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978-0-521-73132-4 - The Endurance of National Constitutions

Zachary Elkins, Tom Ginsburg and James Melton

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THE ENDURANCE OF NATIONAL CONSTITUTIONS

Constitutions are supposed to provide an enduring structure for politics. Yet most die at a young age. Why is it that some constitutions endure, whereas others do not? In *The Endurance of National Constitutions*, Zachary Elkins, Tom Ginsburg, and James Melton examine the causes of constitutional endurance from an institutional perspective. Using both statistical and case study evidence, they argue that certain design features can sustain constitutions even in the face of seemingly lethal crises.

Zachary Elkins is an Assistant Professor in the Department of Government at the University of Texas at Austin. Professor Elkins's research focuses on issues of democracy, institutional reform, research methods, and national identity, with an emphasis on cases in Latin America. His work has appeared in leading journals such as the *American Political Science Review*, the *American Journal of Political Science*, and *International Organization*.

Tom Ginsburg is a Professor at the University of Chicago Law School. His books include *Rule by Law: The Politics of Courts in Authoritarian Regimes* (2008, with Tamir Moustafa) and *Judicial Review in New Democracies* (2003), which won the American Political Science Association's C. Herman Pritchett Award for best book on law and courts.

James Melton is a postdoctoral Fellow in political science at the IMT Institute for Advanced Studies in Lucca, Italy. His research focuses on aspects of democracy and democratization and he is currently working on projects related to constitutional design, voter turnout, and measuring democracy.

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To Jules, Amber, and Linh

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[C]onstitutions are *made*, not found. They do not fall miraculously from the sky or grow naturally on the vine. They are human creations, products of convention, choice, the specific history of a particular people, and (almost always) a political struggle in which some win and others lose. Indeed, in this vein one might even want to argue that our constitution is more something we do than something we make: we (re)shape it all the time through our collective activity.

– Hannah Fenichel Pitkin, *The Idea of a Constitution* (1987)

A permanent constitution must be the work of quiet, leisure, much inquiry, and great deliberation.

– Thomas Jefferson to A. Coray (1823)

For if a constitution is to be permanent, all parts of the state must wish that it should exist and the same arrangements be maintained.

– Aristotle, *Politics* IX (350 B.C.E.)

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Preface

This book is the first from the Comparative Constitutions Project, a long-term research initiative we began several years ago with the goal of understanding the origins, characteristics, and consequences of written constitutions for most independent states. As part of this project, we have since identified and collected the texts of nearly all national constitutions from 1789 onward, and we are engaged in a systematic effort to code their contents along a wide range of dimensions. Readers interested in details of the project can find more information at www.comparativeconstitutionsproject.org. Logically prior to the collection of constitutional texts and a coding of their contents comes an accounting of when, exactly, the various documents came to exist and when they were replaced. This sort of census requires comprehensive historical information on the chronologies of national constitutions, including dates of birth, death, and amendment. In seeking genealogical data about, say, the whereabouts of the Ecuadorian constitution of 1830, we frequently came across veritable “obituaries” that reported the circumstances of death. It was not long before we were deeply engaged in questions of the mortality and endurance of these constitutions ourselves.

This book has its origins at the University of Illinois, where Elkins and Ginsburg were colleagues in the Political Science Department and the Law School, respectively, and where Melton received his doctorate. We are especially grateful to Peter Nardulli, Director of the Cline Center for Democracy at the University of Illinois, for his early and continuing support, friendship, and faith in our project, and to Richard Cline for his vision in endowing the Center and our efforts. Various other institutions have supported aspects of our project, and for that we thank Deans Heidi Hurd and Charles Tabb of the University of Illinois College of Law, Dean Saul Levmore of the University of Chicago Law School, Randy Diehl and Gary Freeman of the University

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of Texas, Alexander Thier of the United States Institute for Peace, and the National Science Foundation (Awards Nos. SES-0648288 and 0819102).

We have been privileged to have an outstanding group of students at the University of Illinois, University of Chicago, and the University of Texas work with us on the Comparative Constitutions Project over the years. Their assistance in helping to produce the raw materials for this book has been invaluable and we acknowledge each of them individually on the project website. Several students in and outside this group provided helpful research assistance for the book itself, and for that we thank Abby Blass, Justin Blount, Svitlana Chernykh, Adam J. Fleisher, Angelica Ghindar, Zoë Ginsburg, Michael Werner, and Emily Winston. Kalev Leetaru, of the Cline Center, provided inimitable assistance with the electronic archiving of texts and general information processing support.

Many audiences in law schools and political science departments have heard versions of the chapters here, and we are grateful to them all. An incomplete list of people to whom we are indebted for helpful comments includes Robert Barro, Omri Ben-Shahar, David Collier, Rui de Figueiredo, Manuel Delmestro, Rosalind Dixon, Brent Elkins, Nancy Elkins, Brian Gaines, Jacob Gersen, Mark Graber, Gretchen Helmke, Donald Horowitz, Gary Jacobsohn, Jai Kwan Jung, Dan Klorman, Maximo Langer, David Law, James Lindgren, Gabriel Negretto, Eric Posner, Mark Ramseyer, Kal Raustiala, Daria Roithmayr, Adam Samaha, Miguel Schor, Jeff Segal, Neil Siegel, David Strauss, Cass Sunstein, Michael Trebilcock, Tim Waters, Barry Weingast, and reviewers for Cambridge University Press. We are exceptionally indebted to John Carey, Jose Cheibub, and Henry Elkins, who read the entire manuscript and improved it immeasurably. We apologize to the many others whom we have not acknowledged here. Their collective wisdom renders the remaining errors inexcusable, and for those we bear sole responsibility. Finally, our thanks go to John Berger, our editor at Cambridge University Press, for his patience with a project whose life span, unlike most constitutions, lasted longer than it should have.

A new generation of Elkinses, Ginsburgs, and Meltons either came to be or passed major milestones during the process of writing this book. No doubt that they have left their mark on these pages somehow as well. Surely, our spouses – Jules, Amber, and Linh – have done so, through their patience, support, and sense of humor. To them, we give our deepest thanks and dedicate this book.