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| **Transnational Constitutions[[1]](#footnote-1)** | | | | |
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**Abstract**

*Constitutions are commonly regarded as uniquely national products, shaped by domestic ideals and politics. This paper develops and empirically tests a novel hypothesis, which is that constitutions are also shaped by transnational influence, or “diffusion.” Constitutional rights can diffuse through four mechanisms: coercion, competition, learning and acculturation. To test diffusion in the constitutional realm, we traced the historical documents of all post-WWII constitutions and documented the presence of 108 constitutional rights. With this data, we estimate a spatial lag model to explain their adoption. Our results show that countries follow the choices of their former colonizer, countries with the same legal origin, the same religion, the same former colonizer, and the same aid donor. These transnational influences are strongest when a nation adopts its first constitution. At this time, no less than 46 percent of the variation in a bill of rights results from transnational influences.*

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**1. Introduction**

One of the most important political developments since the Second World War is the growing willingness of governments to constrain themselves by constitutional means. Around the world, constitutions have been reformed in a wave of constitutionalism. Constitutional rights have been at the forefront of these reforms. Constitutions have gradually expanded their catalogue of rights: first-generation negative liberty rights have been supplemented with second-generation positive socio-economic rights and third-generation cultural and group rights. Constitutions today enumerate an extensive list of rights that place substantive constraints on democratic politics. The enforcement of these rights is increasingly entrusted to the judiciary (Ginsburg (2003)). No less than 83 percent of the world’s constitutions mandate the judiciary to overturn democratic decisions that contradict the constitution (Ginsburg and Versteeg (2012)).

These developments pose a puzzle: Why would self-interested elites willingly constrain themselves by constitutional means? Leading accounts in political science emphasize leaders’ fear of revolution (Acemoglu and Robinson (2000)) and their response to electoral pressures (Ginsburg (2003), Hirschl (2004)). Constitutional scholars, by contrast, suggest that rights constitutionalism is spurred by the traumatic experience of war and repression, and a belief that unconstrained politics can be dangerous (Weinrib (2007)). What all these explanations have in common is that they focus on the domestic determinants of constitution-making. Whether through revolution, the electoral market or changing beliefs, the constitution is perceived as a national product.

In this paper, we develop a novel and thus far untested hypothesis, which is that constitutional pre-commitments are also externally driven, and shaped through transnational influence or “diffusion.” States face both material and immaterial incentives to incorporate foreign constitutional norms. To develop this hypothesis, we build upon the literature on policy diffusion, which identifies different types of transnational influence, or mechanisms of diffusion. A first diffusion mechanism is *coercion,* which suggests thatpowerful states, such as former colonizers and aid donors, push for the adoption of specific constitutional arrangements in less powerful states. A second mechanism is *competition*, which implies that states strategically imitate foreign constitutions in order to attract foreign buyers and investors. A third mechanism is *learning*, which entails a functional borrowing of constitutional rights among states that share important pre-existing similarities, such as a similar legal system. And finally, a fourth diffusion mechanism is *acculturation*, which suggests that states emulate foreign constitutional rules not because they are convinced by the intrinsic merits of these rules, but to gain international acceptance and legitimacy.

To test whether constitutions are in part transnational documents, we traced all historical constitutional documents written since WWII and documented the presence or absence of 108 distinct constitutional rights. Using a sample of these 108 rights in 180 countries over the period 1948 to 2001, we estimate a multi-order spatial lag model to explain the adoption of constitutional rights. This allows us to test whether diffusion shapes constitutional design, and, if so, which transnational dimensions of proximity (such as colonial ties, common language or religion, common legal origin) are most important as channels of diffusion. The three dimensions of variation in the panel (countries, constitutional rights and years) allow us to control for all country-year and right-year specific omitted variables through the inclusion of fixed effects. Our results show that, when adopting rights, countries follow the constitutional choices of their former colonizer, as well as foreign countries with the same legal origin, the same dominant religion, the same former colonizer, and the same dominant foreign aid donor. We also find substantial differences across countries and time periods. First, developing countries are more susceptible to transnational influence than industrialized ones. Second, diffusion is strongest when a nation adopts its first constitution. At this time, no less than 46 percent of the variation in a nation’s menu of constitutional rights is explained by transnational influences.

The remainder of this paper is organized as follows. In Section 2 we conceptualize four distinct possible theoretical mechanisms behind constitutional diffusion, and a number of more specific channels through which these mechanisms may manifest themselves. In Section 3 we describe the empirical analysis and address several econometric challenges in estimating the diffusion of constitutional rights. Section 4 describes in detail our data set on constitutional rights, as well as the data used to construct the spatial lags in our analysis. Section 5 reports the estimation results, while Section 6 explores whether the strength of diffusion varies across different types of countries, constitutional rights, and time periods. Section 7 concludes.

**2. Explaining Transnational Influence**

Our analysis on transnational influences in constitution-making builds upon a rich literature on diffusion, developed in political science, economics, sociology and geography. Diffusion is “the process by which the prior adoption of a trait or practice in a population alters the probability of adoption for the remaining non-adopters” (Strang (1991), p. 325). Classical studies document the diffusion of innovations among groups of individuals: hybrid corn at Iowa farms (Ryan and Gross (1943)), telephones in Swedish households (Hagerstrand (1967)) or HYV cotton in a Southern Indian village (Besley and Case (1994)). A more recent macro literature explores the diffusion of policies or institutional innovations across states. Examples include the diffusion of democracy (Gleditsch and Ward (2006)), liberal economic policies or reforms (Simmons and Elkins (2004)), central bank independence (Polillo and Guillén (2005)), and bilateral investment treaties (Elkins et al. (2006)). Laws and legal institutions have also been shown to diffuse (e.g. Boli-Bennet and Meyer (1978)), although transnational influences in law-making are more commonly studied as “transplantation” in the small-*N* comparative law literature ((Twining (2005)).

The diffusion literature has proposed a number of mechanisms through which diffusion may take place, “ranging from Bayesian learning to rational competition through hegemonic domination to unthinking emulation of leaders” (Simmons et al. (2006)). We expect that constitutional rights may diffuse through four possible mechanisms - *coercion, competition, learning* and *acculturation* – because each of these has been theorized as an important predictor of transnational influence in the realm of human rights (Goodman and Jinks (2004), Law (2008)). Of course, we note that the state is an abstract entity that, in reality, consists of a range of different actors, often with diverging interests. It is therefore difficult to establish whether the state indeed learns or acculturates. To test the different *mechanisms*, we link them to more specific diffusion *channels*. Each channel is indicative of one or more broad diffusion mechanisms. For example, if states borrow from foreign states with which they share a common aid donor, this suggests that constitutional choices are driven by the carrots and sticks of donors and implicates constitutional coercion. Even though the channels do not map on to the mechanisms perfectly, this approach characterizes most of the diffusion literature (see e.g., Simmons and Elkins (2004)).

*2.1 Coercion*

A first diffusion mechanism is coercion. Coercion is the process whereby “states influence the behavior of other states by escalating the benefits of adoption and the costs of non-adoption through material rewards and punishments” (Goodman and Jinks (2004), p. 633). When powerful nations exploit power asymmetries to impose their policy preferences on weaker nations, diffusion takes place. Such coercion includes the brute imposition of constitutional rules through force. The most paradigmatic examples of imposed constitutions can be found in the former colonies. For example, the independence constitutions of Britain’s former colonies in Africa and the Caribbean were drafted and negotiated by Britain, which insisted upon the inclusion of a Bill of Rights modeled after the European Convention on Human Rights (Parkinson (2007)). Likewise, the U.S. directed the writing of the 1935 constitution of the Philippines (Billias (2010)) and the 1986 constitution of Micronesia (Tamanaha (2013)).

In an age of widespread commitment to democracy, however, transnational pressures in most cases are subtler than wholesale imposition and work through incentives and sanctions, or carrots and sticks rather than guns and bombs (Schauer (2005)). An important tool for such coercion is foreign aid and foreign assistance. Recent decades have seen a growing consensus among economists that good institutions are an important recipe for economic growth (North (1990). As a result, substantial financial resources have been allocated to rule-of-law reforms and improving institutions more generally (Rodrik (2007)). Such rule-of-law assistance may provide a direct impetus for constitutional reform (Hirschl (2004), p. 47). The link between institutions and growth has moreover been translated into aid conditionality, whereby aid is made conditional upon policies and institutions (Burnside and Dollar (2000)). Some aid conditions are couched in terms of institutional prescriptions, such as the adoption of an independent central bank or an independent constitutional court. Other aid conditions demand political reforms, such as democratization (Alesina and Dollar (2000), Svensson (1999)) or government respect for civil and political rights (Neumayer (2003)). If aid donors indeed reward human rights, the constitution may be a particularly useful tool to signal good intentions (Farber (2002)). Thus, when aid is conditional upon human rights, aid recipients face financial incentives to constitutionally commit to rights.

In this paper, we empirically test two channels of constitutional coercion: coercion through colonial ties and through foreign aid. Colonial powers typically sought to leave a strong constitutional legacy in their former colonies. They modeled the post-colonial constitutional landscape after their own, as the U.S. did in the Philippines, or after some other template, like the U.K., which imposed a bill of rights on its colonies even though it notoriously lacked a bill of rights itself (Parkinson (2007)). Through such coercion, constitutions of former colonies come to resemble one another, or that of the former colonizer. A similar pattern may emerge from aid conditionality and rule-of-law assistance: the constitutions of aid recipients may be modeled after the constitution of the aid donor or some other template that is promoted by that donor.

*2.2 Competition*

A second diffusion mechanism is competition. Competition refers to the rivalry among two or more states for material benefits. Countries may compete for foreign capital or exports through the adoption of policies or institutions that are attractive to investors and buyers in international markets (Simmons et al. (2006)). Competition has been shown to affect trade liberalization (Simmons and Elkins (2004)), welfare policies (Figlio et al. (1999)), tax policies (Tiebout (1956)), bilateral investment treaties (Elkins et al. (2006)) and even democracy (Jensen (2003)). In all of these cases, if one country adopts a policy or institution, its competitors are likely to follow so as to safeguard their position in export and international capital markets.

Foreign buyers and investors may not only value economic policies, they may also favor rights protection, in particular property rights and first generation liberty rights (Law (2008)). If so, constitutions can be used to offer attractive bundles of rights to foreign buyers and investors (Law (2008)). The fact that a constitution is a highly visible legal document, judicially enforceable and typically hard to amend, renders it particularly suitable to do so (Farber (2002)). Constitutional commitments are potentially credible commitments. Thus, the constitution may be employed as a strategic tool to attract economic benefits. For example, economic considerations motivated the constitutional entrenchment of property rights and free-market guarantees in South Africa, New Zealand (Hirschl (2004)) and Egypt (Moustafa (2007)).

In this paper, we focus on the competition for foreign export markets and foreign direct investment (FDI). It is possible to conceptualize the competition for exports and the competition for FDI as two separate diffusion channels. Yet empirical studies suggest that those who buy exports from a country are often the same as those who invest resources in that country (Elkins et al. (2006), p. 830)). Moreover, foreign buyers and investors have similar motives for favoring those countries with a strong human rights record. Associating with repressive regimes has negative reputational effects for both buyers and investors. Human rights protection moreover adds to a secure investment climate, secure property rights and a transparent legal system, all of which lower the costs of doing business for foreign buyers and investors (Law (2008)). If foreign buyers and investors indeed award human rights,[[4]](#footnote-4) countries face economic incentives to offer attractive bundles of constitutional rights (Law (2008)). If one country reaps trade benefits and attracts capital through constitutional reform, others are likely to follow, resulting in rights diffusion among economic competitors.

*2.3. Learning*

A third diffusion mechanism is learning. In contrast with competition and coercion, learning theories do not assume that the constitutional choices of other countries alter material costs and benefits of rights adoption. Instead, constitutional choices of others generate new data that leads countries to change their beliefs or their confidence in existing beliefs (Simmons et al. (2006)). There are different approaches to learning. Economists typically focus on “Bayesian learning”, in which agents use new information to update their knowledge. In practice, however, agents are unable to collect and process all available information (March and Simon (1993)), and focus on the alternatives they are actually familiar with (Kahneman (2003)). Information constraints imply that learning may be channeled through social networks. Interaction through social networks is central in sociological approaches to learning (Gray (1973)). Through interaction, agents not only exchange information but also “convince” each other. Thus, sociological approaches tend to view learning as a complex cognitive process rather than a simple information updating. Learning does not just generate new truths, but also generates new beliefs. As a result, “actors ‘internalize’ new norms and rules of appropriate behavior and redefine their interests and identities accordingly” (Goodman and Jinks (2004), p. 635).

Constitution-makers are likely to face information constraints (Tushnet (1999), p. 1285-1301). Assuming that it is impossible to consider all foreign constitutional practices, which experiences do constitution-makers draw on? At the most general level, we expect that constitution-makers learn from the states to which they are somehow close. Proximity implies information availability as well as interaction, both of which spur diffusion (Rogers (2003)). Moreover, constitution-makers, for functional reasons, may turn to the models of those with whom they share important pre-existing similarities. In our empirical analysis, information availability, interaction and pre-existing similarity are observationally equivalent, as all do imply proximity. Similarly, we cannot establish whether states actually “internalize” new norms and “change their minds” (as in sociological learning), or whether they merely update their information (as in Bayesian learning). Yet where proximity spurs diffusion, we assume that learning may be at work (Simmons and Elkins (2004)).

We empirically explore a number of different channels through which such learning may take place. The first is learning through legal similarity, among countries that share a common legal origin. Even though it has been argued that constitutional law transcends the traditional boundaries between the common- and civil law systems (Weinrib (2007)), constitution-makers consult the constitutional arrangements of nations with similar legal systems for functional reasons. Countries with the same legal system may have similar traditions, for example on the appropriate role of the state (Hayek (1960)), and exchange more information (Spamann (2010)). Second, we consider trade partnerships, or whether countries trade with each other on a regular basis. Trade partnerships might imply information exchange and interaction. Moreover, countries may also choose to harmonize their legal system with those with which they trade in order to ease cross-border transactions (Posner and Sunstein (2006), p. 176). Third, we consider learning through a shared language. A shared language facilitates information flows and interaction between countries, both of which are conducive to learning. Fourth, we consider a shared religion: religious partners may not only interact more, but may also consider each others’ constitutions for functional reasons. Because of religion, countries may extend the right to life to the unborn, as in the Irish constitution, or curtail women’s rights, as in Islamic constitutions. Fifth, we consider military alliances, since military allies, too, may interact more and exchange more information. At the same time military alliances may also be indicative of complex geopolitical relationships and historical conflict. When long-standing historical enemies enter a military alliance, attraction to each other’s constitutional model may be limited (Schauer (2000), p. 243). Finally, we consider geographic proximity, since countries that are geographically close may also be more likely to interact and exchange information.

*2.4 Acculturation*

The last diffusion mechanism is acculturation: “the general process by which actors adopt the behavioral patterns of the surrounding culture” (Goodman and Jinks (2004)). This mechanism has its roots in organizational sociology (DiMaggio and Powell (1983), Meyer and Rowan (1977)), which has demonstrated that organizations routinely follow taken-for-granted models regardless of their functional utility. Models are adopted not because of their utility, but because of their legitimacy and the social relationships they represent. These insights have been translated to state behavior by the “world polity school” in sociology (see for example Meyer et al. (1997)). States adopt global institutional blueprints, not because of functional utility, but because they represent a global consensus.

Acculturation is different from coercion and competition in that states adopt constitutional norms not because of material cost and benefits but because of social rewards and sanctions. States desire to be part of a self-identified group of peers. As a result, they conform to the norms of these peers, regardless of the content of these norms. The content of a norm is less important than the social relationship it represents. In this respect, acculturation is also different from learning. Where learning takes place, a norm is actively assessed, internalized and accepted, as a result of which beliefs are altered. With acculturation, a norm is adopted but not internalized, as a result of which outward conformance is detached from internal acceptance (Goodman and Jinks (2004)). The result is a “structural decoupling” between adopted norms and actual practices. Numerous examples have been documented: states adopt environmental policies in the absence of environmental problems (Frank et al. (2000)), social welfare policies without a budget for implementation (Strang and Chang (1993)) or human rights without intention of compliance (Goodman and Jinks (2004)).

Constitution-writing may be motivated by a similar dynamic and constitution-makers may use the constitution to signal conformity to international norms and standards (Boli-Bennet and Meyer (1978)). The South African Constitution, for example, was shaped by “the emergence of a thin, yet significant international political culture.” Even though the majority of citizens had suffered years of oppression under a legal system in which the role of judges was instrumental, the former pariah nation embraced Western liberal rights and a powerful constitutional court to gain international legitimacy (Klug (2001)).

In this paper, we focus on acculturation through a global “world polity,” as conceptualized by the world polity school (Meyer et al. (1997)). Under this logic, all states influence each other and constitutional convergence will be global.

**3. The Empirical Analysis**

We now turn to the empirical analysis in which we address the two central research questions of this paper:

1. Do constitutional rights diffuse? Or in other words, does the prior adoption of a constitutional right in some countries alter the probability of adoption of others?
2. If there is diffusion, through which channels does it take place?

Empirical studies of diffusion typically estimate models of spatial interdependence, developed in the spatial econometrics literature. The focus of this literature is on the estimation of theoretical models of interdependence in which space is not limited to geography but can relate to social, economic, political, or other connections. Interdependence is modeled by the inclusion of spatial lags, the coefficients of which capture the average strengths of interdependence (Franzese and Hays (2008)). Following this literature, we analyze the diffusion of constitutional rights using the following spatial lag model of order :

In the above equation, the subscripts , , and index the constitutional rights, countries, and years in the panel, respectively. Here is a dummy variable that captures the adoption of right by country in year . In particular, letting represent a dummy variable that takes a value of one if a country’s constitution contains a right and zero if it does not, the dependent variable is constructed as follows:

(2)

The aim of our empirical analysis is thus to explain the adoption (or “onset”) of a constitutional right, i.e. the presence of a right in a country’s constitution conditional on the absence of that right in the previous year. After adoption of a right, the dependent variable is coded as missing.[[5]](#footnote-5)

The spatial lags , …, in equation (1) capture the weighted average incidence of constitutional rights in other countries, hence in all countries . Here the weights , …, correspond to the relative connectivity from country to country in year for each of the dimensions of space (trade relationships, colonial relationships, common language, etc). To address potential problems of non-stationarity, we “row-standardize” the spatial weights matrices by dividing each weight by the sum of weights so that , …, . As a result, the spatial lags can be viewed as weighted *averages*. The variable captures the presence of right in country in year . Expressed in less technical terms, the spatial lags thus capture the presence of rights in other countries, while recognizing the potential importance of space by giving higher weights to countries that are in closer “proximity.” The parameters , …, in equation (1) are the spatial autoregressive coefficients, reflecting the average strengths of interdependence, or diffusion, across each of the different dimensions of space.

The country-year fixed effect controls for any characteristics that vary across countries and years but do not vary across constitutional rights, such as democratization, political instability, or economic growth. Thus, “insurance policies” (Ginsburg and Versteeg (2012)), “hegemonic preservation” (Hirschl (2004)) and other types of constitutional moderation of the electoral tide are controlled for. The same is true for the characteristics of the legal system, such as whether a country respects the rule of law, whether the judiciary is independent, or the ease of constitutional amendment. The right-year fixed effect controls for any common shocks that vary across rights and years but do not vary across countries, such as policies of international organizations, international conferences, or the entry into force of human rights treaties. Finally, represents an idiosyncratic error term.

*3.1 Econometric Challenges in Estimating the Diffusion of Constitutional Rights*

Estimating spatial interdependence poses several econometric challenges. First, the spatial lags in equation (1) might be endogenous (correlated with the error term), which could cause our estimates to be biased and inconsistent. Endogeneity can take various forms. First, it can relate to *reverse causality* (simultaneity). If the spatial lags in equation (1) would not be temporally lagged but instead would enter contemporaneously, reverse causality would occur automatically. Brueckner (2003) shows that in this case each element of depends on all the ’s including . To avoid this automatic reverse causality, we temporally lag the spatial lags by one year (see equation 1). Lagging by one year eliminates simultaneity only if two conditions hold. First, the error terms should not be subject to first-order serial correlation. And second, the adoption of a right by country in year should not *directly* depend on the adoption of that right by country in the (subsequent) year . Because it is not obvious that these two conditions hold, we show that our results are robust to using spatial lags that are temporally lagged by *five* years instead of one.[[6]](#footnote-6)

Endogeneity can also relate to *omitted variable bias*. If the error term in equation (1) includes omitted variables that are correlated with the spatial lags, our estimates are biased and inconsistent. For diffusion studies, the main empirical challenge is to distinguish true spatial interdependence from *common shocks,* or developments of domestic or foreign nature that are common to all nations (Franzese and Hays (2008)). Developments of a *domestic* nature may cause nations to independently adopt the same solutions, without looking at each other. In this case, constitutional similarities result from a “parallel evolution” rather than a true interdependence. To control for such domestic developments, we include country-year fixed effects. These eliminate any omitted variable bias due to country-year varying omitted variables and take away the need to include controls at the country-year level, such as democracy or per capita income. A possible objection to this fixed effects strategy is that when omitted variables affect some rights but not others, the country-year fixed effect is poorly specified. We therefore also experimented with country-year-*rights type* fixed effects but this did not affect our findings.[[7]](#footnote-7) Developments of a *foreign* nature may also cause nations to adopt the same rights. An example of such an external common shock is the entry into force of a human rights treaty. To control for global constitutional developments that affect all of the world’s constitutions, we include right-yearfixed effects. Some shocks, however, may affect one geographic region but not others. To illustrate, the entry into force of the African Charter on Human and Peoples’ Rights is likely to affect African constitutions only. To control for such regional shocks, we also experimented with right-year-*region* fixed effects, but this did not affect our findings.[[8]](#footnote-9)

Given that the model in equation (1) is a binary response model, the inclusion of fixed effects requires some care. Wooldridge (2002) shows that the *linear probability model* (OLS) provides consistent and unbiased coefficient estimates, which can be interpreted as marginal effects. However, OLS cannot be a fully adequate description of the population response probability, as the predicted values can lie outside the unit interval. Fortunately, it often well approximates the response probability for common regressor values. Also, the issue of predictions outside the unit interval becomes less relevant if, as in our model, most explanatory variables are dummies for mutually exclusive and exhaustive categories.[[9]](#footnote-10) An alternative to OLS is *fixed effects probit*, which takes into account the binary nature of the model and yields predicted values that lie within the unit interval. Despite this advantage, fixed effects probit (as any fixed effects model) suffers from the “incidental parameters” problem, causing the estimates for the fixed effects to be inconsistent. While in the case of OLS, it is possible to eliminate these fixed effects so that the other coefficients can be estimated consistently, this is not the case for most non-linear models, including probit (Verbeek (2000)). In addition, from a practical perspective, the estimation of a large number of fixed effects can be computationally challenging. For these reasons, we use the linear probability model (OLS) in all our fixed effects estimations.[[10]](#footnote-11)

Finally, to account for heteroskedasticity and the correlation of error terms within each country-year cell, we compute robust standard errors clustered by country-year.[[11]](#footnote-12)

1. **Data**

*4.1 Constitutional Rights since World War II*

To test the various diffusion theories set out above, we constructed an original data set on 108 constitutional rights in the written constitutions of 188 countries over the period 1946-2006. For every post-WWII constitution, we traced the historical constitutional document and coded the presence of these 108 rights.[[12]](#footnote-13) An important feature of our data is that it only captures written, “large-C”, constitutions and omits “small-c” constitutional practices, such as judicial interpretations and unwritten constitutional conventions. Written constitutions are unlikely to fully capture constitutional reality (Llewellyn (1934)). Nonetheless, written constitutions are highly visible commitments by national governments. Even if they are not written to alter domestic practices, they may reflect important considerations of international politics and capture how governments advertise themselves to the rest of the world (Boli-Bennet and Meyer (1980)). This feature, in fact, may make them particularly suitable to test transnational influences, even more so than “small-c” constitutional practices.

We define a given country’s large-C constitution as follows. First, any document or set of documents that a country formally designates to be its “constitution” is treated as such. This implies that our data includes a number of documents that are enacted as ordinary legislation as well as a few documents that are most accurately described as military decrees issued by dictatorial regimes. Most of the constitutions in the data were included pursuant this formal criterion. Second, in addition to this formal criterion, we also use a more functional one. Formal legal instruments that are not explicitly labeled “constitutional” but nevertheless govern constitutional matters such as the basic structure, powers, and limits of the state are also considered to be constitutional. Examples in this category are Israel’s Basic Laws, the U.K.’s 1998 Human Rights Act, and Canada’s 1960 Bill of Rights. Only few constitutions were included in the data on the sole basis of this criterion.

As a general rule, rights had to be mentioned somewhat explicitly in order to be counted as part of the constitution. For example, if a constitution contained an express right to “liberty”, this language was not coded as constituting a “prohibition of arbitrary arrest and detention”, even if the word “liberty” could be interpreted as such by the courts. Thus, we refrained from giving our own (subjective) constitutional interpretation. Following this approach, we did not code limitation clauses, as the actual impact of a limitation clause can typically not be ascertained from the constitutional text alone. When coding constitutional rights, the text of the entire constitution was analyzed, and rights-related provisions were coded regardless of whether they appeared in a distinct section or were intermingled with other types of provisions.

We coded each country’s constitution(s) from 1946 to 2006 or, if the country in question lacked a constitution in 1946, from the time that a constitution was first adopted. Countries that are not fully independent and governed (in part) by the constitution and laws of other countries are excluded from the database. Allowing for the creation of new states and both the replacement and amendment of existing constitutions, a total of 729 documents were coded.

For each country in each year we documented the presence (or absence) of each of the 108 constitutional rights. The adoption of each of these rights represents a substantive constitutional decision. We do not include variables on constitutional features further down the decision tree, for example on how to draft and frame a particular right. Yet, some of these 108 rights are broader than others. For example, the right to property is a broad and general right, while the right to equality for handicapped persons is more specific. Moreover, some of these more specific rights could, in principle, be grouped together as a more general right. For example, provisions on the “inviolability of correspondence”, the “privacy of personal data”, the “inviolability of the home”, the “right to personal privacy” and the “right to privacy of the family” could all be collapsed under the heading of a general privacy right. Even more broadly, all civil liberty rights could be collapsed under the heading of “liberty”, while socio-economic rights (food, housing and social security) could be collapsed under the heading of “positive rights.” Such general categories would probably make it easier to find constitutional similarities. But in order to be able to trace the specific paths of constitutional influence, we believe it is more appropriate to look at the more specific drafting choices, even if they effectively mean the same thing in practice. For example, while almost all constitutions offer some protection of liberty, some opt for “due process of law”, while others protect “personal privacy.” These specific manifestations of broad constitutional ideas may contain valuable information on transnational influence.

Table 1 lists the 108 rights used in our analysis and divides them into 7 categories. Figures 1a, 1b and 1c show the prevalence of the 108 rights on a world map for 1946, 1976 and 2006, respectively. The maps show that the number of rights has increased over time but also reveal important cross-country variation in rights adoption. The dependent variable in our analysis is constructed from these 108 constitutional rights. Tables 2 and 3 report data sources and summary statistics for this dependent variable.

*4.2 Spatial Lags*

To estimate the diffusion of constitutional rights, we construct a set of spatial lags ⎯ , …, in equation (1) ⎯ which capture the weighted average incidence of constitutional rights in other countries, hence in all countries . What distinguishes the spatial lags from each other is the spatial *weights* (, …, ): each lag is weighted according to a different dimension of space (e.g. language, common legal origin).

For each dimension of space, we collected a proxy for the relative connectivity from country to country in year , where the proxy is a variable that is larger than or equal to zero and higher values correspond to stronger connectivity. Let us call this proxy , , … and for the different dimensions of space, respectively. We constructed the spatial lags, say for example , in the following manner. We first computed the sum of values for the proxy over all countries , that is , *using only those combinations of right , country , other country , and year , for which data on both the proxy and the variable (binary variable for presence of constitutional right) is available*. We then expressed the proxy as a share of that sum , which yielded the spatial weights in equation (1) and ensures that these add up to 1 (“row-standardization”). Using these spatial weights, we then computed , which yielded the first spatial lag in equation (1).[[13]](#footnote-18) The other spatial lags were constructed in the same way. In less technical terms, we constructed each spatial lag by computing the previous year’s weighted average incidence of a right in all other countries for which we have data on connectivity to country and presence (or absence) of that right. Table 2 (part B) describes the different spatial weights used in our estimations, the proxies used to generate these weights, and the data sources for these proxies.

As can be seen from Table 2, we use four spatial weights to test *coercion*. The first two relate to the possible importance of colonial *power*. captures whether countries and have ever been a colony of the same country, while indicates whether country has ever been a colony of country . Thus, for example, links all Britain’s former colonies to each other, while links each former colony to Britain. The next two spatial weights test for coercion through development assistance (foreign aid). captures whether countries and have the same dominant donor, where a dominant donor is the donor (either a country or a multilateral institution) that gives the highest proportion of aid to a country. instead reflects bilateral aid flows received by recipient country from donor country . Thus, links aid recipients to each other, while links each aid recipient to its aid donors.

To test *competition* for export markets, we use a set of spatial weights () that captures the correlation between country ’s exports to each of the other countries and country ’s exports to each of the other countries. The higher this correlation, the larger the extent to which the two countries export to the same foreign markets and thus compete with one another (Simmons and Elkins (2004), p. 179).

The next six sets of spatial weights are used to test *learning*. indicates whether countries and have the same legal origin, following La Porta et al. (1999), who identify five types of legal origin: English, Socialist, French, German and Scandinavian. reflects learning through trade relationships and captures the exports from country to country .[[14]](#footnote-19) and relate to whether countries and share a common official language or a common dominant religion, respectively, both of which could facilitate learning but could also point at acculturation. stands for military alliances and measures the number of separate formal military alliances between country and country . Finally, to test learning through geographic proximity, indicates whether countries and are contiguous (share a border).

To test *acculturation* through the global world polity, attaches equal weights to all countries so that the corresponding spatial lag is simply the unweighted average incidence of constitutional rights in other countries. This reflects the notion that the constitutional choices of all foreign countries are deemed equally important (see Meyer et al. (1997)).

Finally, to control for constitutional similarity that is due to new countries simply retaining constitutional arrangements of the former mother country (and hence is not due to diffusion), we include a set of spatial weights () that indicates whether countries and were ever part of the same country (such as former Yugoslavia or the Soviet Union).

Table 3 (parts A and B) reports summary statistics and pairwise correlations for the spatial lags used in estimation. All correlations are positive but only the spatial lags that capture competition for exports and acculturation through the global world polity have a correlation far above 0.80. Including each of these spatial lags separately did not substantially change our estimation results so that multicollinearity is not much of a concern.

Our dataset consists of all constitutional rights, countries and years for which data are available, and covers 108 rights in 180 countries over the period 1948 to 2001. Table 3 (part C) lists the 180 countries used in estimation.

1. **Estimating the Diffusion of Constitutional Rights**

Table 4 reports the results of estimating equation (1). The first two columns report the results from a *linear probability* (OLS) model without fixed effects and a *probit* model without fixed effects, respectively. Table 4, column (3), reports the results from a linear probability model with both country-year and right-year fixed effects. These fixed effects control for all country-year and right-year specific omitted variables (as well as for the world polity spatial lag, which is therefore no longer included in column (3)). Adding the fixed effects increases the -squared from 0.03 to 0.39. In all three specifications, the constitutional choices of foreign countries with the same former colonizer, the same legal origin and the same dominant religion have a positive effect on domestic adoption of constitutional rights, statistically significant at the 1 percent level. The choices of the former colonizer itself and foreign countries with the same dominant aid donor also significantly predict domestic rights adoption, although at varying levels of significance. The choices of export destination countries matter only marginally for domestic rights. Together, these findings suggest that constitutional rights diffuse: where countries are connected through colonial past, common legal origin, common religion or common aid donors, their constitutions are interdependent. By contrast, the constitutional choices of aid donors themselves, export competitors, countries with a common official language and countries with a common border do not generally drive the diffusion of constitutional rights. We also do not find a global diffusion effect driven by the world polity at large.

We next consider the size of the diffusion effects. The coefficients from the linear probability models in Table 4, columns (1) and (3), and the marginal effects from the probit model in Table 4, column (2), measure the change in the probability of adoption if the corresponding spatial lag increases from zero to one. They thus capture what happens to the probability of adopting a constitutional right if all *relevant* foreign countries (that is, all countries with a strictly positive spatial weight ) decide to adopt that right. The positive and statistically significant coefficients in column (1) show that adoption by all relevant foreign countries leads to an increase in the probability of domestic adoption in the range of 0.7 (for former colonizers) to 4.5 percentage points (for countries with the same legal origin) in each year. In other words, if the former colonizer(s) adopt(s) a given right, the probability of domestic adoption increases by 0.7 percentage points each year, while if all countries with the same legal origin adopt, this probability increases by 4.5 percentage points each year. The size of the other effects lies within these upper and lower bounds. To further assess the size of these effects, we evaluate them against the annual probability of adoption when all explanatory variables are set at their sample mean. For the model in Table 4, column (1), this probability is 1.5 percent. This means that for an average country that has not yet adopted a given right in year , if nothing changes, the probability that it will have adopted by year is or 26 percent. As a first example, now suppose that, in addition to the countries that had already adopted, the (sole) former colonizer, let’s say the United Kingdom, adopts the right. In that case, the annual probability of adoption increases from 1.5 percent to 2.2 percent, which after twenty years cumulates to a probability of having adopted of 36 percent, an increase of 10 percentage points relative to counterfactual. In other words, the actions of one or more foreign colonizers increase the probability of similar action by the former colonies by 10 percentage points over a twenty-year period. As a second example, now suppose that, in addition to the countries that had already adopted, half of the countries with the same legal origin adopt the right. In that scenario, the annual probability of adoption increases to 3.75 percent, which after twenty years cumulates to a probability of having adopted of 53 percent, an increase of 27 percentage points relative to counterfactual. These examples indicate that the long-run diffusion effects are substantial.

In Table 4, columns (1) to (3), the spatial lag that captures the constitutional choices of military allies enters statistically significant but with a negative sign. Though somewhat puzzling at first, this is consistent with Schauer’s (2000, p. 243) observation that geopolitical considerations may produce constitutional anti-models: the Irish avoid British models, the Vietnamese avoid French models and the Canadians, worried about becoming the 51st state, avoid American models. It is possible that, after controlling for all other types of proximity, military alliances capture the ties between historical enemies that do not otherwise interact.

We performed a range of robustness tests to assess the sensitivity of the baseline results in the preferred fixed effects specification of Table 4, column (3). First, we re-estimated this preferred specification using spatial lags that are temporally lagged by *five* years instead of one in order to address reverse causality. Second, we estimated two alternative fixed effects specifications, in which we replaced the country-year fixed effects by country-year-*rights type* fixed effects and the right-year fixed effects by right-year-*region* fixed effects, both aimed at addressing omitted variable bias. Third, we estimated a number of specifications, in each of which we replace one spatial lag by an alternative.[[15]](#footnote-20) The results of these robustness tests (not reported) yielded results similar to the original results in Table 4, column (3).

1. **Patterns of Diffusion**

It is possible that diffusion effects vary across different countries, different time periods, and different constitutional rights. In this section, we explore whether this is the case by re-estimating the preferred fixed effects specification in Table 4, column (3), for different subsamples based on income, democracy, time period, and type of constitutional right (Melton (2012)).

*6.1 Different Types of Countries*

We first explore whether the diffusion effects are different for different types of countries. As a first possibility, we consider countries with different levels of *per capita income*. Under the logic of coercion, poor (and thus weaker) countries are likely to be more susceptible to transnational influence than rich and powerful ones. But also under the logic of competition, diffusion may be stronger in poor countries, as (i) they often face more intense competition for their (primary) exports than rich countries (which export more technologically advanced products), and (ii) foreign buyers and investors may favor the secure investment climate of rich countries anyway, so that rich countries do not have to resort to constitutional means to secure their share of export markets.

To test whether diffusion depends on per capita income, we split the countries in our sample into OECD members and non-OECD members and re-estimate the specification in Table 4, column (3), for these two subsamples separately. The results are reported in Table 5, columns (1) and (2), and suggest that the constitutions of non-OECD members are indeed more susceptible to transnational influence than the constitutions of OECD members. While most spatial lag coefficients for non-OECD members are positive and statistically significant, the coefficients for OECD members are not statistically significant, except for the coefficient of the spatial lag for common legal origin. More specifically, the coercion and competition channels (that is, diffusion among countries with the same former colonizer, aid donor and export markets) work exclusively for non-OECD members. The only diffusion channel that is common to both OECD and non-OECD members is learning from countries with the same legal origin.

Not only economic development, but also the democratic nature of the regime may affect nations’ susceptibility to diffusion. Specifically, democracies may be more likely to engage in genuine learning, while autocracies may emulate foreign models for more disingenuous reasons. The reason for this difference could be that, in the absence of democratic constraints, lip-service to internationally accepted constitutional norms may be a cheap way to gain international recognition. To test whether diffusion depends on democracy, we split the sample into democracies and non-democracies and re-estimate the specification in Table 4, column (3), for these two subsamples separately.[[16]](#footnote-22) The results (not reported) suggest that the difference between democracies and autocracies is relatively small. Both groups follow the constitutional choices of their former colonizer, countries with the same former colonizer, countries with the same legal origin and countries with the same dominant religion. A difference is that, unlike democracies, autocracies do not borrow from countries with which they share a common aid donor and use the constitution of aid donors as an anti-model. In addition, only autocracies model their constitutions after those of their trade partners, while only democracies are negatively affected by the constitutional rights of military allies.

*6.2 Different Time Periods*

Diffusion may not only differ across countries, but also across time. Specifically, the literature has identified three distinct global “waves” of constitution-making (Elster (1995), p. 369). The first wave (1948-1972) took place in the context of decolonization, starting with the independence of India and Pakistan, gaining momentum in the 1960s, and ending in the early 1970s. The second wave (1973-1989) started with the fall of dictatorial regimes in Southern Europe in the mid-1970s and ended with the end of the Cold War. The third wave (1990-2001) started immediately after the end of the Cold War and was marked by the constitutional reconstruction in former Soviet Republics and throughout the globe.

To explore whether diffusion differs across these three waves, we divide our sample-period 1948-2001 into the three post-WWII waves and re-estimate the baseline specification of Table 4, column (3), for each of these sub-samples. The results (not reported) suggest that the baseline results are for the most part robust across the different waves of constitution-making. The spatial lags that capture the constitutional rights of countries with the same legal origin and the same dominant religion are statistically significant in all three subsamples. The spatial lags that capture the constitutional rights of the former colonizer, countries with the same former colonizer, and countries with the same dominant aid donor are significant in 2 of the 3 subsamples. For all of these five spatial lags, the size of the coefficients is comparable across subsamples with one exception. Borrowing from countries with the same aid donor is strongest (and significant at 1 percent) during the first wave, substantially less strong (and significant at 10 percent) during the second wave, and even smaller (and insignificant) during the third wave.

We next explore whether the strength of diffusion is different during years in which a country adopts its *first constitution*. We expect diffusion to be stronger when a nation adopts its very first constitution. When writing a new document from scratch, constitution-makers likely turn abroad for inspiration, and rely on the models⎯or “constitutional boiler-plates”⎯ provided by foreign constitutions (Ginsburg (2013)). Subsequent amendments, by contrast, typically concern only a few constitutional rights, and specifically those parts of the original constitution that contained design flaws. Constitutional amendments, it has often been said, are responses to “imperfection” (Levinson (1995)). Especially when the original constitution was largely borrowed from abroad, it is likely that amendments are made to adapt the constitution to local circumstances (Berkowitz et al. (2003)). If true, amendments are not driven by foreign influences, but by domestic considerations instead.

Table 3 (part C) lists the 105 countries for which the adoption of the first constitution is included in our sample. Table 5, columns (3) and (4), report the results from re-estimating the specification in Table 4, column (3), for subsamples of years in which a country adopts its first constitution and other years. The results show that, irrespective of whether countries adopt their first constitution or change their existing constitution, they follow the constitutional choices of their former colonizer, countries with the same dominant aid donor, export competitors, countries with the same legal origin and countries with the same dominant religion. These results for the most part resemble the earlier findings reported in Table 4. But while diffusion is present in both subsamples, the diffusion effects are substantially larger during years in which a country adopts its first constitution.

This finding raises the question how much of the variation in constitutional rights during years in which a country adopts its first constitution, is collectively explained by the spatial lags. To answer this question, we use the variance decomposition developed by Cornelissen (2008) and apply it to the baseline specification of Table 4, column (3) as well as to the sub-sample of first constitutions from Table 5, column (3). The results show that, in our baseline specification, only 3 percent of the total variation in rights adoption is explained by diffusion. However, when we use the same variance decomposition and apply it to the specification of Table 5, column (3), we find that no less than 46 percent of the variation in rights adoption during years in which a country adopts its first constitution is explained by diffusion. Hence, not only are the individual diffusion effects stronger during years in which a country adopts its first constitution, but diffusion also explains much more of the variation in constitutional rights adoption. These findings support the notion that, particularly when drafting a first constitution, countries follow the constitutional choices of others.[[17]](#footnote-23)

*6.3 Different Types of Rights*

It is also possible that diffusion effects are different for different types of rights. To illustrate, constitution-makers may model property guarantees after those of their economic competitors, while they model their right to life after that of their religious partners. To test whether diffusion depends on the types rights, we divide the 108 rights into 7 categories: (i) political, democratic and accountability rights, (ii) life, liberty, physical integrity and privacy rights, (iii) fair trial rights, (iv) equality rights, (v) socio-economic rights, (vi) women, children and family rights, and (vii) minority rights, environmental rights and other ‘new’ rights. We then re-estimate the baseline specification of Table 4, column (3), for subsamples of each of the 7 categories. The results (not reported) suggest that the baseline results are mostly robust across the subsamples. The spatial lags that capture the constitutional rights of countries with the same former colonizer and the same legal origin are statistically significant in 6 out of the 7 subsamples. The spatial lags that capture the constitutional rights of the former colonizer, countries with the same dominant aid donor, and countries with the same dominant religion are significant in 5 of the 7 subsamples. One baseline result that is not robust is the insignificance of the spatial lag that captures the constitutional choices of export competitors. This spatial lag now enters significant in the subsample of fair trial rights. Thus, when constitution-makers compete for export markets, they seem to do so by offering fair judicial process rights.

1. **Conclusion**

Constitutions are commonly described as inherently national products, shaped by domestic politics and reflecting the views and values of the nation. In this paper we have developed and empirically tested a novel hypothesis, which is that constitutions are also shaped by transnational influence, or diffusion. Our results show that the rights-related content of a country’s constitution is indeed shaped by the constitutional choices of other countries, in particular the former colonizer, countries with the same legal origin, the same dominant religion, the same former colonizer, and the same dominant aid donor. This implies that different diffusion mechanisms may be at work. Diffusion among countries with the same legal origin or religion suggests a functional form of learning whereby countries learn from similarly situated peers. Diffusion among countries with the same aid donor, on the other hand, suggests strategic behavior to attract foreign aid and possibly indicates coercion. Likewise, diffusion through colonial ties also suggests coercive power. We also find some notable differences across different types of countries. First, developing countries seem more susceptible to transnational influence than industrialized ones. And second, diffusion is much stronger and explains a much larger proportion (46 percent) of the variation in bills of rights during years in which a country adopts its first constitution.

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|  |  |
| --- | --- |
| Table 1: 108 Constitutional rights | |
| I. Political, democratic and accountability rights | |
| Right to freedom of religion  Freedom of expression  Right to assembly  Right to association  Right to vote  Freedom of press  Freedom to form political parties | Right to a remedy  Right to petition  Right to information about government  Right to compensation  Right to resist  Right to amparo |
| II. Life, liberty, physical integrity and privacy | |
| Prohibition of arbitrary arrest and detention  Right to privacy of the home  Right to privacy of communication  Freedom of movement  Prohibition of torture  Right to life  Right not to be expelled  Prohibition of slavery  Right to personal privacy  Artistic freedom | Right to establish private schools  Freedom of education  Right to privacy of family life  Right to protection of one’s reputation  Prohibition of death penalty  Right to privacy of personal data  Free development of personality  Rights for unborn children  Right to bear arms |
| III. Fair trial | |
| Right of access to court  Prohibition of ex post facto laws  Presumption of innocence  Right to defense  Right to counsel  Right to public trial  Prohibition of double jeopardy | Right to remain silent  Right to a timely trial  Right to an interpreter  Right to fair trial  Right to appeal  Rights for prisoners  Right to due process |
| IV. Equality rights | |
| General equality clause  Gender equality  Racial equality  Religious equality  Equality regardless of belief/ philosophy  Equality regardless of political opinion  Equality regardless of social status  Linguistic equality  Economic equality  Ethnic equality | Equality regardless of nationality  Equality regardless of place of origin  Equality regardless of disability  Age equality  Equality regardless of education  Equality regardless of tribe  Equality regardless of ancestry  Equality regardless of caste  Equality regardless of sexual orientation  Equality regardless of HIV/aids |
| V. Socio-economic rights | |
| Right to property  Right to education  Right to work  Right to form trade unions  Right to health  Right to social security  Freedom of enterprise  Right to rest  Right to minimum wage  Right to housing | Right to work for the government  Right to favorable working conditions  Intellectual property  Right to sport  Right to strike  Right to adequate standard of living  Prohibition of child labor  Prohibition of confiscation  Right to food  Right to water |
| VI. Women, children and family | |
| Right to establish a family  Rights for children  Special protection of mothers  Right to get married  Equality husband and wife | Rights for elderly people  Protection of women  Gender equality in labor  Right to maternity leave |
| VII. Third generation rights | |
| Right to a healthy environment  Right to culture  Protection of minority language  Right to preserve customs  Right to asylum  Special protection of minorities  Rights for handicapped people | Schooling right for minorities  Rights for consumers  Right for minorities to use indigenous lands  Rights for victims of crimes  Representation right for minorities  Autonomy for minorities |

Figure 1a: Number of rights per constitution in 1946



Figure 1b: Number of rights per constitution in 1976



Figure 1c: Number of rights per constitution in 2006



|  |  |  |
| --- | --- | --- |
| Table 2: Description of variables and data sources | | |
| A: Constitutional rights | | |
| *variable* | *description of variable* | *Sources* |
|  | binary variable for adoption of constitutional right (dependent variable) | The two primary sources for the full text (English translation) of each constitution were Peaslee’s *Constitutions of Nations*, published in three editions in 1950, 1956, and 1965, and Blaustein and Flanz’s *Constitutions of the Countries of the World,* a continuously updated loose-leaf collection*.* |
|  | binary variable for presence of constitutional right | same as for |
| B: Spatial weights | | |
| *variable* | *description of variable* | *used proxy and sources* |
|  | *coercion*:  common colonizer | proxy : binary variable that takes a value of 1 if countries and have ever been a colony of the same country and 0 if they have not, data from Mayer and Zignago (2006). |
|  | *coercion*:  colonial relationships | proxy : binary variable that takes a value of 1 if country has ever been a colony of country , and 0 if it has not, data from Mayer and Zignago (2006). |
|  | *coercion*:  development assistance  common dominant donor | proxy : binary variable that takes a value of 1 if countries and have the same dominant aid donor (that is, the donor that gives the highest proportion of total aid to a country), and 0 if they do not, where (i) aid is expressed as net disbursements of official development assistance (ODA) plus official aid (OA) in millions of U.S. dollars, and (ii) the donor can be either a country or a multilateral institution, aid data from OECD (2006, 2007). |
|  | *coercion*:  development assistance donor-recipient relationship | proxy : net disbursements of official development assistance (ODA) plus official aid (OA) received by recipient country from donor country in year in millions of U.S. dollars, where negative disbursements are replaced by zeroes, data from OECD (2006, 2007). |
|  | *competition*:  export markets | proxy : correlation between (i) country ’s exports in millions of current U.S. dollars to each of the other countries and (ii) country ’s exports to each of the other countries, both in year , where negative correlations are replaced by zeroes, export data from Gleditsch (2002). |
|  | *learning*:  common legal origin | proxy : binary variable that takes a value of 1 if countries and have the same legal origin, and 0 if they do not, data on legal origin are from La Porta et al. (1999), who identify 5 types of legal origin: English, Socialist, French, German and Scandinavian. |
|  | *learning*:  trade relationships | proxy : exports from country to country in year in millions of current U.S. dollars, data from Gleditsch (2002). |
|  | *learning*:  common official language | proxy : binary variable that takes a value of 1 if countries and share a common official language and 0 if they do not, data from Mayer and Zignago (2006). |
|  | *learning*:  common dominant religion | proxy : binary variable that takes a value of 1 if countries and had the same dominant religion in 1970 (that is, the religion that has the largest proportion of a country’s population adhering to it), and 0 if they do not, data on religion are from Barro and McCleary (2005), who identify 7 religions: Catholic, Protestant, Orthodox, Jews, Muslim, Hindu, Buddhist (we omit other categories in Barro and McCleary (2005) as they do not necessarily represent 1 religion only). |
|  | *learning*:  military alliances | proxy : number of separate formal military alliances between country and country in year , data on military alliances from Gibler and Sarkees (2004), who identify 3 types of military alliance: defense pact, neutrality or non-aggression pact, and entente. |
|  | *learning*:  common border | proxy : binary variable that takes a value of 1 if countries and are contiguous (that is, share a border) and 0 if they are not, data from Mayer and Zignago (2006). |
|  | *acculturation*:  world polity | proxy : Here, the variable simply takes a value of 1 for all countries and so that the spatial lag corresponds to the previous year’s *unweighted* average incidence of a right in other countries. |
|  | *control variable*:  same country | proxy : binary variable that takes a value of 1 if countries and were ever part of the same country and 0 if they were not, data from Mayer and Zignago (2006). |

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| Table 3: Descriptive statistics for the variables used in estimation | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A: Summary statistics | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Dependent variable | | | | | | | Observations | | | | Mean | | | | | | St. Dev. | | | | Minimum | | | | | Maximum | | | | |
|  | | | | | | | 505348 | | | | 0.015 | | | | | | 0.121 | | | | 0 | | | | | 1 | | | | |
|  | | | | | | | 7475 | | | |  | | | | | |  | | | |  | | | | |  | | | | |
| Spatial lags | | | | | | |  | | | |  | | | | | |  | | | |  | | | | |  | | | | |
|  | | | | | | | 505348 | | | | 0.140 | | | | | | 0.210 | | | | 0 | | | | | 1 | | | | |
|  | | | | | | | 505348 | | | | 0.132 | | | | | | 0.317 | | | | 0 | | | | | 1 | | | | |
|  | | | | | | | 505348 | | | | 0.134 | | | | | | 0.225 | | | | 0 | | | | | 1 | | | | |
|  | | | | | | | 505348 | | | | 0.105 | | | | | | 0.235 | | | | 0 | | | | | 1 | | | | |
|  | | | | | | | 505348 | | | | 0.202 | | | | | | 0.196 | | | | 0 | | | | | 1 | | | | |
|  | | | | | | | 505348 | | | | 0.189 | | | | | | 0.217 | | | | 0 | | | | | 1 | | | | |
|  | | | | | | | 505348 | | | | 0.171 | | | | | | 0.219 | | | | 0 | | | | | 1 | | | | |
|  | | | | | | | 505348 | | | | 0.140 | | | | | | 0.225 | | | | 0 | | | | | 1 | | | | |
|  | | | | | | | 505348 | | | | 0.194 | | | | | | 0.219 | | | | 0 | | | | | 1 | | | | |
|  | | | | | | | 505348 | | | | 0.114 | | | | | | 0.215 | | | | 0 | | | | | 1 | | | | |
|  | | | | | | | 505348 | | | | 0.141 | | | | | | 0.268 | | | | 0 | | | | | 1 | | | | |
|  | | | | | | | 505348 | | | | 0.210 | | | | | | 0.196 | | | | 0 | | | | | 0.967 | | | | |
|  | | | | | | | 505348 | | | | 0.076 | | | | | | 0.227 | | | | 0 | | | | | 1 | | | | |
| B: Pairwise correlations of spatial lags | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Note: sl1 =,sl2 *=* ,…, sl13 = | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|  | | sl1 | | sl2 | | sl3 | | sl4 | | sl5 | | | sl6 | | sl7 | | | sl8 | | sl9 | | | sl10 | | sl11 | | | sl12 | | sl13 |
| sl1 | | 1.00 | |  | |  | |  | |  | | |  | |  | | |  | |  | | |  | |  | | |  | |  |
| sl2 | | 0.41 | | 1.00 | |  | |  | |  | | |  | |  | | |  | |  | | |  | |  | | |  | |  |
| sl3 | | 0.54 | | 0.25 | | 1.00 | |  | |  | | |  | |  | | |  | |  | | |  | |  | | |  | |  |
| sl4 | | 0.43 | | 0.36 | | 0.52 | | 1.00 | |  | | |  | |  | | |  | |  | | |  | |  | | |  | |  |
| sl5 | | 0.65 | | 0.38 | | 0.57 | | 0.46 | | 1.00 | | |  | |  | | |  | |  | | |  | |  | | |  | |  |
| sl6 | | 0.64 | | 0.44 | | 0.52 | | 0.45 | | 0.81 | | | 1.00 | |  | | |  | |  | | |  | |  | | |  | |  |
| sl7 | | 0.54 | | 0.45 | | 0.46 | | 0.55 | | 0.76 | | | 0.68 | | 1.00 | | |  | |  | | |  | |  | | |  | |  |
| sl8 | | 0.65 | | 0.44 | | 0.42 | | 0.36 | | 0.62 | | | 0.62 | | 0.52 | | | 1.00 | |  | | |  | |  | | |  | |  |
| sl9 | | 0.58 | | 0.39 | | 0.47 | | 0.39 | | 0.81 | | | 0.77 | | 0.64 | | | 0.59 | | 1.00 | | |  | |  | | |  | |  |
| sl10 | | 0.37 | | 0.28 | | 0.31 | | 0.24 | | 0.50 | | | 0.44 | | 0.43 | | | 0.47 | | 0.46 | | | 1.00 | |  | | |  | |  |
| sl11 | | 0.41 | | 0.33 | | 0.34 | | 0.27 | | 0.52 | | | 0.51 | | 0.50 | | | 0.49 | | 0.50 | | | 0.46 | | 1.00 | | |  | |  |
| sl12 | | 0.64 | | 0.36 | | 0.56 | | 0.46 | | 0.96 | | | 0.81 | | 0.73 | | | 0.60 | | 0.81 | | | 0.46 | | 0.49 | | | 1.00 | |  |
| sl13 | | 0.43 | | 0.23 | | 0.31 | | 0.24 | | 0.32 | | | 0.34 | | 0.29 | | | 0.42 | | 0.33 | | | 0.33 | | 0.42 | | | 0.30 | | 1.00 |
| C: Sample countries (ISO alpha-3 codes) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| afg | bfa\* | | caf\* | | cub | | est\* | | gnq\* | | | irq | | kwt\* | | mdg | | | mys\* | | | phl | | sgp\* | | | tcd\* | | usa | |
| ago\* | bgd\* | | can | | cyp\* | | eth | | grc | | | isr\* | | lao | | mdv | | | nam\* | | | png\* | | slb\* | | | tgo\* | | uzb\* | |
| alb | bgr | | che | | cze\* | | fin | | grd\* | | | ita | | lbn | | mex | | | ner\* | | | pol | | sle\* | | | tha | | vct\* | |
| are\* | bhr\* | | chl | | deu\* | | fji\* | | gtm | | | jam\* | | lbr | | mhl | | | nga\* | | | prk | | slv | | | tjk\* | | ven | |
| arg | bhs\* | | chn | | dji\* | | fra | | guy\* | | | jor | | lby\* | | mkd\* | | | nic | | | prt | | som\* | | | tkm\* | | vnm\* | |
| arm\* | bih\* | | civ\* | | dma\* | | fsm | | hnd | | | jpn | | lca\* | | mli\* | | | nld | | | pry | | stp\* | | | ton | | vut\* | |
| atg\* | blr\* | | cmr\* | | dnk | | gab\* | | hrv\* | | | kaz\* | | lka | | mlt\* | | | nor | | | qat\* | | sur\* | | | tto\* | | wsm\* | |
| aus | blz\* | | cod\* | | dom | | gbr | | hti | | | ken\* | | lso\* | | mmr\* | | | npl | | | rou | | svk\* | | | tun\* | | yem\* | |
| aut | bol | | cog\* | | dza\* | | geo\* | | hun | | | kgz\* | | ltu\* | | mng | | | nzl | | | rus\* | | svn\* | | | Tur | | zaf | |
| aze\* | bra | | col | | ecu | | gha\* | | idn | | | khm | | lux | | moz\* | | | omn\* | | | rwa\* | | swe | | | tza\* | | zmb\* | |
| bdi\* | brb\* | | com\* | | egy | | gin\* | | ind\* | | | kir\* | | lva\* | | mrt\* | | | pak\* | | | sau | | swz\* | | | uga\* | | zwe\* | |
| bel | brn\* | | cpv\* | | eri\* | | gmb\* | | irl | | | kna\* | | mar\* | | mus\* | | | pan | | | sdn\* | | syc\* | | | ukr\* | |  | |
| ben\* | bwa\* | | cri | | esp | | gnb | | irn | | | kor | | mda\* | | mwi\* | | | per | | | sen\* | | syr | | | Ury | |  | |
| \* Countries for which the adoption of the first constitution is included in our sample. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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| Table 4: Estimation results - baseline specifications | | | | |
| Diffusion mechanism | Explanatory variable | (1) | (2) | (3) |
| Coercion | Rights of countries with the same former colonizer () | 0.036\*\*\*  (0.011) | 0.010\*\*\*  (0.003) | 0.020\*\*\*  (0.005) |
| Coercion | Rights of former colonizer(s) () | 0.007\*  (0.004) | 0.003\*\*  (0.001) | 0.007\*\*\*  (0.002) |
| Coercion | Rights of countries with the same dominant aid donor () | 0.017\*\*  (0.007) | 0.007\*\*\*  (0.002) | 0.022\*\*\*  (0.005) |
| Coercion | Rights of aid donors () | -0.007  (0.004) | -0.004\*\*  (0.002) | -0.004  (0.003) |
| Competition | Rights of export competitors () | 0.004  (0.028) | -0.001  (0.010) | 0.029  (0.020) |
| Learning | Rights of countries with the same legal origin () | 0.045\*\*\*  (0.008) | 0.020\*\*\*  (0.003) | 0.026\*\*\*  (0.004) |
| Learning | Rights of export destination countries () | 0.011\*  (0.006) | 0.004  (0.003) | 0.008\*  (0.004) |
| Learning | Rights of countries with a common official language () | -0.019  (0.012) | -0.003  (0.003) | -0.002  (0.005) |
| Learning | Rights of countries with the same dominant religion () | 0.033\*\*\*  (0.006) | 0.015\*\*\*  (0.003) | 0.017\*\*\*  (0.003) |
| Learning | Rights of military allies () | -0.026\*\*\*  (0.008) | -0.008\*\*\*  (0.002) | -0.010\*\*  (0.005) |
| Learning | Rights of countries with a common border () | 0.009  (0.006) | 0.003  (0.002) | -0.001  (0.003) |
| Acculturation | Rights of *all* (equally weighted) other countries (world polity) () | -0.016  (0.027) | -0.003  (0.009) |  |
| Control (no diffusion) | Rights of countries that were formerly part of the same country () | 0.011  (0.008) | 0.003  (0.002) | 0.009\*  (0.005) |
| Country-year fixed effects | | No | No | Yes |
| Right-year fixed effects | | No | No | Yes |
| Method | | OLS | Probit | OLS |
| N | | 505348 | 505348 | 505348 |
| (pseudo) -squared | | 0.03 | 0.14 | 0.39 |
| Notes: The dependent variable is a dummy variable that captures the adoption of a constitutional right. Columns (1) and (3) report the estimated coefficients from a linear probability model. Column (2) reports marginal effects from a probit model, where all regressors are evaluated at their sample mean. In all columns, robust standard errors (clustered by country-year) are reported in parentheses. \*\*\*, \*\*, and \* denote significance at the 1%, 5%, and 10% levels, respectively. | | | | |

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| Table 5: Estimation results - subsamples based on income and first constitution | | | | | |
| Diffusion mechanism | Explanatory variable | OECD  (1) | non-OECD  (2) | year of first constitution  (3) | other years  (4) |
| Coercion | Rights of countries with the same former colonizer () | -0.001  (0.010) | 0.016\*\*  (0.006) | 0.059  (0.052) | -0.001  (0.003) |
| Coercion | Rights of former colonizer(s) () | 0.006  (0.004) | 0.008\*\*\*  (0.002) | 0.101\*\*\*  (0.037) | 0.003\*\*\*  (0.001) |
| Coercion | Rights of countries with the same dominant aid donor () | 0.040\*  (0.021) | 0.013\*\*  (0.005) | 0.184\*\*\*  (0.064) | 0.004\*  (0.002) |
| Coercion | Rights of aid donors  () | 0.024\*  (0.012) | -0.012\*\*\*  (0.003) | -0.008  (0.055) | 0.006\*\*\*  (0.002) |
| Competition | Rights of export competitors () | -0.059  (0.060) | 0.043\*\*  (0.020) | 0.217\*  (0.119) | 0.013\*\*  (0.007) |
| Learning | Rights of countries with the same legal origin () | 0.021\*\*\*  (0.008) | 0.031\*\*\*  (0.006) | 0.382\*\*  (0.163) | 0.012\*\*\*  (0.003) |
| Learning | Rights of export destination countries () | -0.016  (0.010) | 0.012\*\*\*  (0.004) | 0.138\*\*\*  (0.050) | -0.002  (0.002) |
| Learning | Rights of countries with a common official language () | -0.005  (0.007) | 0.006  (0.007) | 0.187\*\*\*  (0.068) | 0.000  (0.003) |
| Learning | Rights of countries with the same dominant religion () | 0.002  (0.003) | 0.022\*\*\*  (0.005) | 0.124\*  (0.064) | 0.008\*\*\*  (0.002) |
| Learning | Rights of military allies () | 0.006  (0.009) | -0.010\*  (0.006) | 0.050  (0.069) | 0.007\*\*  (0.003) |
| Learning | Rights of countries with a common border () | 0.006  (0.004) | -0.003  (0.005) | 0.029  (0.037) | 0.004\*\*  (0.002) |
| Control (no diffusion) | Rights of countries that were formerly part of the same country () | 0.010\*  (0.006) | 0.007  (0.006) | -0.025  (0.038) | 0.003  (0.002) |
| Country-year fixed effects | | Yes | Yes | Yes | Yes |
| Right-year fixed effects | | Yes | Yes | Yes | Yes |
| Method | | OLS | OLS | OLS | OLS |
| N | | 110428 | 394920 | 11340 | 494008 |
| -squared | | 0.42 | 0.39 | 0.74 | 0.32 |
| Notes: The dependent variable is a dummy variable that captures the adoption of a constitutional right. Robust standard errors (clustered by country-year) are reported in parentheses. \*\*\*, \*\*, and \* denote significance at the 1%, 5%, and 10% levels, respectively. | | | | | |

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2. CentER, European Banking Center, Department of Economics, Tilburg University, and Oxford Centre for the Analysis of Resource Rich Economies, Department of Economics, University of Oxford. . [b.v.g.goderis@uvt.nl](mailto:b.v.g.goderis@uvt.nl) [↑](#footnote-ref-2)
3. University of Virginia School of Law. [versteeg@virginia.edu](mailto:versteeg@virginia.edu) [↑](#footnote-ref-3)
4. Empirical evidence suggests that foreign investors do award rights (Blanton and Blanton (2006), Busse and Hefeker (2007)). [↑](#footnote-ref-4)
5. Only in a few cases are constitutional rights abolished after their adoption so that they re-enter the sample. [↑](#footnote-ref-5)
6. We use a five-year lag because constitutional amendment typically does not take longer than one electoral cycle, which typically corresponds to (at most) four years. Moreover, Ginsburg et al. (2009) find that constitution-making on average takes 2.4 years only. We should point out that temporally lagging the spatial lags implies excluding any contemporaneous interdependence but given that the adoption of constitutions is a slow-moving process such interdependence is probably limited. [↑](#footnote-ref-6)
7. We distinguish the seven categories of rights listed in Table 1. [↑](#footnote-ref-7)
8. A problem that is equivalent to omitted variable bias is *sample selection bias* (Heckman (1979)). As shown in equation (2), our estimation sample includes only observations in which a country had not yet adopted a right in the previous year. In the presence of spatial interdependence, this selected sample may consist of (i) observations with *low* values for the spatial lags and *normal* values for unobserved determinants of adoption, and (ii) observations with *high* values for the spatial lags and values for unobserved determinants that make adoption particularly unlikely. This selection effect leads to biased and inconsistent estimates only if these unobserved factors are country-right specific (since any country-year or right-year specific unobservables are controlled for) and drive both past and current adoption (i.e. if the error terms in equation (1) are serially correlated). However, since observations with high values for the spatial lags have atypically low error terms, even if such unobservables exist, they cause a *downward* bias in our estimates of spatial interdependence. [↑](#footnote-ref-9)
9. One drawback is the likely presence of heteroskedasticity but we address this by computing robust standard errors (Wooldridge (2002)). [↑](#footnote-ref-10)
10. For all fixed effects specifications, we use the Stata command “felsdvreg” written by Thomas Cornelissen (Cornelissen (2008)) to compute a linear regression model with two high-dimensional fixed effects. In addition to OLS and fixed effects probit, we considered several other estimation techniques (fixed effects logit, semi parametric approaches, random effects probit and logit, duration models) but do not use these due to various drawbacks. [↑](#footnote-ref-11)
11. The clustering is motivated by the concern that constitutional rights are often adopted jointly instead of individually. [↑](#footnote-ref-12)
12. The general coding approach resembles that of the Comparative Constitutions Project(http://www.comparativeconstitutionsproject.org/), although our dataset includes a wider range of constitutional rights. A sub-set of the rights from our database also feature in Law and Versteeg (2011). [↑](#footnote-ref-13)
13. Some countries became independent during our sample period. Since for their years of independence, the *temporally lagged* spatial lags (e.g. ) are missing, we instead use the *contemporaneous* (year ) spatial lags (e.g. ). [↑](#footnote-ref-18)
14. As part of our sensitivity analysis, we also experiment with a set of spatial weights for *imports*. These are not included in the baseline specifications due to a very high correlation with the spatial weights for exports. [↑](#footnote-ref-19)
15. We replace (i) the spatial lag for countries with the same former colonizer by a spatial lag for countries with the same former *post-WW II* colonizer, (ii) the spatial lag for former colonizers by a spatial lag for former *post-WW II* colonizers, (iii) the spatial lag for countries with the same dominant aid donor based on *net disbursements* by spatial lags based on *gross disbursements* or *commitments*, respectively (iv) the spatial lag for countries with the same dominant aid donor by a spatial lag for countries with the same *majority* aid donor , (v) the spatial lag for aid donors based on *net disbursements* by a spatial lag for aid donors based on either *gross disbursements* or *commitments*, (vi) the spatial lag for *export destination* countries by a spatial lag for *import origin* countries, (vii) the spatial lag for countries with a common *official* language by a spatial lag for countries with a common language that is spoken by at least 9 percent of the population, (viii) the spatial lag of countries with the same dominant religion *in* *1970* by a spatial lag of countries with the same dominant religion *in 2000*, (ix) the spatial lag of countries with the same dominant religion in 1970 by a spatial lag of countries with either the same *majority* religion in 1970, or the same *majority* religion in 2000, where a majority religion is a religion that has the majority of a country’s population adhering to it, (x) the spatial lag for military allies based on the *number* of formal military alliances by a spatial lag for military allies based on the *strength* of formal military alliances, where strength is reflected by the type of alliance (from strong to weak: defense pact, neutrality pact, entente), and (xi) the spatial lag for countries with a common border by one based on distance between capital cities. [↑](#footnote-ref-20)
16. The classification of democracies and non-democracies is based on the indicator of democracy (“democ”) from the Polity IV dataset. This indicator has an additive eleven-point scale and ranges from 0 to 10, where higher scores indicate a higher degree of democracy. Following Collier and Hoeffler (2009), we define democracies as countries with a democracy score that is greater than or equal to 5 and non-democracies as countries with a score below 5. The Polity IV data are described in Marshall and Jaggers (2005). [↑](#footnote-ref-22)
17. A possible concern is that our finding that diffusion is more important during first constitution years could be explained by the *type of countries* for which the adoption of the first constitution is included in our sample. Re-estimating the baseline specification of Table 4, column (3), for all observations corresponding to those countries, except for the observations in the first constitution years, revealed that this is not the case. [↑](#footnote-ref-23)