

### Table A4-2: Basis of small-c Rights – Conventions – Legal Variables

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Law</td>
<td>0.030</td>
<td>0.102</td>
<td>(0.090)</td>
<td>(0.122)</td>
<td></td>
</tr>
<tr>
<td>Rule of Law</td>
<td>-0.234</td>
<td>-0.037</td>
<td>(0.360)</td>
<td>(0.661)</td>
<td></td>
</tr>
<tr>
<td>Judicial Independence</td>
<td>-0.035</td>
<td>-0.296</td>
<td>(0.141)</td>
<td>(0.566)</td>
<td></td>
</tr>
<tr>
<td>Polity Score</td>
<td>-0.001</td>
<td>0.016</td>
<td>(0.007)</td>
<td>(0.020)</td>
<td></td>
</tr>
<tr>
<td>Observations</td>
<td>117</td>
<td>78</td>
<td>119</td>
<td>110</td>
<td>75</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.001</td>
<td>0.006</td>
<td>0.001</td>
<td>0.000</td>
<td>0.022</td>
</tr>
</tbody>
</table>

-- OLS estimates with standard errors in parentheses
-- *** p<0.01, ** p<0.05, * p<0.1
-- DV = 1 if country is coded as having Conventions as a basis of small-c rights
-- Unit of observation is the country level
**Table A5-1: Basis of small-c Rights – Quasi-Constitutional Laws – Constitutional Variables**

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Age</td>
<td>0.002*</td>
<td>0.001</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.001)</td>
<td>(0.001)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entrenchment Score</td>
<td>0.008</td>
<td>0.010</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.006)</td>
<td>(0.006)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constitution Word Count</td>
<td>0.000</td>
<td>0.002</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.002)</td>
<td>(0.002)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Observations</td>
<td>121</td>
<td>121</td>
<td>119</td>
<td>119</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.030</td>
<td>0.017</td>
<td>0.000</td>
<td>0.030</td>
</tr>
</tbody>
</table>

-- OLS estimates with standard errors in parentheses
-- *** p<0.01, ** p<0.05, * p<0.1
-- DV = 1 if country is coded as having Quasi-Constitutional Laws as a basis of small-c rights
-- Unit of observation is the country level

**Table A5-2: Basis of small-c Rights – Quasi-Constitutional Laws – Legal Variables**

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Law</td>
<td>0.013</td>
<td></td>
<td></td>
<td>0.052</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.088)</td>
<td></td>
<td></td>
<td>(0.114)</td>
<td></td>
</tr>
<tr>
<td>Rule of Law</td>
<td></td>
<td>0.147</td>
<td></td>
<td>0.329</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.341)</td>
<td></td>
<td>(0.619)</td>
<td></td>
</tr>
<tr>
<td>Judicial Independence</td>
<td>-0.028</td>
<td></td>
<td>0.237</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.140)</td>
<td></td>
<td>(0.530)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Polity Score</td>
<td>-0.004</td>
<td>-0.022</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.007)</td>
<td>(0.019)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Observations</td>
<td>117</td>
<td>78</td>
<td>119</td>
<td>110</td>
<td>75</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.000</td>
<td>0.002</td>
<td>0.000</td>
<td>0.003</td>
<td>0.036</td>
</tr>
</tbody>
</table>

-- OLS estimates with standard errors in parentheses
-- *** p<0.01, ** p<0.05, * p<0.1
-- DV = 1 if country is coded as having Quasi-Constitutional Laws as a basis of small-c rights
-- Unit of observation is the country level
### Table A6-1: Basis of small-c Rights – Common Law Precedents – Constitutional Variables

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Age</td>
<td>0.002***</td>
<td></td>
<td>0.001</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.001)</td>
<td></td>
<td>(0.001)</td>
<td></td>
</tr>
<tr>
<td>Entrenchment Score</td>
<td></td>
<td>-0.001</td>
<td>-0.001</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.004)</td>
<td>(0.004)</td>
<td></td>
</tr>
<tr>
<td>Constitution Word Count</td>
<td></td>
<td></td>
<td>0.000</td>
<td>0.000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.001)</td>
<td>(0.002)</td>
</tr>
<tr>
<td>Observations</td>
<td>121</td>
<td>121</td>
<td>119</td>
<td>119</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.057</td>
<td>0.001</td>
<td>0.000</td>
<td>0.023</td>
</tr>
</tbody>
</table>

- OLS estimates with standard errors in parentheses
- *** p<0.01, ** p<0.05, * p<0.1
- DV = 1 if country is coded as having Common Law Precedents as a basis of small-c rights
- Unit of observation is the country level

### Table A6-2: Basis of small-c Rights – Common Law Precedents – Legal Variables

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Law</td>
<td>0.176***</td>
<td></td>
<td></td>
<td>0.218***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.052)</td>
<td></td>
<td></td>
<td>(0.067)</td>
<td></td>
</tr>
<tr>
<td>Rule of Law</td>
<td></td>
<td>-0.163</td>
<td></td>
<td>-0.202</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.207)</td>
<td></td>
<td>(0.364)</td>
<td></td>
</tr>
<tr>
<td>Judicial Independence</td>
<td></td>
<td></td>
<td>-0.006</td>
<td>0.102</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.085)</td>
<td>(0.311)</td>
<td></td>
</tr>
<tr>
<td>Polity Score</td>
<td></td>
<td></td>
<td>-0.003</td>
<td>-0.006</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.004)</td>
<td>(0.011)</td>
<td></td>
</tr>
<tr>
<td>Observations</td>
<td>117</td>
<td>78</td>
<td>119</td>
<td>110</td>
<td>75</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.091</td>
<td>0.008</td>
<td>0.000</td>
<td>0.006</td>
<td>0.143</td>
</tr>
</tbody>
</table>

- OLS estimates with standard errors in parentheses
- *** p<0.01, ** p<0.05, * p<0.1
- DV = 1 if country is coded as having Common Law Precedents as a basis of small-c rights
- Unit of observation is the country level

Electronic copy available at: https://ssrn.com/abstract=3490919
### Table A7-1: Basis of small-c Rights – Total Sources – Constitutional Variables

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Age</td>
<td>0.006**</td>
<td>0.005</td>
<td>(0.003)</td>
<td>(0.004)</td>
</tr>
<tr>
<td>Entrenchment Score</td>
<td>-0.004</td>
<td>0.005</td>
<td>(0.019)</td>
<td>(0.020)</td>
</tr>
<tr>
<td>Constitution Word Count</td>
<td></td>
<td></td>
<td>0.012</td>
<td>0.014*</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.008)</td>
<td>(0.008)</td>
</tr>
<tr>
<td>Observations</td>
<td>121</td>
<td>121</td>
<td>119</td>
<td>119</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.033</td>
<td>0.000</td>
<td>0.021</td>
<td>0.039</td>
</tr>
</tbody>
</table>

-- OLS estimates with standard errors in parentheses
-- *** p<0.01, ** p<0.05, * p<0.1
-- DV = is the total number of legal basis (e.g. judicial precedents, treaties, conventions, quasi-constitutional laws, common law precedents, and “other”)
-- Unit of observation is the country level

### Table A7-2: Basis of small-c Rights – Total Sources – Legal Variables

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Law</td>
<td>0.112</td>
<td>0.088</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.287)</td>
<td>(0.367)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rule of Law</td>
<td>-0.579</td>
<td>-1.730</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1.077)</td>
<td>(1.992)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judicial Independence</td>
<td>0.531</td>
<td>0.303</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.450)</td>
<td>(1.704)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Polity Score</td>
<td></td>
<td></td>
<td>0.019</td>
<td>0.037</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.023)</td>
<td>(0.060)</td>
<td></td>
</tr>
<tr>
<td>Observations</td>
<td>117</td>
<td>78</td>
<td>119</td>
<td>110</td>
<td>75</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.001</td>
<td>0.004</td>
<td>0.012</td>
<td>0.007</td>
<td>0.027</td>
</tr>
</tbody>
</table>

-- OLS estimates with standard errors in parentheses
-- *** p<0.01, ** p<0.05, * p<0.1
-- DV = is the total number of legal basis (e.g. judicial precedents, treaties, conventions, quasi-constitutional laws, common law precedents, and “other”)
-- Unit of observation is the country level
Table A8: Source of Constitutional Rights – Excluding Countries with Large Disagreement

<table>
<thead>
<tr>
<th></th>
<th>A. By Expert</th>
<th></th>
<th>B. By Country</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>#</td>
<td>%</td>
<td>#</td>
<td>%</td>
</tr>
<tr>
<td>Exclusively Large-C</td>
<td>56</td>
<td>34.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Primarily Large-C</td>
<td>61</td>
<td>37.9</td>
<td>75</td>
<td>70.8</td>
</tr>
<tr>
<td>Mix</td>
<td>37</td>
<td>23.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Primarily small-c</td>
<td>3</td>
<td>1.9</td>
<td>4</td>
<td>3.8</td>
</tr>
<tr>
<td>Exclusively small-c</td>
<td>4</td>
<td>2.5</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This table recreates Table 1, but excludes the responses of experts from countries with disagreements of 2 points or greater based on the approach used in Table 6.
Appendix 2: Text of the Survey Instrument

Expert Survey on Constitutional Rights Protection

As a constitutional law expert, we want to ask you a few questions on constitutional rights protections in your country. This survey will take roughly 10 to 30 minutes of your time.

We know that your time is valuable, so we will acknowledge the experts that help us by completing this survey in two ways. First, we will include a list of the experts that complete this survey in an appendix of the book we are currently writing on the effectiveness of constitutional rights (if you'd prefer, you can complete the survey and choose not to have your name listed). Second, we are building a website that will make the data from this survey, and our other data on constitutional rights, publicly available. We will acknowledge all the experts that complete this survey on a page of experts on that website (we will follow up by email to collect the necessary biographical information for everyone that completes the survey).

If you have any questions about this research, you can either email us or contact the University of Chicago Institutional Review Board by email (sbs-irb@uchicago.edu) or phone (+1-773-834-7835).

Thank you for taking the time to help with this research.
- Adam & Mila

Adam Chilton
University of Chicago Law School
adamchilton@uchicago.edu

Mila Versteeg
University of Virginia School of Law
versteeg@virginia.edu
Background

We are trying to learn about the sources of constitutional rights and their level of protection around the world. More specifically, we want to know how often rights that are considered constitutional are not included in a country's written constitution (the "Large-C" constitution), but are instead found in the larger body of constitutional law (the "Small-c" constitution) comprised of sources like judicial interpretations, laws with quasi-constitutional status ("super statutes"), treaties that have been incorporated into the constitution, or conventions.

For instance, in some countries, constitutional rights are found exclusively in the countries written constitution. In other countries, constitutional rights that were not explicitly enumerated in the written constitution have been recognized by courts and governments (e.g. the Israeli Supreme Court has found many rights protection in the human dignity provision of the Basic Law on Human Dignity and Liberty).

We want to know where most rights protections are found in your country.
**Personal Information**

Q3A
Before getting started, we need a little information about you and the country you are taking the survey for.

- Name (1) ________________________________
- Title (2) ________________________________
- Institution (3) ____________________________
- Email (4) ________________________________

Q3B
We plan to acknowledge the names of the experts who participate in this survey in an appendix and the website we are creating on constitutional rights. We will follow up via email for your biographical information. If you would prefer, we can keep your name confidential.

- Keep my name confidential (1)
- Include my name in the list of experts (2)

Q3C
Please select the country you are taking the survey for.

- Afghanistan (1) ... Zimbabwe (195)
Source of Constitutional Rights

Q4A
What is the legal source of constitutional rights in [Your Country]? Please answer on a scale from 1 (exclusively the Large-C constitution) to 5 (exclusively the "Small-c" constitution).

- 1. Exclusively the Large-C Constitution The rights that are considered constitutional are exclusively enumerated in the written constitution. (1)

- 2. Primarily the Large-C Constitution The rights that are considered constitutional are primarily enumerated in the written constitution—but there are exceptions. (2)

- 3. A Mix of Large-C Constitution and Small-c Constitution The rights that are considered constitutional are found roughly equally in the written constitution and the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status ("super statutes"), treaties that have been incorporated into the constitution, or conventions. (3)

- 4. Primarily the Small-c Constitution The rights that are considered constitutional are primarily found in the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status ("super statutes"), treaties that have been incorporated into the constitution, or conventions—but there are exceptions. (4)

- 5. Exclusively the Small-c Constitution The rights that are considered constitutional are exclusively found in the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status ("super statutes"), treaties that have been incorporated into the constitution, or conventions. (5)

Display the following questions unless respondents answered “Exclusively Large C”.

Q4B Please provide examples of rights that are considered constitutional rights in [Your Country] that are found in small-c constitution.

Electronic copy available at: https://ssrn.com/abstract=3490919
Q4C
For the constitutional rights that are found in the Small-c constitution, what is the primary legal basis of those rights? Feel free to select more than one option if appropriate.

- Judicial interpretations of express constitutional guarantees (1)
- Common law precedents (2)
- Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees) (3)
- Treaties that have been incorporated into the constitution (4)
- Conventions (5)
- Others, please specify: (6)

Q4D
Do most constitutional law scholars consider Judicial Interpretations of Express Constitutional guarantees to be part of constitutional law in [Your Country]?

- Yes (1)
- No (2)

Q4E
Do most constitutional law scholars consider Common law precedents to be part of constitutional law in [Your Country]?

- Yes (1)
- No (2)

Q4F
Do most constitutional law scholars consider Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees) to be part of constitutional law in [Your Country]?

- Yes (1)
- No (2)
Q4G
Do most constitutional law scholars consider Treaties that have been incorporated into the constitution to be part of constitutional law in [Your Country]?

- Yes  (1)
- No  (2)

Q4H
Do most constitutional law scholars consider Conventions to be part of constitutional law in [Your Country]?

- Yes  (1)
- No  (2)

Q4I
Do most constitutional law scholars consider the "Other" source you entered to be part of constitutional law in [Your Country]?

- Yes  (1)
- No  (2)

Q4K
Would you say the government of [Your Country] generally respects the constitution’s rights provisions?

- No (i.e. constitutional rights are usually ignored by the government)  (1)
- Somewhat (i.e. constitutional rights are sometimes ignored by the government)  (2)
- Yes (i.e. constitutional rights are almost never ignored by the government)  (3)
Twelve Specific Rights

We are going to end by asking you few questions about twelve specific constitutional rights.

Please answer all questions even if [Your Country] does not have one of the rights in its constitution. (In other words, we would like to know whether a country respects the right to unionize, even if the right to unionize is not found in a given country's constitution.)
Freedom of Expression

Example: "Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference." -- Constitution of Nigeria (Art. 39)

Q6A
What is the main legal source of the constitutional right to Freedom of Expression in [Your Country]?

☐ The Right is in the Large-C Constitution This constitutional right is the written constitution.  (1)

☐ The Right is not in the Large-C Constitution, but it is in the Small-c Constitution This right is not in the written constitution, but this right is part of the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status ("super statutes"), treaties that have been incorporated into the constitution, or conventions.  (2)

☐ Not Applicable There is no such constitutional right in [Your Country].  (3)

☐ I Don't Know I'm not sure if this is a constitutional right.  (4)

Q6B
You answered that the main legal source of the constitutional right to Freedom of Expression is the Small-c Constitution. What is the primary legal source that establishes the constitutional right to Freedom of Expression?

☐ Judicial interpretations of express constitutional guarantees  (1)

☐ Common law precedents  (2)

☐ Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees)  (3)

☐ Treaties that have been incorporated into the constitution  (4)

☐ Conventions  (5)

☐ Others, please specify:  (6) __________________________________________________________
Q6C
Do you think most constitutional lawyers in your country would regard the right to **Freedom of Expression** as constitutional law?

- Yes (1)
- No (2)

Q6D
If possible, can you name the **Year (e.g. "1965")** that the right to **Freedom of Expression** was first protected through the small-c constitution?

________________________________________________________________

Q6E
If there is anything else you would like to tell us about the small-c basis for the constitutional right to **Freedom of Expression**, please enter it below.

________________________________________________________________

________________________________________________________________

________________________________________________________________

________________________________________________________________

________________________________________________________________
Q6F
Does the government generally respect the right to **Freedom of Expression**?

- No (i.e. the right is usually ignored by the government) (1)
- Somewhat (i.e. the right is sometimes ignored by the government) (2)
- Yes (i.e. the right is almost never ignored by the government) (3)

Q6G
Have courts enforced the right to **Freedom of Expression** based on either the large-c constitution or small-c constitution in [Your Country]? Please do not include enforcement of these rights based on sources that are not considered constitutional in nature in your answer.

- Never (1)
- Rarely (2)
- Sometimes (3)
- Often (4)
- Very Often (5)
Political Parties

Example: "All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government. All citizens shall have the right to form and join political parties and; subject to such qualifications prescribed by law as are necessary in a democratic society to participate in the conduct of public affairs, whether directly or through freely chosen representatives."

-- Constitution of Namibia (Art. 17)

Q7A
What is the main legal source of the constitutional right to Political Parties in [Your Country]?

○ The Right is in the Large-C Constitution This constitutional right is the written constitution. (9)

○ The Right is not in the Large-C Constitution, but it is in the Small-c Constitution This right is not in the written constitution, but this right is part of the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status ("super statutes"), treaties that have been incorporated into the constitution, or conventions. (14)

○ Not Applicable There is no such constitutional right in [Your Country]. (11)

○ I Don't Know I'm not sure if this is a constitutional right. (13)
Q7B
You answered that the main legal source of the constitutional right to Political Parties is the Small-c Constitution. What is the primary legal source that establishes the constitutional right to Political Parties?

- Judicial interpretations of express constitutional guarantees (1)
- Common law precedents (2)
- Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees) (3)
- Treaties that have been incorporated into the constitution (4)
- Conventions (5)
- Others, please specify: (6) __________________________

Q7C
Do you think most constitutional lawyers in your country would regard the right to Political Parties as constitutional law?

- Yes (1)
- No (2)

Q7D
If possible, can you name the Year (e.g. "1965") that the right to Political Parties was first protected through the small-c constitution?

______________________________________________________________

Q7E
If there is anything else you would like to tell us about the small-c basis for the constitutional right to Political Parties, please enter it below.

________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________
Q7F
Does the government generally respect the right to Political Parties?

- No (i.e. the right is usually ignored by the government) (1)
- Somewhat (i.e. the right is sometimes ignored by the government) (2)
- Yes (i.e. the right is almost never ignored by the government) (3)

Q7G
Have courts enforced the right to Political Parties based on either the large-c constitution or small-c constitution in [Your Country]? Please do not include enforcement of these rights based on sources that are not considered constitutional in nature in your answer.

- Never (1)
- Rarely (2)
- Sometimes (3)
- Often (4)
- Very Often (5)
Right to Unionize

Example: "The Constitution guarantees all persons: . . . The right to unionize in the cases and manner provided by the law. Trade union membership shall always be voluntary." -- Constitution of Chile (Art. 19)

Q8A
What is the main legal source of the constitutional right to Unionize in [Your Country]?

○ The Right is in the Large-C Constitution This constitutional right is the written constitution. (9)

○ The Right is not in the Large-C constitution, but is is in the Small-c Constitution This right is not in the written constitution, but this right is part of the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status ("super statutes"), treaties that have been incorporated into the constitution, or conventions. (10)

○ Not Applicable There is no such constitutional right in [Your Country]. (11)

○ I Don't Know I'm not sure if this is a constitutional right. (12)

Q8B
You answered that the main legal source of the constitutional right to Unionize is the Small-c Constitution. What is the primary legal source that establishes the constitutional right to Unionize?

○ Judicial interpretations of express constitutional guarantees (1)

○ Common law precedents (2)

○ Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees) (3)

○ Treaties that have been incorporated into the constitution (4)

○ Conventions (5)

○ Others, please specify: (6) ___________________________________________________________
Q8C
Do you think most constitutional lawyers in your country would regard the right to **Unionize** as constitutional law?

- Yes (1)
- No (2)

Q8D
If possible, can you name the **Year (e.g. "1965")** that the right to **Unionize** was first protected through the small-c constitution?

________________________________________________________________

Q8E
If there is anything else you would like to tell us about the small-c basis for the constitutional right to **Unionize**, please enter it below.

________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________

Q8F
Does the government generally respect the right to **Unionize**?

- No (i.e. the right is usually ignored by the government) (1)
- Somewhat (i.e. the right is sometimes ignored by the government) (2)
- Yes (i.e. the right is almost never ignored by the government) (3)
Q8G
Have courts enforced the right to **Unionize** based on either the large-c constitution or small-c constitution in [Your Country]? Please do not include enforcement of these rights based on sources that are not considered constitutional in nature in your answer.

- Never (1)
- Rarely (2)
- Sometimes (3)
- Often (4)
- Very Often (5)
Freedom of Religion

Example: "Everyone has the freedom of conscience, religious belief and conviction.”
-- Constitution of Turkey (Art. 24)

Q9A
What is the main legal source of the constitutional right to Freedom of Religion in [Your Country]?

○ The Right is in the Large-C Constitution This constitutional right is in the written constitution. (9)

○ The Right is not in the large-C Constitution, but it is in the Small-c Constitution
This right is not in the written constitution, but this right is part of the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status ("super statutes"), treaties that have been incorporated into the constitution, or conventions. (10)

○ Not Applicable There is no such constitutional right in [Your Country]. (11)

○ I Don't Know I'm not sure if this is a constitutional right. (12)

Q9B
You answered that the main legal source of the constitutional right to Freedom of Religion is the Small-c Constitution. What is the primary legal source that establishes the constitutional right to Freedom of Religion?

○ Judicial interpretations of express constitutional guarantees (1)

○ Common law precedents (2)

○ Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees) (3)

○ Treaties that have been incorporated into the constitution (4)

○ Conventions (5)

○ Others, please specify: (6) ____________________________________________________________

Electronic copy available at: https://ssrn.com/abstract=3490919
Q9C
Do you think most constitutional lawyers in your country would regard the right to **Freedom of Religion** as constitutional law?

- Yes (1)
- No (2)

Q9D
If possible, can you name the **Year (e.g. "1965")** that the right to **Freedom of Religion** was first protected through the small-c constitution?

________________________________________________________________

Q9E
If there is anything else you would like to tell us about the small-c basis for the constitutional right to **Freedom of Religion**, please enter it below.

________________________________________________________________

________________________________________________________________

________________________________________________________________

________________________________________________________________

Q9F
Does the government generally respect the right to **Freedom of Religion**?

- No (i.e. the right is usually ignored by the government) (1)
- Somewhat (i.e. the right is sometimes ignored by the government) (2)
- Yes (i.e. the right is almost never ignored by the government) (3)
Q9G
Have courts enforced the right to **Freedom of Religion** based on either the large-c constitution or small-c constitution in [Your Country]? Please do not include enforcement of these rights based on sources that are not considered constitutional in nature in your answer.

- Never (1)
- Rarely (2)
- Sometimes (3)
- Often (4)
- Very Often (5)
Freedom of Association

Example: "Every person has the right to freedom of association for any cause or purpose.” -- Constitution of Ethiopia (Art. 31)

Q10A
What is the main legal source of the constitutional right to Freedom of Association in [Your Country]?

○ The Right is in the Large-C Constitution This constitutional right is in the written constitution. (9)

○ The Right is not in the large-C Constitution, but it is in the Small-c Constitution This right is not in the written constitution, but this right is part of the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status (“super statutes”), treaties that have been incorporated into the constitution, or conventions. (10)

○ Not Applicable There is no such constitutional right in [Your Country]. (11)

○ I Don't Know I'm not sure if this is a constitutional right. (12)

Q10B
You answered that the main legal source of the constitutional right to Freedom of Association is the Small-c Constitution. What is the primary legal source that establishes the constitutional right to Freedom of Association?

○ Judicial interpretations of express constitutional guarantees (1)

○ Common law precedents (2)

○ Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees) (3)

○ Treaties that have been incorporated into the constitution (4)

○ Conventions (5)

○ Others, please specify: ____________________________________________________________
Q10C
Do you think most constitutional lawyers in your country would regard the right to **Freedom of Association** as constitutional law?

- Yes (1)
- No (2)

Q10D
If possible, can you name the **Year (e.g. "1965")** that the right to **Freedom of Association** was first protected through the small-c constitution?
________________________________________________________________

Q10E
If there is anything else you would like to tell us about the small-c basis for the constitutional right to **Freedom of Association**, please enter it below.
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________

Q10F
Does the government generally respect the right to **Freedom of Association**?

- No (i.e. the right is usually ignored by the government) (1)
- Somewhat (i.e. the right is sometimes ignored by the government) (2)
- Yes (i.e. the right is almost never ignored by the government) (3)
Q10G
Have courts enforced the right to Freedom of Association based on either the large-c constitution or small-c constitution in [Your Country]? Please do not include enforcement of these rights based on sources that are not considered constitutional in nature in your answer.

- Never (1)
- Rarely (2)
- Sometimes (3)
- Often (4)
- Very Often (5)
Freedom of Movement

Example: "Every person has the right to freedom of movement."
-- Constitution of Kenya (Art. 39)

Q11A
What is the main legal source of the constitutional right to Freedom of Movement in [Your Country]?

- The Right is in the Large-C Constitution This constitutional right is in the written constitution. (9)

- The Right is not in the large-C Constitution, but it is in the Small-c Constitution This right is not in the written constitution, but this right is part of the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-
constitutional status (“super statutes”), treaties that have been incorporated into the constitution, or conventions. (10)

☐ Not Applicable There is no such constitutional right in [Your Country]. (11)

☐ I Don't Know I'm not sure if this is a constitutional right. (12)

Q11B
You answered that the main legal source of the constitutional right to Freedom of Movement is the Small-c Constitution. What is the primary legal source that establishes the constitutional right to Freedom of Movement?

☐ Judicial interpretations of express constitutional guarantees (1)

☐ Common law precedents (2)

☐ Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees) (3)

☐ Treaties that have been incorporated into the constitution (4)

☐ Conventions (5)

☐ Others, please specify: ___________________________________________

Q11C
Do you think most constitutional lawyers in your country would regard the right to Freedom of Movement as constitutional law?

☐ Yes (1)

☐ No (2)

Q11D
If possible, can you name the Year (e.g. "1965") that the right to Freedom of Movement was first protected through the small-c constitution?

________________________________________________________________
Q11E
If there is anything else you would like to tell us about the small-c basis for the constitutional right to Freedom of Movement, please enter it below.
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________

Q11D
Does the government generally respect the right to Freedom of Movement?

○ No (i.e. the right is usually ignored by the government) (1)

○ Somewhat (i.e. the right is sometimes ignored by the government) (2)

○ Yes (i.e. the right is almost never ignored by the government) (3)

Q11F
Have courts enforced the right to Freedom of Movement based on either the large-c constitution or small-c constitution in [Your Country]? Please do not include enforcement of these rights based on sources that are not considered constitutional in nature in your answer.

○ Never (1)

○ Rarely (2)

○ Sometimes (3)

○ Often (4)

○ Very Often (5)

Electronic copy available at: https://ssrn.com/abstract=3490919
Gender Equality

Example: "Men and women shall have equal rights.”
-- Constitution of Germany (Art. 3)

Q12A
What is the main legal source of the constitutional right to Gender Equality in [Your Country]?

- **The Right is in the Large-C Constitution** This constitutional right is in the written constitution. (9)

- **The Right is not in the large-C Constitution, but it is in the Small-c Constitution** This right is not in the written constitution, but this right is part of the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status (“super statutes”), treaties that have been incorporated into the constitution, or conventions. (10)

- **Not Applicable** There is no such constitutional right in [Your Country]. (11)

- **I Don't Know** I'm not sure if this is a constitutional right. (12)
Q12B
You answered that the main legal source of the constitutional right to **Gender Equality** is the Small-c Constitution. What is the primary legal source that establishes the constitutional right to **Gender Equality**?

- Judicial interpretations of express constitutional guarantees (1)
- Common law precedents (2)
- Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees) (3)
- Treaties that have been incorporated into the constitution (4)
- Conventions (5)
- Others, please specify: (6) ________________________________

Q12C
Do you think most constitutional lawyers in your country would regard the right to **Gender Equality** as constitutional law?

- Yes (1)
- No (2)

Q12D
If possible, can you name the **Year (e.g. "1965")** that the right to **Gender Equality** was first protected through the small-c constitution?

________________________________________________________________

Q12E
If there is anything else you would like to tell us about the small-c basis for the constitutional right to **Gender Equality**, please enter it below.

________________________________________________________________

________________________________________________________________

________________________________________________________________

________________________________________________________________

Electronic copy available at: https://ssrn.com/abstract=3490919
Q12F
Does the government generally respect the right to Gender Equality?

○ No (i.e. the right is usually ignored by the government) (1)

○ Somewhat (i.e. the right is sometimes ignored by the government) (2)

○ Yes (i.e. the right is almost never ignored the government) (3)

Q12G
Have courts enforced the right to Gender Equality based on either the large-c constitution or small-c constitution in [Your Country]? Please do not include enforcement of these rights based on sources that are not considered constitutional in nature in your answer.

○ Never (1)

○ Rarely (2)

○ Sometimes (3)

○ Often (4)

○ Very Often (5)
Prohibition of Torture

Example: "No person shall be subject to torture or inhuman degrading punishment or other treatment."
-- Constitution of Gambia (Art. 21)

Q13A
What is the main legal source of the constitutional prohibition of Torture in [Your Country]?

- The Right is in the Large-C Constitution This constitutional right is in the written constitution. (9)

- The Right is not in the large-C Constitution, but it is in the Small-c Constitution This right is not in the written constitution, but this right is part of the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status ("super statutes"), treaties that have been incorporated into the constitution, or conventions. (10)

- Not Applicable There is no such constitutional right in [Your Country]. (11)

- I Don't Know I'm not sure if this is a constitutional right. (12)

Q13B
You answered that the main legal source of the constitutional prohibition of Torture is the Small-c Constitution. What is the primary legal source that establishes the constitutional prohibition of Torture?

- Judicial interpretations of express constitutional guarantees (1)

- Common law precedents (2)

- Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees) (3)

- Treaties that have been incorporated into the constitution (4)

- Conventions (5)

- Others, please specify: (6) ____________________________________________________________
Q13C
Do you think most constitutional lawyers in your country would regard the prohibition of Torture as constitutional law?

○ Yes (1)

○ No (2)

Q13D
If possible, can you name the Year (e.g. "1965") that the prohibition of Torture was first protected through the small-c constitution?


Q13E
If there is anything else you would like to tell us about the small-c basis for the constitutional prohibition of Torture, please enter it below.


Q13F
Does the government generally respect the prohibition of Torture?

○ No (i.e. the right is usually ignored by the government) (1)

○ Somewhat (i.e. the right is sometimes ignored by the government) (2)

○ Yes (i.e. the right is almost never ignored by the government) (3)
Q13G
Have courts enforced the prohibition of **Torture** based on either the large-c constitution or small-c constitution in [Your Country]? Please do not include enforcement of these rights based on sources that are not considered constitutional in nature in your answer.

- Never (1)
- Rarely (2)
- Sometimes (3)
- Often (4)
- Very Often (5)
Education

Example: "Every citizen shall have the right to education."
-- Constitution of Mali (Art. 16)

Q14A
What is the main legal source of the constitutional right to Education in [Your Country]?

○ The Right is in the Large-C Constitution This constitutional right is in the written constitution. (9)

○ The Right is not in the large-C Constitution, but it is in the Small-c Constitution
This right is not in the written constitution, but this right is part of the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status ("super statutes"), treaties that have been incorporated into the constitution, or conventions. (10)

○ Not Applicable There is no such constitutional right in [Your Country]. (11)

○ I Don't Know I'm not sure if this is a constitutional right. (12)

Q14B
You answered that the main legal source of the constitutional right to Education is the Small-c Constitution. What is the primary legal source that establishes the constitutional right to Education?

○ Judicial interpretations of express constitutional guarantees (1)

○ Common law precedents (2)

○ Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees) (3)

○ Treaties that have been incorporated into the constitution (4)

○ Conventions (5)

○ Others, please specify: (6) ________________________________
Q14C
Do you think most constitutional lawyers in your country would regard the right to Education as constitutional law?

☐ Yes (1)

☐ No (2)

Q14D
If possible, can you name the Year (e.g. "1965") that the right to Education was first protected through the small-c constitution?
________________________________________________________________

Q14E
If there is anything else you would like to tell us about the small-c basis for the constitutional right to Education, please enter it below.
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________

Q14F
Does the government generally respect the right to Education?

☐ No (i.e. the right is usually ignored by the government) (1)

☐ Somewhat (i.e. the right is sometimes ignored by the government) (2)

☐ Yes (i.e. the right is almost never ignored by the government) (3)
Q14G
Have courts enforced the right to Education based on either the large-c constitution or small-c constitution in [Your Country]? Please do not include enforcement of these rights based on sources that are not considered constitutional in nature in your answer.

- Never (1)
- Rarely (2)
- Sometimes (3)
- Often (4)
- Very Often (5)
Health Care

Example: "Every citizen is entitled to health and to comprehensive health care with quality criteria. The state guarantees to maintain and support public health facilities that provide health services to the people, and work on enhancing their efficiency and their fair geographical distribution."
-- Constitution of Egypt (Art. 18)

Q15A
What is the main legal source of the constitutional right to Health Care in [Your Country]?

☐ The Right is in the Large-C Constitution This constitutional right is in the written constitution. (9)

☐ The Right is not in the large-C Constitution, but it is in the Small-c Constitution This right is not in the written constitution, but this right is part of the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status ("super statutes"), treaties that have been incorporated into the constitution, or conventions. (10)

☐ Not Applicable There is no such constitutional right in [Your Country]. (11)

☐ I Don't Know I'm not sure if this is a constitutional right. (12)

Q15B
You answered that the main legal source of the constitutional right to Health Care is the Small-c Constitution. What is the primary legal source that establishes the constitutional right to Health Care?

☐ Judicial interpretations of express constitutional guarantees (1)

☐ Common law precedents (2)

☐ Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees) (3)

☐ Treaties that have been incorporated into the constitution (4)

☐ Conventions (5)

☐ Others, please specify: (6) ........................................................................................................
Q15C
Do you think most constitutional lawyers in your country would regard the right to Health Care as constitutional law?

☐ Yes (1)

☐ No (2)

Q15D
If possible, can you name the Year (e.g. "1965") that the right to Health Care was first protected through the small-c constitution?

________________________________________________________________

Q15E
If there is anything else you would like to tell us about the small-c basis for the constitutional right to Health Care, please enter it below.

________________________________________________________________

________________________________________________________________

________________________________________________________________

________________________________________________________________

Q15F Does the government generally respect the right to Health Care?

☐ No (i.e. the right is usually ignored by the government) (1)

☐ Somewhat (i.e. the right is sometimes ignored by the government) (2)

☐ Yes (i.e. the right is almost never ignored by the government) (3)
Q15G Have courts enforced the right to **Health Care** based on either the large-c constitution or small-c constitution in [Your Country]? Please do not include enforcement of these rights based on sources that are not considered constitutional in nature in your answer.

- Never (1)
- Rarely (2)
- Sometimes (3)
- Often (4)
- Very Often (5)
Housing

Example: "The public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing."
-- Constitution of Finland (Section 19)

Q16A
What is the main legal source of the constitutional right to Housing in [Your Country]?

- **The Right is in the Large-C Constitution** This constitutional right is in the written constitution. (9)

- **The Right is not in the large-C Constitution, but it is in the Small-c Constitution** This right is not in the written constitution, but this right is part of the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status (“super statutes”), treaties that have been incorporated into the constitution, or conventions. (10)

- **Not Applicable** There is no such constitutional right in [Your Country]. (11)

- **I Don't Know** I'm not sure if this is a constitutional right. (12)

Q16B
You answered that the main legal source of the constitutional right to Housing is the Small-c Constitution. What is the primary legal source that establishes the constitutional right to Housing?

- Judicial interpretations of express constitutional guarantees (1)

- Common law precedents (2)

- Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees) (3)

- Treaties that have been incorporated into the constitution (4)

- Conventions (5)

- Others, please specify: (6) ______________________________________________
Q16C
Do you think most constitutional lawyers in your country would regard the right to Housing as constitutional law?

☐ Yes (1)

☐ No (2)

Q16D
If possible, can you name the **Year (e.g. "1965")** that the right to Housing was first protected through the small-c constitution?

________________________________________________________________

Q16E
If there is anything else you would like to tell us about the small-c basis for the constitutional right to Housing, please enter it below.

________________________________________________________________

________________________________________________________________

________________________________________________________________

________________________________________________________________

Q16F
Does the government generally respect the right to Housing?

☐ No (i.e. the right is usually ignored by the government) (1)

☐ Somewhat (i.e. the right is sometimes ignored by the government) (2)

☐ Yes (i.e. the right is almost never ignored by the government) (3)
Q16G
Have courts enforced the right to **Freedom of Housing** based on either the large-\(c\) constitution or small-\(c\) constitution in [Your Country]? Please do not include enforcement of these rights based on sources that are not considered constitutional in nature in your answer.

- Never (1)
- Rarely (2)
- Sometimes (3)
- Often (4)
- Very Often (5)
Social Security

Example: "The State shall care for the social security of the working people, as specified by law." -- Constitution of Greece (Art. 22)

Q17A
What is the main legal source of the constitutional right to Social Security in [Your Country]?

- **The Right is in the Large-C Constitution** This constitutional right is in the written constitution. (9)

- **The Right is not in the large-C Constitution, but it is in the Small-c Constitution** This right is not in the written constitution, but this right is part of the larger body of constitutional law comprised of sources like judicial interpretations, laws with quasi-constitutional status ("super statutes"), treaties that have been incorporated into the constitution, or conventions. (10)

- **Not Applicable** There is no such constitutional right in [Your Country]. (11)

- **I Don't Know** I'm not sure if this is a constitutional right. (12)

Q17B
You answered that the main legal source of the constitutional right to Social Security is the Small-c Constitution. What is the primary legal source that establishes the constitutional right to Social Security?

- Judicial interpretations of express constitutional guarantees (1)

- Common law precedents (2)

- Laws with quasi-constitutional status ("super statutes" or laws that implement constitutional guarantees) (3)

- Treaties that have been incorporated into the constitution (4)

- Conventions (5)

- Others, please specify: (6) ____________________________________________________________
Q17C
Do you think most constitutional lawyers in your country would regard the right to Social Security as constitutional law?

○ Yes (1)

○ No (2)

Q17D
If possible, can you name the Year (e.g. "1965") that the right to Social Security was first protected through the small-c constitution?

________________________________________________________________

Q17E
If there is anything else you would like to tell us about the small-c basis for the constitutional right to Social Security, please enter it below.

________________________________________________________________

________________________________________________________________

________________________________________________________________

________________________________________________________________

Q17F
Does the government generally respect the right to Social Security?

○ No (i.e. the right is usually ignored by the government) (1)

○ Somewhat (i.e. the right is sometimes ignored by the government) (2)

○ Yes (i.e. the right is almost never ignored by the government) (3)
Q17G
Have courts enforced the right to **Social Security** based on either the large-c constitution or small-c constitution in [Your Country]? Please do not include enforcement of these rights based on sources that are not considered constitutional in nature in your answer.

- Never (1)
- Rarely (2)
- Sometimes (3)
- Often (4)
- Very Often (5)
## Appendix 3: List of Experts

<table>
<thead>
<tr>
<th>Country</th>
<th>Expert</th>
<th>Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>Ghizal Haress</td>
<td>American University of Afghanistan, Department of Law</td>
</tr>
<tr>
<td>Albania</td>
<td>Adea Pirideni</td>
<td>University of Tirana, Faculty of Law</td>
</tr>
<tr>
<td>Algeria</td>
<td>Abdessalem Salmi</td>
<td>Ajman University, UAE</td>
</tr>
<tr>
<td>Andorra</td>
<td>Marcin Łukaszewski</td>
<td>Adam Mickiewicz University in Poznań</td>
</tr>
<tr>
<td>Angola</td>
<td>Alexandre Pegado</td>
<td>Alexandre Pegado &amp; Associados Sociedade De Advogados, R.L.</td>
</tr>
<tr>
<td>Argentina</td>
<td>Flavio Inocencio</td>
<td>Nova School of Law</td>
</tr>
<tr>
<td>Argentina</td>
<td>Juan Martín Morando</td>
<td></td>
</tr>
<tr>
<td>Armenia</td>
<td>Maria Lorena Schiariiti</td>
<td>Marval, O'Farrell &amp; Mairal</td>
</tr>
<tr>
<td>Armenia</td>
<td>Armen Mazmanyan</td>
<td>Central European University</td>
</tr>
<tr>
<td>Australia</td>
<td>Rosalind Dixon</td>
<td>UNSW</td>
</tr>
<tr>
<td>Austria</td>
<td>Konrad Lachmayer</td>
<td>Sigmund Freud University Vienna</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>Ridwanul Hoque</td>
<td>University of Dhaka and La Trobe University</td>
</tr>
<tr>
<td>Belgium</td>
<td>Jurgen Goossens</td>
<td>Ghent University and Erasmus University of Rotterdam</td>
</tr>
<tr>
<td>Belgium</td>
<td>Ronald Van Crombrugge</td>
<td>KU Leuven</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>Maja Sahadzic</td>
<td>University of Antwerp</td>
</tr>
<tr>
<td>Botswana</td>
<td>Kago Rapula Mokotedi</td>
<td>Botswana Public Employees Union</td>
</tr>
<tr>
<td>Brazil</td>
<td>Bruno Bodart</td>
<td>Harvard Law School; Rio de Janeiro State University</td>
</tr>
<tr>
<td>Brazil</td>
<td>Daniel Capecchi Nunes</td>
<td>Federal University of Juiz de Fora</td>
</tr>
<tr>
<td>Brazil</td>
<td>Fernando Barboza Dias</td>
<td>University of Virginia</td>
</tr>
<tr>
<td>Brazil</td>
<td>Filippo Maria Lancieri</td>
<td>University of Chicago Law School</td>
</tr>
<tr>
<td>Brazil</td>
<td>Gabriel Dias Marques da Cruz</td>
<td>Federal University of Bahia (UFBA, Brazil)</td>
</tr>
<tr>
<td>Brazil</td>
<td>José Borges Teixeira Júnior</td>
<td>Federal University of Espírito Santo State</td>
</tr>
<tr>
<td>Brazil</td>
<td>José Eduardo Figueiredo de Andrade Martins</td>
<td>Pontifical Catholic University of Campinas</td>
</tr>
<tr>
<td>Brazil</td>
<td>Luiz Guilherme Marinoni</td>
<td>Universidade Federal do Paraná</td>
</tr>
<tr>
<td>Brazil</td>
<td>Mariana Almeida Kato</td>
<td>Université de Reims Champagne-Ardenne</td>
</tr>
<tr>
<td>Brazil</td>
<td>Miguel Calmon Dantas</td>
<td>UFBA</td>
</tr>
<tr>
<td>Brazil</td>
<td>Paula Gorzoni</td>
<td>Christian Albrechts University Kiel</td>
</tr>
<tr>
<td>Brazil</td>
<td>Vanice Lirio do Valle</td>
<td>Estácio de Sá University</td>
</tr>
<tr>
<td>Brunei</td>
<td>Dr. Kerstin Steiner</td>
<td>Law School, La Trobe University</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Martin Belov</td>
<td>University of Sofia “St. Kliment Ohridski”, Faculty of Law</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>Lamoussa Sawadogo</td>
<td>Human Rights First Burkina Faso</td>
</tr>
<tr>
<td>Burundi</td>
<td>Audace Gatavu</td>
<td>University of Ottawa</td>
</tr>
<tr>
<td>Burundi</td>
<td>Eric Bizimana</td>
<td></td>
</tr>
<tr>
<td>Cambodia</td>
<td>Hor Peng</td>
<td>National University of Management</td>
</tr>
<tr>
<td>Cameroon</td>
<td>Charles Manga Fombad</td>
<td>Institute for International and Comparative Law, Faculty of Law, University of Pretoria</td>
</tr>
<tr>
<td>Cameroon</td>
<td>Laura-Stella Enonechong</td>
<td>De Montfort University</td>
</tr>
<tr>
<td>Canada</td>
<td>Charles-Maxime Panaccio</td>
<td>Faculty of law, University of Ottawa</td>
</tr>
<tr>
<td>Country</td>
<td>Name</td>
<td>Institution</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------------------------</td>
<td>-------------------------------------------------------</td>
</tr>
<tr>
<td>Canada</td>
<td>Gordon DiGiacomo</td>
<td>University of Ottawa</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>José Pina-Delgado</td>
<td>Instituto Superior de Ciências Jurídicas e Sociais - ISCJS</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>Mafalda Oliveira Monteiro</td>
<td>Miranda &amp; Associados - Sociedade de Advogados</td>
</tr>
<tr>
<td>Chad</td>
<td>Kameledy Neldjingaye</td>
<td>Political Affairs Officer, United Nations</td>
</tr>
<tr>
<td>Chile</td>
<td>Alberto Coddou Mc Manus</td>
<td>Diego Portales University</td>
</tr>
<tr>
<td>Chile</td>
<td>Ignacio Arana</td>
<td>Carnegie Mellon University</td>
</tr>
<tr>
<td>Chile</td>
<td>José Francisco García</td>
<td>Pontifical Catholic University of Chile</td>
</tr>
<tr>
<td>Chile</td>
<td>Rodrigo Delaveau</td>
<td>Universidad Católica de Chile</td>
</tr>
<tr>
<td>China</td>
<td>Haiyan Lu</td>
<td>The Hong Kong Polytechnic University</td>
</tr>
<tr>
<td>China</td>
<td>Meng Qiang</td>
<td>School of Law, Beijing Institute of Technology</td>
</tr>
<tr>
<td>China</td>
<td>Qingyu Qi</td>
<td>Renmin University of China Law School</td>
</tr>
<tr>
<td>China</td>
<td>Ran You</td>
<td>China University of Petroleum</td>
</tr>
<tr>
<td>China</td>
<td>Wu Yujia</td>
<td>Economic Law, Renmin University of China</td>
</tr>
<tr>
<td>China</td>
<td>Xi Tian</td>
<td>Nanjing Agricultural University China</td>
</tr>
<tr>
<td>China</td>
<td>Xueze Wu</td>
<td>Shandong University</td>
</tr>
<tr>
<td>Colombia</td>
<td>Camilo Sánchez</td>
<td>Universidad Nacional de Colombia</td>
</tr>
<tr>
<td>Colombia</td>
<td>Santiago Virgüez Ruiz</td>
<td>Universidad de los Andes</td>
</tr>
<tr>
<td>Colombia</td>
<td>Susan Ashury</td>
<td>University of Houston</td>
</tr>
<tr>
<td>Colombia</td>
<td>Vicente F. Benítez-Rojas</td>
<td>Universidad de La Sabana (Colombia) and NYU School of Law</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Alejandro Batalla</td>
<td>Universidad Autónoma de Centro América</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Bruce Wilson</td>
<td>UCF</td>
</tr>
<tr>
<td>Croatia</td>
<td>Djordje Gardasevic</td>
<td>Zagreb Law Faculty, University of Zagreb, Croatia</td>
</tr>
<tr>
<td>Cuba</td>
<td>Armando Chaguaceda</td>
<td>Centro de Estudios Constitucionales AC</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Constantinos Kombos</td>
<td>Law Department, University of Cyprus</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Marek Antoš</td>
<td>Charles University, Prague</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Miluse Kindlova</td>
<td>Charles University Faculty of Law (Prague)</td>
</tr>
<tr>
<td>Denmark</td>
<td>Helle Krunke</td>
<td>Faculty of Law, University of Copenhagen</td>
</tr>
<tr>
<td>Denmark</td>
<td>Ole Terkelsen</td>
<td>Aarhus University, Department of Law</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>Nassef Perdomo</td>
<td>Pontificia Universidad Católica Madre y Maestra</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Jorge Baquerizo-Minuchu</td>
<td>Universitat de Girona (Spain)</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Mauricio Guim</td>
<td>University of Virginia</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Oscar Del Brutto</td>
<td>UEES</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Patricio Alvarado Luzuriaga</td>
<td>Universidad de Especialidades Espiritú Santo</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Socrates Augusto Verduga Sanchez</td>
<td>Catholic University of Guayaquil</td>
</tr>
<tr>
<td>Egypt</td>
<td>Mohamed Abdelaal</td>
<td>Alexandria University</td>
</tr>
<tr>
<td>El Salvador</td>
<td>Herman Manuel Duarte</td>
<td>Hluarte-LEX (Costa Rica &amp; El Salvador)</td>
</tr>
<tr>
<td>El Salvador</td>
<td>José Albino Tinetti</td>
<td>Escuela Superior de Economía y Negocios</td>
</tr>
<tr>
<td>El Salvador</td>
<td>Roberto Díaz</td>
<td>Harvard Law School</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>Maria Araújo</td>
<td>Vieira de Almeida e Associados and the VdA Legal Partners network</td>
</tr>
<tr>
<td>Country</td>
<td>Name</td>
<td>Institution/organization</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-------------------------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Estonia</td>
<td>Mart Susi</td>
<td>Tallinn University</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>Benhun Adugna Gebeye</td>
<td>Central European University</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>Adem K Abebe</td>
<td>Constitution Building Programme, International IDEA</td>
</tr>
<tr>
<td>Federated States of Micronesia</td>
<td>Michael J. Sipos</td>
<td>Law Office of Michael J. Sipos</td>
</tr>
<tr>
<td>Fiji</td>
<td>Shai斯塔 Shameem</td>
<td>University of Fiji</td>
</tr>
<tr>
<td>Finland</td>
<td>Tuomas Ojanen</td>
<td>University of Helsinki</td>
</tr>
<tr>
<td>France</td>
<td>Cédric Bernard</td>
<td>Université Jean Moulin, Lyon 3</td>
</tr>
<tr>
<td>France</td>
<td>Pierre-Jean Douvier</td>
<td>CMS Francis Lefebvre</td>
</tr>
<tr>
<td>Gabon</td>
<td>Ondo Telephore</td>
<td>Omar Bongo University</td>
</tr>
<tr>
<td>Gambia</td>
<td>Satang Nabaneh</td>
<td>Law Hub Gambia</td>
</tr>
<tr>
<td>Ghana</td>
<td>Michael Addaney</td>
<td>University of Energy and Natural Resources, Sunyani, Ghana</td>
</tr>
<tr>
<td>Ghana</td>
<td>Peace Gifty Sakyibea Ofie</td>
<td>Kristalhelder Proeflezer</td>
</tr>
<tr>
<td>Greece</td>
<td>Georgios Dimitropoulos</td>
<td>HBKU, College of Law and Public Policy</td>
</tr>
<tr>
<td>Guinea-Bissau</td>
<td>Maria Araújo</td>
<td>Vieira de Almeida and the VdA Legal Partners' network</td>
</tr>
<tr>
<td>Hungary</td>
<td>Eszter Bodnár</td>
<td>ELTE Eőtvös Loránd University</td>
</tr>
<tr>
<td>India</td>
<td>Sandeep Suresh</td>
<td>Jindal Global Law School</td>
</tr>
<tr>
<td>India</td>
<td>Saranya Mishra</td>
<td>ILS Law College, Pune</td>
</tr>
<tr>
<td>India</td>
<td>Vishwajith Sadananda</td>
<td>University of Michigan Law School</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Reyhan Gustira Anwar</td>
<td>Padjadjaran University, Bandung, Indonesia</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Rosa Ristawati</td>
<td>Maastricht University</td>
</tr>
<tr>
<td>Iran</td>
<td>Ali Shirvani</td>
<td>Xiamen University, China; Meymeh University, Iran</td>
</tr>
<tr>
<td>Ireland</td>
<td>Graham Butler</td>
<td>Aarhus University, Denmark</td>
</tr>
<tr>
<td>Israel</td>
<td>Adam Shinar</td>
<td>IDC Herzliya</td>
</tr>
<tr>
<td>Israel</td>
<td>Netta Barak-Corren</td>
<td>Hebrew University of Jerusalem</td>
</tr>
<tr>
<td>Israel</td>
<td>Talya Steiner</td>
<td>Israel Democracy Institute, Hebrew University Law School</td>
</tr>
<tr>
<td>Italy</td>
<td>Andrea Pin</td>
<td>University of Padova</td>
</tr>
<tr>
<td>Italy</td>
<td>Antonio D'Aloia</td>
<td>University of Parma</td>
</tr>
<tr>
<td>Japan</td>
<td>Eriko Taoka</td>
<td>Faculty of Law, Kokushikan University</td>
</tr>
<tr>
<td>Japan</td>
<td>Keigo Obayashi</td>
<td>Chiba University Law School</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>Alexei Trochev</td>
<td>Nazarbayev University</td>
</tr>
<tr>
<td>Kenya</td>
<td>Kipkemoi Sang</td>
<td>Advocate Trainee at Kenya School of Law</td>
</tr>
<tr>
<td>Kenya</td>
<td>Demas Kiprono</td>
<td>Amnesty International Kenya</td>
</tr>
<tr>
<td>Kosovo</td>
<td>Visar Morina</td>
<td>Faculty of Law of the University of Pristina</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>Shairbek Dzhuraev</td>
<td>Crossroads Central Asia</td>
</tr>
<tr>
<td>Laos</td>
<td>Khamphaeng Phoanchanthlath</td>
<td>Sciaroni &amp; Associates Sole Co., Ltd.</td>
</tr>
<tr>
<td>Laos</td>
<td>Pavina Thephithueck</td>
<td>BABSEACLE (NGO)</td>
</tr>
<tr>
<td>Latvia</td>
<td>Uldis Knis</td>
<td>Riga Stradiņš University</td>
</tr>
<tr>
<td>Lesotho</td>
<td>Masekara Sekoankoeta</td>
<td>Lesotho National Federation of the Organisation of the Disabled</td>
</tr>
<tr>
<td>Liberia</td>
<td>D. Elwood Dunn</td>
<td>Sewanee: The University of the South</td>
</tr>
<tr>
<td>Liberia</td>
<td>James P. Monibah</td>
<td>Private Lawyer</td>
</tr>
</tbody>
</table>
Liechtenstein

Patricia Schiess

Liechtenstein-Institut

Lithuania

Vaidotas A. Vaicaitis

Vilniaus Universitetas (Vilnius University)

Macedonia

Gordana Siljanovska-Davkova

St. Cyril and Methodius University in Skopje

Maldives

Dheena Hussain

SHC Lawyers LLP

Marshall Islands

Divine Waiti

Private Consultant

Mauritania

Cheikhany Jules

University of Nouakchott

Mauritius

Nota Ho Tu Nam

University of the Western Cape

Mexico

Franz Oberarzbacher

University of Virginia, School of Law; ITAM

Mexico

Geraldina Gonzalezdelavega

Universidad Iberoamericana

Mexico

Ismael Villar Bragdon

UNAM

Mexico

José María Soberanes Diez

Universidad Panamericana

Mongolia

Shagdarsuren Zuunai

Mongolian Law and Economics Association (MLEA)

Morocco

Mohammed Madani

University Mohamed V-Rabat, Rabat Morocco

Namibia

Kennedy Karisbe

University of Namibia

Netherlands

Hans-Martien ten Napel

Leiden Law School

Netherlands

Ingrid Leijten

Leiden University

New Zealand

Petra Butler

Victoria University of Wellington

Nicaragua

Byron Guadalupe Cárdenas Velásquez

OHCHR

Nigeria

Emmanuel Ojotu

University of Roehampton

Nigeria

Iyabode Ogumniran

Faculty of Law, University of Lagos, Nigeria

North Korea

Jeong-Ho Roh

Columbia Law School

Norway

Anine Kierulf

Norwegian National Human Rights Institution

Norway

Eirik Holmyyvik

University of Bergen

Norway

Eivind Smith

University of Oslo

Norway

Mads Andenas QC

University of Oslo

Norway

Malcolm

University of Oslo

Norway

Stian Øby Johansen

University of Oslo

Papua New Guinea

Edward P. Wolfers

University of Wollongong, NSW, Australia

Paraguay

Luis Lezcano Claude

Universidad Nacional de Asunción (Paraguay)

Peru

Daniel Soria Luján

Pontificia Universidad Católica del Perú

Philippines

Francis Tom Temprosa

University of Michigan Law School

Poland

Rafal Blicharz

University of Silesia

Poland

Władysław Jóźwicki

Adam Mickiewicz University

Portugal

Catarina Santos Botelho

Universidade Católica Portuguesa

Portugal

Irene Portela

Polytechnic Institute of Cavado and Ave

Portugal

Mariana de Sousa e Alvim

Lisbon School of Law

Romania

Bianca Gutan

Lucian Blaga University of Sibiu

Sao Tome and Principe

Fernando Loureiro Bastos

Faculty of Law, University of Lisbon

Senegal

FAIL Alioune Badara

Faculté de Droit, de Science politique et de Gestion, Université de Bordeaux, France

Sierra Leone

Joel Tejan Deen-Tarawally

Legal Aid Board
Singapore
Andrew Harding
National University of Singapore

Singapore
Swati Jhaveri
National University of Singapore

Slovakia
Marek Domín
Comenius University in Bratislava, Faculty of Law

Slovenia
Samo Bandutský
University of Ljubljana

Somalia
Mustafe Mohamed H. Dahir
SAHANSAMO Advocates and Legal Consultants

South Africa
André le Roux-Kemp
City University of Hong Kong

South Africa
Andrew Konstant
University of Chicago

South Africa
Wessel le Roux
University of the Western Cape

South Korea
Su-Yeon Kim
Samsung Economic Research Institute

South Sudan
Biel Boutros Biel
South Sudan Human Rights Society for Advocacy

South Sudan
Elfaki Chol Lual
University of Juba

South Sudan
Biel Boutros Biel
Biel & Co. Advocates

Spain
Ana Cannilla
University of Reading

Spain
Benito Aláez Corral
University of Oviedo

Spain
Ángel Aday Jiménez Alemán
University of Vigo

Swaziland
Thabiso Caesar Mavuso
Motsa Mavuso Attorneys

Swaziland
Thulani Maseko
Institute for Democracy & Leadership

Sweden
Anna Jonsson Cornell
Faculty of Law, Uppsala University

Switzerland
Klaus Mathis
University of Lucerne

Switzerland
Reto Walther
University of Zurich

Switzerland
Rény Bucheler
University of Virginia, School of Law

Taiwan
Hsin-Hsuan Lin
Taiwan Constitutional Court; National Taiwan University

Tanzania
Benedit Maige Nchalla, Esq.
Tumaini University Makumira

Thailand
Apinop Atipiboonsin
Thammasat University

Thailand
Khemthong Tonsakulrungruang
Chulalongkorn University

Trinidad and Tobago
Dr. Hamid Ghany
Sir Arthur Lewis Institute of Social and Economic Studies

Tunisia
Neila Chaabane ép. Hamouda
Faculty of Juridical, Political and Social Sciences, Carthage University

Turkey
Cem Tecimer
Harvard Law School

Turkey
Serkan Koçybaşi
Bahcesehir University

Turkey
Tarik Olay
University of Glasgow

Turkey
Volkan Aslan
Istanbul University Faculty of Law

Uganda
Fred Sekindi
Foundation for Human Rights Initiative

Uganda
Sauda Nabukenya
University of Michigan

Uganda
Walter Mandela
Graduate Institute of International and Development Studies, Geneva

Uganda
Sauda Nabukenya
University of Michigan

United Kingdom
Aileen McHarg
University of Strathclyde

United Kingdom
Christina Lienen
University College London

United Kingdom
Kenneth Campbell QC
Faculty of Advocates & University of Edinburgh

United Kingdom
Rebecca Mooney
University of Oxford

Electronic copy available at: https://ssrn.com/abstract=3490919
<table>
<thead>
<tr>
<th>Country</th>
<th>Name</th>
<th>Institution</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States of America</td>
<td>William Baude</td>
<td>University of Chicago Law School</td>
</tr>
<tr>
<td>United States of America</td>
<td>Kim Forde-Mazrui</td>
<td>University of Virginia School of Law</td>
</tr>
<tr>
<td>United States of America</td>
<td>Deborah Hellman</td>
<td>University of Virginia</td>
</tr>
<tr>
<td>Venezuela</td>
<td>Allan R. Brewer-Cartas</td>
<td>Central University of Venezuela</td>
</tr>
<tr>
<td>Venezuela</td>
<td>Juan Alberto Berrios Ortigoza</td>
<td>Universidad del Zulia</td>
</tr>
<tr>
<td>Vietnam</td>
<td>Vy Nguyen Due Nguyen</td>
<td>University of Virginia</td>
</tr>
<tr>
<td>Yugoslavia</td>
<td>Violeta Beširević</td>
<td>Union University Law School Belgrade</td>
</tr>
<tr>
<td>Zambia</td>
<td>Muna Ndulo</td>
<td>Cornell Law School</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>David Tinashe Hofisi</td>
<td>Zimbabwe Lawyers for Human Rights</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>Simplicio Bhebhe</td>
<td>Kantor And Immerman Legal Practitioners</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=3490919