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# Social Capital, Institutional Rules, and Constitutional Amendment Rates

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## Abstract

Why are some constitutions amended more frequently than others? Despite the importance of this question to political science and legal theory, there is little consensus regarding the forces that shape constitutional amendments. Some scholars only focus on institutional factors, while others emphasize variations in culture. This paper makes a contribution to both literatures by examining how social capital reduces the transaction costs imposed by amendment rules. We conduct cross-sectional analyses of amendment rates for democratic constitutions globally and time-series analyses of efforts to amend the U.S. Constitution. The results indicate amendment frequency is a product of amendment rules, group membership, civic activism, and levels of social and political trust, but these effects vary across contexts based on the corresponding transaction costs. Our findings suggest social capital can have beneficial effects on social movements that demand constitutional amendments and the political elites and voters who supply them.

**Keywords:** constitutional amendment rates, social capital, constitutional rigidity, transaction costs, social movements

Word Count: 12,200

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# 1 Introduction

Popular sovereignty is a foundational principle of democratic constitutionalism, yet scholars in multiple fields have reached little consensus about how “the right of the people to make and to alter their constitutions” operates empirically (Washington [1796] 2008). Most accounts of constitutional change within legal theory measure popular sovereignty at one remove: the will of the people is expressed through the actions of their elected leaders (e.g., Ackerman 1991). The role of elites within constitutional politics explains why most amendment scholarship within political science emphasize the design of amendment procedures. According to these studies, rigid amendment rules impose greater constraints on elites seeking constitutional change (Anckar and Karvonen 2002; Dixon and Holden 2012; Elkins, Ginsburg, and Melton 2009; Ferejohn 1997; La Porta et al. 2004; Lane 1996; Lijphart 2012; Lorenz 2005; Lutz 1994; Negretto 2012; Rasch and Congleton 2006; Tsebelis n.d.). Even the great defender of “the sovereignty of the people in America,” Alexis De Tocqueville ([1874] 2016, chap. IV), pivots away from the constituent power and towards institutional design when analyzing constitutional amendments. Tocqueville (chap. XV) argues state constitutions change frequently because “[i]n America the authority exercised by the legislative bodies is supreme; nothing prevents them from accomplishing their wishes with celerity, and with irresistible power...”

Institutional accounts, nevertheless, do not provide much insight into the underlying demand for amendments or how vociferously citizens must advocate before elites put constitutional reform on the agenda. Recently, some authors have questioned the significance of amendment rules, suggesting that cultural factors better predict a constitution’s amendment rate (Ahnen and Calcagno 2019; Contiades and Fotiadou 2013; Fruhstorfer and Hein 2016; Ginsburg and Melton 2015; Jackson 2015; Tarabar and Young n.d.; Yokodaido 2019). Others, similarly, have argued that political norms mediate the effect of constitutional rules on amendment rates (Velasco-Rivera n.d.; Versteeg and Zackin 2016). As promising as these studies are, institutionally-focused authors argue that a nation’s constitutional culture may

be endogenous to its amendment rules (Tsebelis 2017, n.d.). In other words, amendment rules establish a set of expectations about the desirability of amendments.

This tension in the literature leaves major questions unanswered. Institutional scholarship cannot explain variation over time within states that have not changed their amendment rules or variation between states with near-identical amendment procedures. The literature is also unclear on whether amendment culture changes over time and, if so, why. More importantly, both approaches adopt a top-down view of amendments, which cannot integrate studies of social movements dedicated to constitutional reform (e.g., Beaumont 2014; Mansbridge 2015; McConnaughy 2013; Szymanski 2003; Woodward-Burns 2021). As these scholars recognize, constitutional rules structure opportunities available to grassroots leaders as well as elites.

We contribute to the amendment literature in political science and constitutional theory by modeling amendment rates as an interaction between social forces and institutional rules. We theorize that social capital—another Tocquevillian concept—creates a political environment more conducive to constitutional reform. Though we acknowledge the contested nature of this term, we follow Keele’s (2007, 242) simple definition: “Social capital is comprised of civic participation and trusting attitudes.” For simplicity, we will use the term “social capital” to refer to the bundle of items used by scholars to operationalize the term, including social and political trust, civic engagement, and group membership. Higher levels of social capital assist elites, citizens, and social movements to overcome the information, coordination, and negotiation and decision costs associated with the amendment process. However, these transaction costs may be so high that social capital provides a necessary, but not a sufficient, condition for constitutional amendment. That is, low levels of social capital may strongly predict a lack of constitutional amendments, but the effect of high levels of social capital on amendment rates is more variable.

Our analysis proceeds in three parts. First, in democracies across the globe, we find that amendment frequency is a function of constitutional design and social capital, but

their effects are contextual to the salience of an amendment and the rigidity of amendment rules. Next, we examine the U.S. Constitution, where amendment rules have remained constant over time, while social capital has varied (Putnam 2000). The analysis indicates a strong, positive association between social capital measures and the number of amendments introduced in Congress and whether proposed amendments advance towards ratification.

Third, we supplement the quantitative analysis with a case study of Ireland’s 2018 repeal of a constitutional prohibition on abortion. This reform is unique because the Irish parliament eschewed the normal amendment process, creating a Citizens’ Assembly to make recommendations before being adopted by parliament and the voters. According to a new collection of interviews with Irish leaders, the Assembly succeeded because it leveraged high levels of social trust at a time when—due to the global financial crisis—trust in political institutions was low. That is, voters were more willing to accept a recommendation from a panel of citizens than if this amendment had gone through the normal political process. Institutional accounts of constitutional amendments cannot explain this strategy. If veto points create barriers to change, then adding a layer to an already difficult amendment process should have weakened the prospects for abortion reform in Ireland, not strengthened them.

We conclude by discussing the implications and limitations of our analysis. In particular, we hope to facilitate a dialogue between political scientists, legal theorists, and constitutional designers about the institutional and social forces that affect amendment frequency.

## **2 Constitutional Design and Culture**

Most constitutions define two processes for change: rules for legislating and rules for amendment. Constitutional designers typically make the former less stringent than the latter for several reasons. From the standpoint of constitutional theory, the difference between these rules separates the *vox populi*—registered in elections—from the constituent power, which justifies constitutional change (Albert 2019). From a political science perspective,

flexible legislative rules allow policy to adapt to changing circumstances, while the stability of constitutional arrangements makes the political environment in which those policies operate more predictable (Tsebelis and Nardi 2016). Scholars in both fields expect that, in general, the stringency of amendment rules affects the pace of amendments and the longevity of the constitution itself (Elkins, Ginsburg, and Melton 2009).

Beyond this broad assumption, however, there is little agreement about how to measure the relationship between constitutional design and amendment rates. For one, operationalizing the features of amendment processes is difficult. Some studies create ordinal or linear indices, which rely on differing assumptions (Anckar and Karvonen 2002; Elkins, Ginsburg, and Melton 2009; Garoupa and Botelho 2021; La Porta et al. 2004; Lijphart 2012; Lorenz 2005; Lutz 1994; Rasch and Congleton 2006). As a result, the correlation between these measures is weak (Tsebelis n.d., 7). A more sophisticated measure of constitutional rigidity comes from Tsebelis (n.d.), who applies a veto players' framework to measure the strength of amendment rules. This study finds a heteroskedastic relationship between constitutional rigidity and amendment rates, as rigidity provides a necessary, but not a sufficient, condition for constitutional change, especially for more consequential amendments. These conflicting approaches and methodological challenges have produced contradictory findings. Some studies suggest that rigid amendment rules significantly reduce constitutional amendment rates (Anckar and Karvonen 2002; Dixon and Holden 2012; Lutz 1994; Negretto 2012; Lijphart 2012; Rasch and Congleton 2006; Tsebelis n.d.), while others using national- and subnational-level data have produced null results (Ferejohn 1997; Ginsburg and Melton 2015; Lorenz 2005; Rasch and Congleton 2006).

Amidst the confusion in institutional approaches to the phenomenon of constitutional amendment, a new literature emerged examining the effect of constitutional culture (Ahnen and Calcagno 2019; Contiades and Fotiadou 2013; Fruhstorfer and Hein 2016; Ginsburg and Melton 2015; Jackson 2015; Tarabar and Young n.d.; Yokodaido 2019). Ginsburg and Melton (2015), in a break from their previous scholarship (Elkins, Ginsburg, and Melton 2009), find

that most measures of constitutional rigidity do not significantly influence amendment rates when models include a measure of constitutional culture. Other scholars have criticized this measure—operationalized as a country’s amendment rate under their prior constitution—on theoretical and methodological grounds (Contiades and Fotiadou 2016; Tarabar and Young n.d.; Tsebelis n.d.). Amongst other shortcomings, it does not reflect attitudinal data, even though Ginsburg and Melton (2015, 699) define amendment culture as a “shared set of attitudes about the desirability of amendment.” Instead, measuring culture using a prior constitution’s amendment rate may be an endogenous reflection of constitutional rigidity, given that amendment rules often do not change when a nation replaces an old constitution with a new one.<sup>1</sup> Furthermore, constitutional designers may attempt to create a certain amendment culture through the design of amendment rules. In *Federalist 49*, James Madison ([1796] 2008) justified the U.S. Constitution’s stringent amendment rules because frequent and widespread constitutional change risked “disturbing the public tranquillity by interesting too strongly the public passions.”

The concept of amendment culture has broadened the scope of analysis from the supply of amendments to the demand for them. However, no study has yet integrated one of the most common sources of amendment demand: social movements. Scholars of American political development, by contrast, have used social movements as a lens to explore constitutional reform on a variety of issues, from the abolition of slavery (e.g., Beaumont 2014; Milkis and Tichenor 2019) and the expansion of citizenship rights (e.g., Smith 1997), to prohibition (e.g., Szymanski 2003), women’s rights (e.g., McConaughy 2013; Mansbridge 2015) and worker’s rights (e.g., Woodward-Burns 2021; Zackin 2013). These accounts place varying emphases on group resources, tactics, and political opportunities, but they all find that constitutional design structures the social mobilization needed to translate demand for constitutional reform

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<sup>1</sup> A new study provides evidence for this assumption: when American states replace an old constitution with a new one, the most common outcome is for the amendment rules to stay the same across the two documents (Miller et al. 2021).

into action.

In the next section, we construct a theory that moves beyond the current divide in the amendment literature. Constitutional reform is not an either/or proposition between amendment rules and public attitudes. Neither is this phenomenon entirely top-down or grassroots. Instead, these forces are contextual and interconnected.

### **3 Structuring and Overcoming Barriers to Constitutional Change**

We propose a more comprehensive theory of the institutional and social forces that affect the pace of constitutional change. Constitutional rules structure the transaction costs associated with amendments (Buchanan and Tullock 1965). Social capital, unlike existing definitions of amendment culture, is a phenomenon that is exogenous to constitutional design and can be measured with attitudinal data, yet scholars have largely overlooked its potential impact on constitutionalism (but see Ahnen and Calcagno 2019; Bjørnskov and Voigt 2014). As elaborated below, the civic benefits of social capital aid reformers in transcending the transaction costs imposed by amendment rules (see Fukuyama 2001).

#### **3.1 Amendment Rules and Transaction Costs**

The most obvious connection between constitutional design and transaction costs is the impact amendment rules have on negotiation and decision costs. Amendment rules structure these costs in several respects. Requiring supermajorities to propose or ratify amendments means any change must satisfy the preferences of a larger proportion of the decision-making body. Furthermore, some constitutions specify that certain provisions or principles (like the German Basic Laws' promise that "[h]uman dignity shall be inviolable") are unamendable (Roznai 2017), regardless of the size of the coalition assembled to change it.

Constitutions also vary in the number of amendment veto points. Assuming preference non-uniformity, requiring more actors to approve an amendment serves a similar function. Constitutions also vary in terms of the number of amendment paths prescribed, which limits



the strategic choices available to elites and social movements seeking to advance their agendas. Social movements and interest groups are sensitive to these costs, taking positions on the rigidity of amendment rules based on whether they prefer change or the constitutional status quo (Dinan 2016).

Higher negotiation and decision costs mean higher renegotiation costs as well. Flexible amendment rules facilitate constitutional innovation because if a reform creates problems, those issues can be more easily solved with a future amendment. Rigid amendment rules, by contrast, raise information costs because decision makers need to be confident that any bargain they reach will last (Elkins, Ginsburg, and Melton 2009, 73). When information costs associated with constitutional change are high, the status quo may seem preferable because it is more familiar. Several studies have documented constitutional status quo bias in direct democracy contexts (Bowler and Donovan 2000; Blake and Anson 2020; Zink and Dawes 2016). Elites, however, are better positioned than citizens to overcome these costs because they possess greater expertise, clearer preferences, and strategic incentives (Negretto and Sánchez-Talanquer 2021; Velasco-Rivera n.d.).

When negotiation and decision costs imposed by amendment rules are too high, political actors may turn entirely in favor of other strategies. Elites can pursue state-level constitutional reform (Woodward-Burns 2021) or utilize the legislative process to pass “super-statutes,” ordinary laws imbued with constitutional significance (Eskridge and Ferejohn 2001). Judicial review also permits judges to reinterpret existing constitutional provisions in radically different ways, obviating the need for amendments (Mansbridge 2015). Thus, like Tsebelis (n.d.), we predict rigid amendment rules will strongly depress amendment rates, while the effect of less rigid amendment rules may be more variable. Furthermore, as amendment substitutes become more attractive alternatives, public trust in the institutions that can provide them—such as courts—becomes more important.

## 3.2 Social Capital and Transaction Costs

We predict amendment frequency will be higher in nations with higher levels of social capital or at times during a particular nation's history when social capital is comparatively higher. These expectations are based on the potential of social capital to mitigate the transaction costs identified in the previous section. Specifically, the trust, reciprocity, and civic activity associated with social capital produce beneficial effects for elites, ordinary citizens, and social movements.

High levels of social capital reduce coordination costs for social movements, facilitating member recruitment, resource mobilization, and coalition formation (Edwards 2013). These forces aid social movements at the proposal and ratification stages of the amendment process. Social movements can force constitutional reform onto the agenda by clarifying the degree to which the public desires amendments (Tavits 2006). When groups are active on both sides of an issue, social movements can reduce the information costs by illuminating potential compliance costs of an amendment. Robust social movements can shepherd amendments through the approval process by providing information to the public in a referendum campaign (Bowler and Donovan 2000) or amplify pressure on regional governments to ratify (Szymanski 2003). Social movements can also mobilize voters to hold elites accountable if they fail to act.

Social capital has beneficial effects on elites independent of the effects on social movements. Policy innovation is more likely to occur where social capital is higher (Putnam 1993), and we predict a similar relationship with constitutional reform. There are several potential linkages to explain this phenomenon. First, trusting voters have different expectations of their elected officials. As Uslaner (2000, 570) has observed, "Trusters...place a high value on compromise and legislative productivity, rather than ideological purity and stalemate."

Second, to the extent that elites share similar levels of trust and reciprocity of their constituents, social capital aids in the coalition-forming necessary to satisfy amendment rules. For example, Boix and Posner (1998) suggest a link between social capital and consociational

politics, where cross-cleavage coalitions are common. Likewise, Diani (2006, 134) has argued, social capital is “conducive to more open attitudes by the elites towards political challengers.” Trust can mitigate the risk aversion that comes with adopting new policies (Wossen, Berger, and Di Falco 2015) and increases the openness of political agendas (Diani 2006, 134), which helps elites overcome constitutional status quo bias. Elite reciprocity also increases the likelihood that any deficiency of a constitutional amendment will become the subject of future good-faith bargaining. On the other hand, distrust is associated with the rise of populism (Algan et al. 2017), which can, in turn, lead to partisan exploitation of constitutions (Landau 2013).

Evaluating how ordinary citizens approach constitutional reform is also important, as referenda are now the most common method of amendment ratification (Elkins and Hudson 2019). In direct democracy settings, voters rely on elite cues as heuristics to overcome the information costs involved (Bowler and Donovan 2000). For those cues to work, they must seem credible, which, in turn, requires trust in political institutions. Even if citizens have no direct role in the amendment process, they can still hold elites accountable for their inaction. Social capital is associated with greater political engagement (Putnam 2000), which facilitates this accountability.

### **3.3 The Limits of Social Capital**

There are methodological and substantive reasons why the influence of social capital may be limited. For one, social capital trends can obscure or exacerbate racial inequalities (Hero 2003), a central concern of many democratic constitutions. Putnam and others also assume that when citizens join groups, they form social bonds and that this foundation of social trust will translate to political trust. However, the causal pathways are not so straightforward. When examined with citizen survey data, voluntary memberships do not automatically lead to social trust, and expressions of generalized trust vary across citizens – usually with “winners” in society expressing higher levels of trust (Newton 2001). Furthermore, social trust is only predictive of confidence in democracy in countries that already score highly on

democratic indicators (Jamal and Nooruddin 2010). Social trust is also multi-pronged and encompasses both general and out-group trust, which do not always co-vary (Welzel and Delhey 2015).

While debates regarding the formation and perpetuation of social capital are important, it is the existence of trustful attitudes and civic participation that animates our analysis. Nevertheless, social capital may provide only a necessary, but not a sufficient condition, for constitutional change. Scholars must make two different predictions when using necessary but not sufficient conditions as an independent variable: the value of the dependent variable and its variance (Goertz and Starr 2002). Consequently, for any particular constitutional amendment, the potential influence of social capital is conditioned on the importance of the proposal and the rigidity of the amendment process. Social capital is more likely to influence amendment rates on less important amendments or when amendment rules are less rigid because transaction costs are less burdensome in these contexts.

Scholars have only recently begun to evaluate how the significance of individual amendments affects the pace of constitutional change. Cross-nationally, stringent amendment rules play a particularly robust role in preventing major, as opposed to minor, amendments from being adopted (Tsebelis n.d.). Thus, some constitutional amendments may be so radical or some amendment rules so rigid that these transaction costs can only be overcome if many different social and political forces align at just the right time. Under these conditions, rapid progress may occur after years of stasis.

## **4 Cross-National Analysis of Constitutional Amendment Rates**

We begin by assessing amendment rates across the globe. We limit the analysis to democracies because amendment rules there are more likely to function as meaningful constraints on a regime's control over their constitutional system (Tsebelis n.d.). Furthermore, as observed earlier, the trust and reciprocity created by social capital is less likely to influence

political decisions in non-democratic nations. Following Tsebelis (n.d.), we define democracies as those nations with a Polity IV score of six or higher.<sup>2</sup> The dependent variable is Tsebelis' (n.d., 10) definition of amendment rate: the number of years in which at least one amendment was enacted divided by the total number of democratic years the current constitution has been in effect, as of 2013. This analysis also leverages Tsebelis' (n.d., 7-10) measure of constitutional rigidity and data on constitutional amendment significance.<sup>3</sup>

The World Values Survey has included a number of social capital questions since its first wave. The analysis includes three measures of political trust: confidence in the government, which provides an overall assessment of political trust; confidence in the political parties, which measures a citizenry's relationship to the elites who often control the amendment process (Velasco-Rivera n.d.); and confidence in courts, the institution that can narrow or expand constitutional provisions through judicial interpretation.<sup>4</sup> Generalized social trust and trust in people from another religion provide potentially contrasting measures of social trust, as the latter explicitly asks respondents to consider their views of an out-group.<sup>5</sup>

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<sup>2</sup> While Polity scores have received considerable, insightful criticism (e.g., Wilson 2014), they remain an important tool for identifying democracies.

<sup>3</sup> The author consulted constitutional experts across the world who classified every amendment to their home constitution as either exceptionally significant, significant, or insignificant (Tsebelis n.d., 12-13).

<sup>4</sup> Although the survey uses the term confidence, not trust, the creators of these questions have used them as indicators of trust in political institutions (Welzel 2013).

<sup>5</sup> For the generalized trust in people measure, we add data from Afrobarometer surveys covering 15 additional African democracies. This data increases the size of a relatively small sample, while ensuring greater representation of democracies in the global south. As elaborated in the online Appendices, not only do the two surveys use the same question wording, they utilize identical response scales, and a similar distribution occurs in the five countries surveyed by both organizations.

When putting together a coalition to overcome amendment transaction costs, support from out-groups becomes especially important.

Finally, group membership rates and civic activism levels provide insight into the effect of civil society on amendment rates. We operationalize the group membership variable based on the total number of association types of which the respondent is an active or passive member. Consistent with other studies (Welzel 2013, 223) civic activism is a three-point index based on whether a respondent has ever engaged in petitioning, boycotting, or protesting. While these variables do not directly measure the scope of resources available to social movements, scholars regularly use WVS data to compare the effects of social movements across nations (e.g., Norris, Walgrave, and Van Aelst 2005).

For each social capital variable, we construct a cross-wave national average after creating a weighted national average for each wave. While some of the resulting measures are strongly correlated – such as government confidence and party confidence ( $r = 0.871$ ) – others are not – like group membership and social trust ( $r = 0.273$ ). Consistent with previous studies (Newton 2001), these data suggests that social capital operates in a complex fashion. For a correlation matrix, see the online Appendices.

Finally, we utilize the Comparative Constitutions Project to control for two other factors that affect the demand for constitutional amendments. One is a dichotomous measure for the presence of judicial review. Ginsburg and Melton (2015) find judicial review is associated with higher rates of constitutional amendments. The models also control for a constitution's length, as measured by the natural log of the number of words. As indicated in previous studies (e.g., Ginsburg and Melton 2015), longer constitutions cover a wider array of policy areas, which increases the likelihood amendments will be needed to correct mistakes or resolve tensions between constitutional provisions.

Like Tsebelis (n.d.), we employ heteroskedastic linear regression to model the determinants of amendment rates, allowing the variance of the social capital and rigidity indicators

Table 1: Heteroskedastic Regression Models of Constitutional Amendment Rates in Democratic Nations

Predictor	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Constitutional Rigidity	-0.347*** (0.088)	-0.369*** (0.096)	-0.303*** (0.094)	-0.281*** (0.071)	-0.273*** (0.097)	-0.302*** (0.090)	-0.255*** (0.077)
Judicial Review	0.020 (0.046)	0.037 (0.051)	0.055 (0.059)	0.064 (0.056)	0.020 (0.054)	0.022 (0.065)	0.094* (0.056)
ln(Word Length)	0.060 (0.071)	0.089 (0.077)	0.097 (0.085)	0.186** (0.085)	0.137* (0.074)	0.135 (0.084)	0.195*** (0.075)
Government Confidence	0.203*** (0.075)						
Party Confidence		0.235** (0.110)					
Court Confidence			0.135** (0.067)				
Trust People				0.347** (0.176)			
Trust Other Religion					0.170** (0.084)		
Group Membership						0.025 (0.036)	
Civic Activism							0.348*** (0.091)
Constant	-0.165 (0.371)	-0.272 (0.425)	-0.268 (0.441)	-0.803 (0.559)	-0.521 (0.429)	-0.110 (0.351)	-0.621* (0.360)
ln( $\sigma^2$ )							
Constitutional Rigidity	-2.958*** (0.837)	-2.971*** (0.847)	-2.106*** (0.777)	-2.792*** (0.727)	-2.736*** (0.889)	-2.334*** (0.842)	-1.974** (0.785)
Government Confidence	2.641*** (0.786)						
Party Confidence		2.343** (0.911)					
Court Confidence			1.576*** (0.610)				
Trust People				1.910** (0.960)			
Trust Other Religion					1.884** (0.821)		
Group Membership						0.723*** (0.231)	
Civic Activism							1.156* (0.611)
Constant	-6.774*** (1.782)	-5.230*** (1.663)	-5.281*** (1.680)	-3.251*** (1.239)	-5.260*** (2.026)	-2.355*** (0.821)	-2.405*** (0.780)
Observations	58	58	58	71	50	58	58
Wald $\chi^2$	29.4***	24.1***	20.1***	32.0***	19.7***	19.8***	35.2***

\*  $p < 0.10$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$

to vary.<sup>6</sup> This methodology allows us to test our theoretical prediction that social capital

<sup>6</sup> With relatively small sample sizes, there is a potential that these models over-fit the data.

levels are a necessary, but not a sufficient, condition for constitutional amendments. Once any heteroskedasticity is accounted for, the mean function produces results that allow for more valid inferences.

Table 1 presents the results of seven heteroskedastic linear regression models, one for each social capital indicator. The variance function of each model, displayed in the bottom portion of the table, finds statistically significant negative effects of constitutional rigidity and positive effects of the corresponding social capital indicator. These results suggest low amendment rates are quite likely to occur when levels of rigidity are high or social capital is low. However, the converse is not necessarily true, as the effect of lax amendment procedures and high levels of social capital are more variable.

The results of the mean function, displayed in the top portion of Table 1, also reflect our theoretical expectations: constitutional rigidity significantly reduces amendment rates in every model, while every social capital indicator, except the group membership variable in Model 6, exerts a statistically significant, positive effect. In every model, the coefficient for the two control variables is positive, as predicted. However, judicial review only achieves statistical significance in Model 7, while word length is only statistically significant in Models 4, 5, and 7.

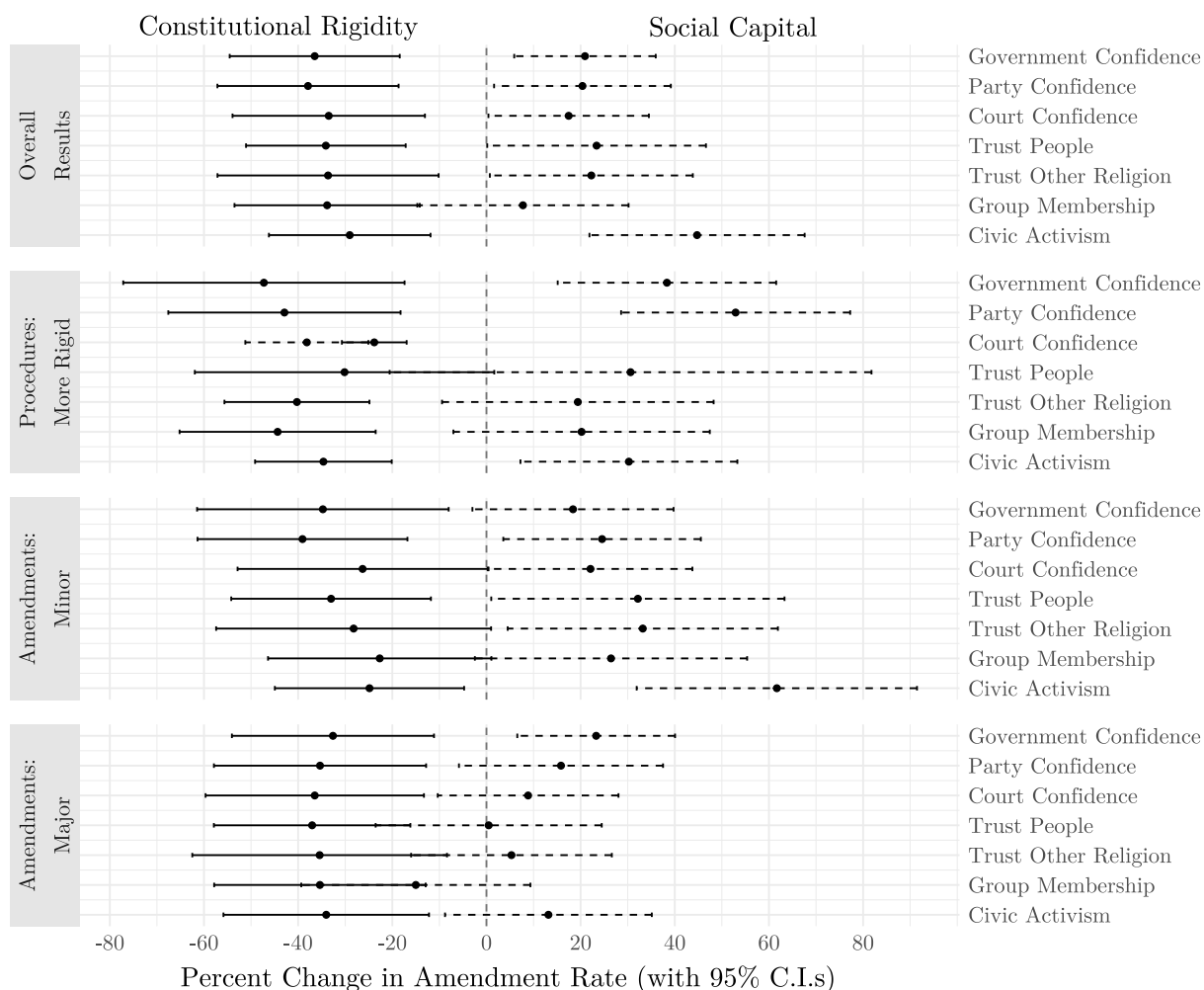
To compare effect sizes, Figure 1 visualizes the percentage change in amendment rates associated with a one-standard-deviation (+1 S.D.) change in the independent variable of interest from its mean. The top portion of the figure is based on the results of Table 1. For example, Model 1 of Table 1 indicates that a +1 S.D. boost in government confidence leads to an average increase of 0.055 amendments per year. Taking into consideration that the average amendment rate is 0.264 per year, the effect of government confidence in this instance is 20.9%, which is displayed at the very top of Figure 1 along with the corresponding 95% confidence intervals.

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The online Appendices contain a table that drop the two control variables to provide more degrees of freedom, and the results are substantially similar.



Figure 1: Effect of Constitutional Rigidity and Social Capital on Amendment Rates in Democratic Nations



Across the seven models displayed at the top of Figure 1, the average +1 S.D. effect of constitutional rigidity is -34.1%, whereas the mean effect of a +1 S.D. change in social capital is only 22.4%. This suggests that social capital is not an automatic antidote to the transaction costs created by amendment rules. Instead, constitutional reformers must work especially hard to overcome the inertia created by institutional rules.

This inertia becomes even more prominent among democracies with particularly stringent amendment rules. The next section of Figure 1 displays the results of the same models performed on a subsample of democracies with above-average measures of constitutional

rigidity.<sup>7</sup> Only three social capital indicators are associated with statistically-significant increases in amendment rates, compared to six in the overall analysis. However, the effect of a +1 S.D. change in government trust and party trust is 38.3% and 52.9%, respectively, compared to 20.9% and 20.4% in the overall results. This change suggests formal amendments are possible under difficult institutional constraints, but if political trust is below average, amendments are highly unlikely. As described above, stringent amendment rules require approval at supermajority thresholds, across multiple institutions, or at multiple points in time. Reciprocity is particularly important to navigate these conditions.

Interestingly, trust in one political institution does not follow this pattern. The coefficient of trust in courts flips from positive in every other model displayed in Figure 1 to negative when modeling countries with more rigid amendment rules. While future research is needed to investigate this relationship, one plausible interpretation is that judicial review—which is present in 79% of the nations in this subsample—provides informal constitutional change. When amendment rules are particularly stringent, substitutes for formal constitutional change become more attractive, especially when people trust the institution that can provide those substitutes. Take the United States, for example, where trust in Congress and the presidency are at all-time lows, especially among out-partisans. Trust in the Supreme Court, however, is comparatively higher (Rainie, Keeter, and Perrin 2019). Given the stringency of Article V amendment rules, informal constitutional change may seem like the only realistic way forward, making appointments to the Supreme Court a battleground for control of the U.S. Constitution itself.

The remainder of Figure 1 visualizes the effects of the independent variables of interest on amendment rates for reforms that are minor versus major in their scope.<sup>8</sup> These results provide further confirmation that the influence of amendment rules and social capital varies

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<sup>7</sup> The results of these remaining regression models can be found in the online Appendices.

<sup>8</sup> We define major amendments as those deemed significant or exceptionally significant by Tsebelis (n.d.).

across contexts. In particular, the effect of constitutional rigidity is smaller for less significant amendments, while the effect of most social capital indicators is stronger for minor, as compared to major amendments. Each social capital indicator is a statistically significant predictor of minor amendment rates, while only government confidence achieves conventional levels of significance for major amendments.

The most consistent social capital indicator was government confidence, which is statistically significant at  $p < 0.10$  in one model and  $p < 0.05$  in all others. Party confidence also strongly predicts higher amendment rates, attaining conventional levels of significance in every model except major amendments, where  $p = 0.152$ . These findings are consistent with our theory that political trust provides the most direct (but, as discussed in the case study section, not the only) way to mitigate amendment transaction costs. A politically-trusting environment makes forming coalitions easier, mitigating a significant negotiation and decision cost imposed by amendment rules. Political trust lowers information costs as well, by mitigating status quo bias and making elite signals to the public about the desirability of an amendment appear more credible.

By contrast, the relationship between measures of social trust and amendment rates is slightly weaker. The effect of trusting people in general and trusting people of another religion are not statistically significant when amendment procedures are more rigid or when amendments make major changes. In the other models, the effect sizes of the two indicators were similar, suggesting there is no substantively significant difference between the effect of generalized trust in people and trust in an out-group.

The two measures of civic culture produce slightly different results in these models. Group membership is positively signed, as predicted, but is only statistically significant as a predictor of minor amendments ( $p = 0.073$ ). The variability of group membership may be a product of economic differences across democracies in the sample. Group participation is dependent on economic resources with higher rates occurring in wealthier nations (Cameron 2021).

By contrast, civic activism is more consistently associated with constitutional change. The strength of this effect, however, varies across contexts. Civic activism significantly increases the frequency of minor constitutional amendments but not major ones. Furthermore, civic activism is less potent when transaction costs are especially high. The effect of a +1 S.D. change in civic activism diminishes from 44.7% to 30.3% when comparing the overall results to democracies with more rigid amendment rules. In the next section, we examine the effects of civic culture over time in one democracy with particularly rigid amendment rules: the United States.

## 5 Over-Time Variation in U.S. Constitutional Amendment Activity

One shortcoming of institutional explanations of constitutional amendments is that these studies cannot explain variations in amendment rates across nations with similar amendment rules. As the previous section indicated, adding social capital indicators creates a more comprehensive account of amendment frequency. In this section, we turn to a related shortcoming in the extant literature: the failure to explain why amendment activity varies over time within nations in which amendment rules remain constant.

The U.S. Constitution provides an illustrative example of over-time amendment variation. Over more than two centuries, only 27 amendments to the Constitution have been adopted (on 17 occasions), while six more have been proposed by Congress and remain unratified. The timing of constitutional change is far from random, with ten amendments ratified in 1791, three more immediately following the Civil War, and four more in the second decade of the 20th century. Yet, political scientists have paid almost no attention to this phenomenon, except for studies of social movements dedicated to constitutional amendments.

Social capital underlies many social movement narratives of American constitutional reform. For example, McConnaughy's (2013) account of the suffrage movement emphasized the need for women's rights groups to form coalitions with farmers' organizations and labor

unions: male-dominated groups with other political priorities. As Putnam and Romney Garrett have noted (2020), social capital levels bottomed out at the end of the 19th century, before rising after 1900. The trust and reciprocity produced by rising levels of social capital makes these kinds of alliances easier to form.

On the issue of prohibition, Symanski (2003) argues that the Anti-Saloon League succeeded in the 1900s-1910s because it pursued a more moderate strategy that won over new supporters. Meanwhile, the more ideologically-pure Women's Christian Temperance Union activism in the 1880s was less successful. These contrasting approaches might make sense when one considers differences in civic culture between these periods. The Women's Christian Temperance Union may have been unsuccessful in building a broader coalition through compromise in a moment marked by low social capital, whereas the same tactics proved more advantageous to the Anti-Saloon League's later operations.

In this section, we go beyond individual reform movements to conduct a wider analysis of how changes in the political environment and American social fabric create opportunities to amend the U.S. Constitution over time. We model American constitutional reform in two ways: the number of amendments introduced in Congress per session and a dichotomous indicator for whether, in a given year, progress on an amendment occurs. We define amendment progress as any successful step in the processes outlined in Article V: a supermajority vote in at least one chamber of Congress or ratification in at least one state legislature. We include both ratified and unratified amendments in this sample but exclude state legislative votes to ratify an amendment post-adoption (such as when Mississippi ratified the 13th Amendment in 1995). We include unratified amendments, like the Equal Rights Amendment, because they provide potential evidence that social capital is a necessary, but not a sufficient condition for constitutional change. That is, higher levels of social capital may increase amendment activity, but that activity may still be insufficient for ratification success. Of course, most amendments introduced in Congress do not see any action. Bill

Table 2: Negative Binomial Regression Models of U.S. Constitutional Amendment Introductions (Per Biennial Congress)

Predictor	(1)	(2)	(3)	(4)
Party Dominance (House)	0.014 (0.014)	-0.014 (0.011)	0.015 (0.014)	0.029 (0.023)
Party Dominance (Senate)	0.006 (0.014)	0.036*** (0.012)	-0.001 (0.014)	0.003 (0.031)
Divided Government	0.109 (0.215)	-0.123 (0.212)	0.010 (0.204)	-0.042 (0.202)
Group Membership Index	1.021*** (0.127)			
Church Membership		0.031*** (0.005)		
Unionization Rate			0.067*** (0.009)	
Government Trust				0.017*** (0.006)
Constant	-1.438*** (0.125)	-3.448*** (0.351)	-2.691*** (0.182)	-5.268*** (0.244)
Observations	58	115	62	31
Pseudo $R^2$	0.070	0.033	0.068	0.053
Exposure Term	Members	Members	Members	Legislation

\*  $p < 0.10$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$

introductions, however, provide low-cost signals of legislative priorities.<sup>9</sup>

The models control for the size of each chamber’s majority party, as party dominance increases the likelihood of acquiring supermajoritarian support in Congress. Furthermore, these variables serve as proxies for party dominance in state legislatures, the other major player in the Article V process. We also include a dichotomous measure for divided control of Congress. The models utilize Putnam and Romney Garrett’s (2020, 119) group membership index, which samples membership rates in national, chapter-based associations, along with measures of church membership, unionization rates, and trust in government. Information about these variables is available in the online Appendices. We do not claim that these

<sup>9</sup> This was not always the case in the House. Until 1821, a bill could only be introduced following a majority vote in the House (Cooper and Young 1989). In the online Appendices, we obtain similar findings by replicating Model 2 of Table 2 from 1821 onwards.

Figure 2: Group Membership and U.S. Constitutional Amendment Introductions in Congress

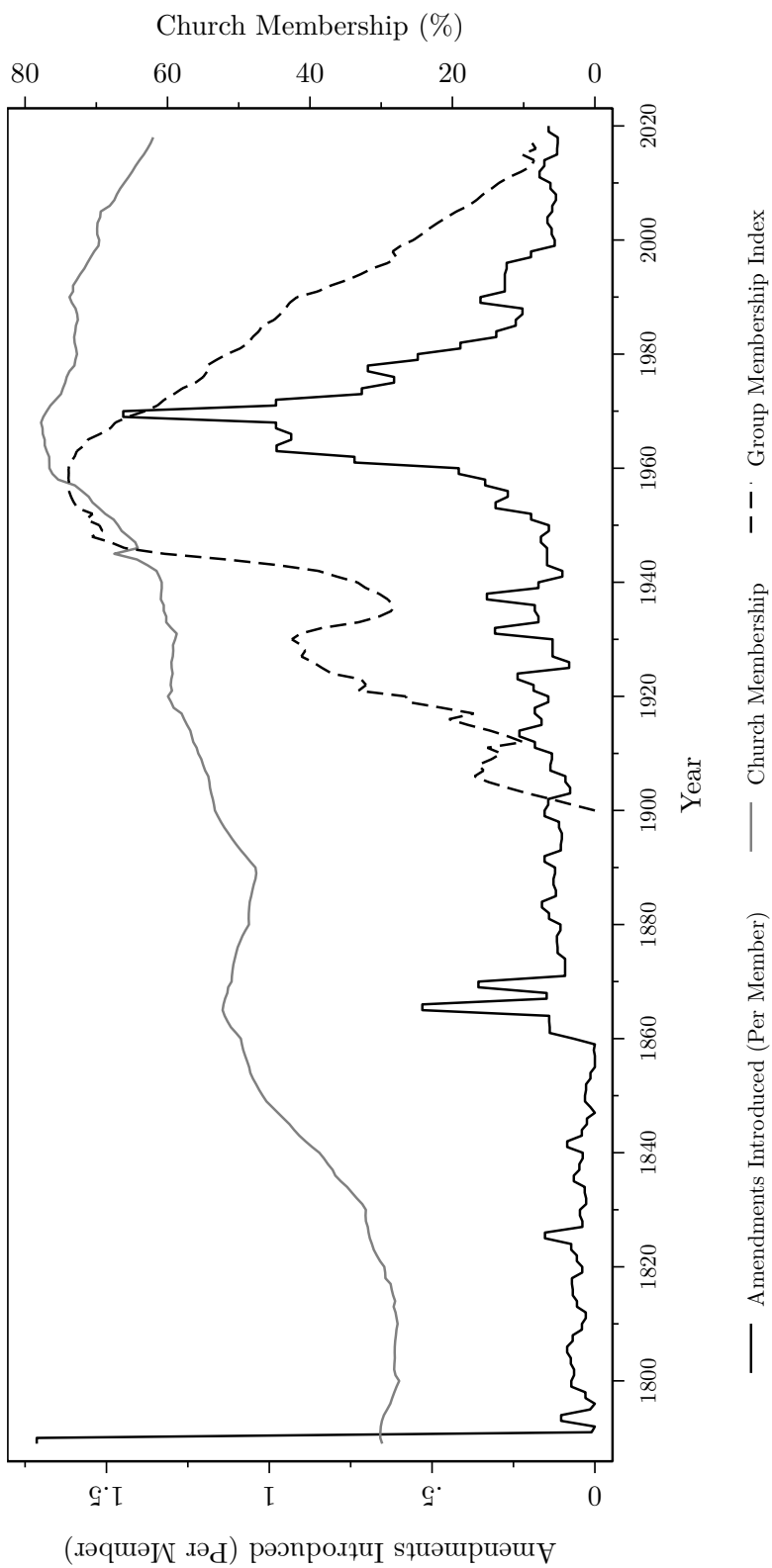


Table 3: Logistic Regression Models of U.S. Constitutional Amendment Progress

Predictor	(1)	(2)	(3)	(4)
Party Dominance (House)	0.041 (0.042)	0.020 (0.022)	0.047 (0.040)	0.249** (0.100)
Party Dominance (Senate)	-0.020 (0.041)	0.058** (0.023)	-0.028 (0.039)	-0.151 (0.118)
Divided Government	0.786 (0.643)	-0.263 (0.418)	0.717 (0.587)	0.447 (0.785)
Group Membership Index	0.943** (0.369)			
Church Membership		0.053*** (0.012)		
Unionization Rate			0.049** (0.024)	
Government Trust				0.059** (0.025)
Constant	-0.122 (0.353)	-4.099*** (0.823)	-1.117** (0.533)	-2.848*** (0.977)
Observations	118	230	124	63
Pseudo $R^2$	0.059	0.112	0.042	0.196

\*  $p < 0.10$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$

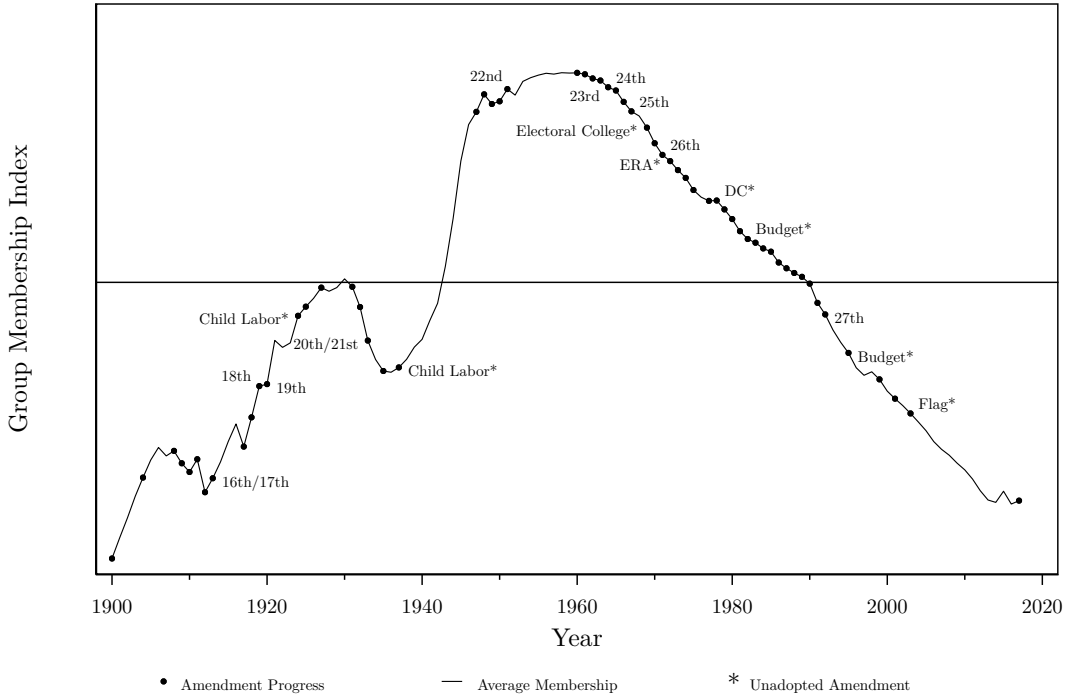
variables provide the only way to explain American constitutional change. Rather, this analysis provides an initial, quantitative analysis of the partisan and social forces that are part of the process of constitutional reform.

We utilize negative binomial regression to model amendment introductions per session, using either the total amount of legislation introduced in that session or the number of members of Congress that session as exposure terms.<sup>10</sup> The results, displayed in Table 2 indicate that every social capital measure significantly increased the number of amendments introduced. Figure 2 graphically depicts the group membership, church membership, and amendment introduction trends across time and suggests an association between these variables with particular spikes in church membership following the Civil War and both variables

<sup>10</sup> Amendment proposals in Congress should grow over time, as the number of members (and staff) increase. Exposure terms correct for this bias. While the amount of legislation introduced is a more precise exposure term, these data are not available before the 1950s.



Figure 3: Group Membership and U.S. Constitutional Amendment Progress

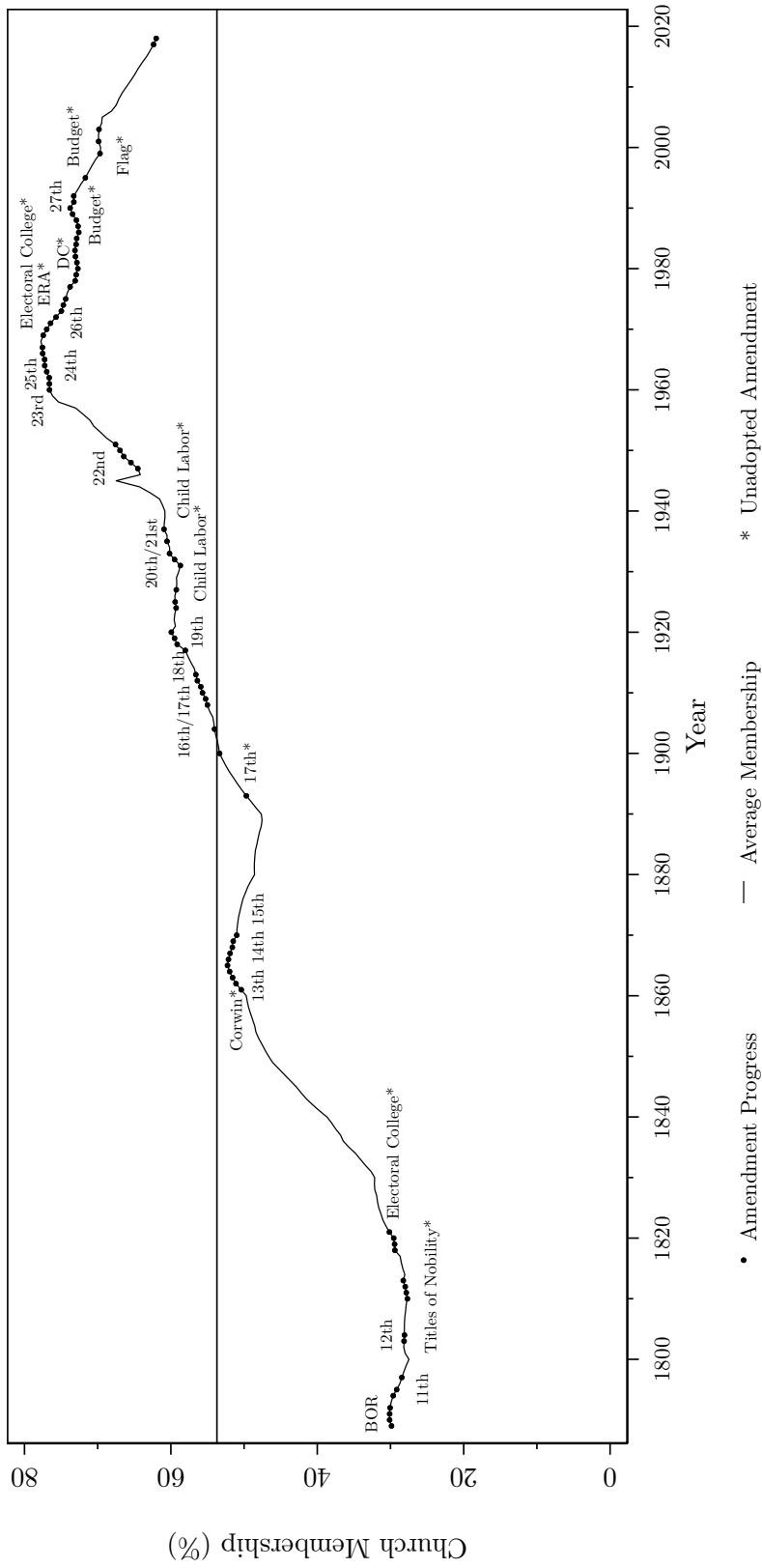


during the 1960s and early 1970s. As church membership and group membership decline in the latter portion of the 20th century, so do the number of amendments introduced in Congress – albeit less dramatically. Additionally, party dominance in the Senate has a positive and significant effect on amendment introductions in Model 2.

Next, we use logistic regression to model amendment progress, and the models produce substantively similar results. These results are displayed in Table 3. Again, the data indicate that every social capital measure is associated with a higher probability of amendment progress. Skipping ahead to Models 3 and 4, the data indicate that a +1 S.D. change in unionization rate increases the likelihood of amendment progress by 0.092, while a +1 S.D. change in government trust is associated with a 0.184 increase.

For the group membership index, displayed in Model 1 of Table 3, a +1 S.D. change produces a 0.115 increase in the predicted probability of amendment progress. Figure 3 depicts the relationship between these variables, demonstrating again that amendments progressed

Figure 4: Church Membership and U.S. Constitutional Amendment Progress



as group membership rates were either on the rise or just past their peak and began to falter as group membership declined. This relationship is particularly stark in the post-World War I and World War II eras. The horizontal line in Figure 3 highlights the average level of group membership during this time-frame.

Similarly, a +1 S.D. change in church membership, displayed in Model 2 of Table 3, increases the probability of amendment progress by 0.174. These results are visualized in Figure 4, with a similar horizontal line indicating average church membership. After an initial burst of amendment activity following the adoption of the Constitution, amendment activity ceased until the Civil War. During this time, church membership remained consistently below average. At the time of the Civil War, church membership plateaued around the historic average, and another burst of amendment activity occurred. Figure 4 also indicates that while successful amendments are more likely to be ratified when church membership rates are above average, unsuccessful amendments also occur during these conditions. This provides additional evidence that social capital provides a necessary, but not a sufficient condition for constitutional amendment, although this observation is not equivalent to the statistical definition of heteroskedasticity tested in the previous section.

Patterns of church membership in the 20th century largely mirror those displayed in Figure 3 using the broader measure of group activity, and in turn these patterns mirror the rise and fall of trust in the federal government. Thus, social capital measures in recent American history appear to co-vary, but the next section explores a situation in which levels of political trust and social trust sharply diverge.

## **6 Rethinking Amending Institutions: The Citizens' Assembly in Ireland**

The quantitative analysis presented thus far highlights the importance of social capital in constitutional change. Finally, we turn to a case study to better understand how these factors interact for a particular amendment in a specific context. In May 2018, voters in

Ireland repealed a provision of their constitution prohibiting abortion, marking a sea change for the historically Catholic country. An overwhelming majority of voters supported the referendum, including a majority in all but one constituency. Nevertheless, the road to repeal was purposefully made long and tedious—not by opponents of the effort but by its supporters. The normal process for amending the Irish Constitution requires a vote of the Oireachtas (parliament) and a ratifying referendum, but this amendment also required consideration by a deliberative Citizens’ Assembly.

According to Tsebelis’ (n.d.) measure of constitutional rigidity, the Irish Constitution is in the 70th percentile. If the Citizens Assembly were a formal part of the Irish Constitution and included in this measure, abortion repeal would have required navigating the most rigid amendment process in the democratic world. Of course, the recommendations of the Citizens’ Assembly were not legally binding, but the interview data presented in this section strongly suggests that it would have been politically costly for elected officials to ignore their views. According to one member of the Joint Oireachtas Committee that acted on the recommendations of the Citizens’ Assembly, “the Government had an idea change was coming and wanted to take the nation’s temperature and start a debate.”<sup>11</sup>

Institutional theories of constitutional change cannot explain why supporters of reform would want to create an additional veto point in the amendment process. Careful attention to the status of social capital in Ireland, by contrast, can provide much greater insight. In this section, we present original, qualitative data highlighting why the Citizens’ Assembly aided the effort to repeal the abortion ban. As noted earlier, scholars have found that levels of social and political trust do not always co-vary. In Ireland, political trust declined following the global financial crisis, while social trust remained higher.

In short, the political elite of Ireland eschewed the traditional amendment process, which relied on political trust, in favor of a new process that, while more cumbersome, appealed to the trust Irish citizens have in one another. As described earlier, tasking the proposal

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<sup>11</sup> Interviewed by author, July 2018.

of amendments to elected officials, such as the Oireachtas, reduces information costs, as policymakers possess the expertise to diagnose constitutional problems and prescribe solutions. When voters control the ratification process, citizens can take cues from their elected officials about the desirability of the amendments proposed. When political trust is low, however, those cues lose their credibility. And while ordinary citizens lack the same expertise, members of the Citizens' Assembly provided credible signals because they lacked reelection incentives that made people distrust their elected officials. Not only did social trust provide legitimacy to the Citizens' Assembly, it provided an effective tool for social movements. For example, during the referendum campaign, abortion rights advocates created a Twitter campaign called "she lives on your street," which targeted men. Their message asked men to think of their wives, sisters, and daughters as those who may need abortion care (Hunt and Friesen 2021).

Ireland was among the hardest-hit countries during the 2008 financial crisis, rattling the public's faith in their political leadership. In 2006, two years before the crisis, political trust in Ireland was comparatively high among European nations, with around 24% of citizens indicating they had a relatively high level of "trust in politicians"—measured as a 6 or higher on a 10-point scale—and 11% saying they had no trust at all. As the crisis unfolded, however, the number of citizens expressing relatively high trust in politicians dipped to a low of 15%, while those indicating they had no trust at all rose to a high of nearly 19% in 2012 (O'Connell 2019).<sup>12</sup> On the other hand, social trust in Ireland remained relatively steady over the same period. According to the European Social Survey, 35% of Irish citizens expressed a relatively high level of trust in other people in 2006—again measured as a 6 or higher on a 10-point scale. This figure is well above the level of trust in politicians and held relatively constant

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<sup>12</sup> When compared to other European states, Ireland ranked 10th out of 23 countries surveyed in the 2006 wave of the European Social Survey on "trust in politicians," 16th out of 29 in 2012, and 11th out of 29 in 2018.

at 33% in 2012 and rose to 39% in 2018.<sup>13</sup>

Dire economic conditions and the loss of trust in the Irish political system sparked an interest in constitutional reform. According to one party leader, “after the crash here in 2011...there was a whole flowering of citizen engagement. After that, the ideas of constitutional conventions and a review of our constitution and really a reconsideration of political mechanisms was very widespread...it was a time of change.”<sup>14</sup>

In 2012, the Oireachtas passed a law creating a Convention on the Constitution, a body tasked with evaluating several key changes to the constitutional text, most significantly whether same-sex marriage should be legalized. In an innovative development for constitutional reform, the Convention was populated with both elected officials and randomly selected citizens. Seeing the project as a success and the potential for further constitutional transformation, the Oireachtas repeated the process in 2016, establishing a Citizens’ Assembly comprised of 99 randomly selected citizens—this time, without any elected officials. The first and most significant task of the Assembly was to review the constitutional prohibition on abortion.

This was no small task. As Ireland Supreme Court Justice Mary Laffoy observed in 2017, “[Abortion] is one of the most divisive and difficult subjects in public life in Ireland.”<sup>15</sup> From its inception, the Irish constitutional order embodied a tension between its dual commitment to liberal democratic principles and Catholic natural law, setting the parameters through which constitutionalism would develop over the next several decades. Though abortion had already been outlawed via statute, there was increasing concern regarding the potential for

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<sup>13</sup> For “trust in other people,” Ireland ranked 8th out of 23 countries surveyed in the 2006 wave of the European Social Survey, 11th out of 29 in 2012, and 9th out of 29 in 2018.

<sup>14</sup> Interviewed by author, July 2018.

<sup>15</sup> See <https://2016-2018.citizensassembly.ie/en/The-Eighth-Amendment-of-the-Constitution/Final-Report-on-the-Eighth-Amendment-of-the-Constitution/Final-Report-incl-Appendix-A-D.pdf>.

judicial intervention, particularly following the Supreme Court’s 1974 contraception decision in *McGee v. The Attorney General*. Irish citizens constitutionalized the right to life of the unborn in 1983. Nevertheless, several changes to the abortion provisions were enacted in the last decade of the 20th century, following the European Court of Human Rights decision in *A, B, and C v. Ireland* and the tragic death of Savita Halappanavar during a septic miscarriage. As the law stood before the 2018 repeal referendum, an abortion could only be attained in Ireland if the life of the mother was at risk, including risk of suicide.

Robust levels of social capital were partly responsible for forcing abortion rights onto the political agenda. Much of the groundwork for change was done by key grassroots civil society organizations, such as the Abortion Rights Campaign (ARC), the Coalition to Repeal the Eighth Amendment—a broad umbrella organization that brought together more than 80 organizations pushing for the liberalization of abortion rights—the National Women’s Council of Ireland, and Terminations for Medical Reasons Ireland. These organizations largely operated unconnected to the political establishment, and they grew in the wake of the *A, B, and C* case and the death of Ms. Halappanavar (Field 2018).

The grassroots campaigning by these civil society organizations raised the salience of abortion rights (Carnegie and Roth 2019), leading to the creation of the Citizens’ Assembly following the 2016 general election. Initially, activist groups were skeptical of the Assembly, seeing it as a stalling tactic. Placing the future of abortion policy in the hands of the Citizens’ Assembly served the interests of elected officials who might wish to avoid taking a position on a difficult issue during times of political distrust. However, many leading activists eventually conceded that repeal could not have happened without the Assembly, with one founding member of the ARC arguing that “without [the Assembly], we may not have won the referendum.”<sup>16</sup>

The Citizens’ Assembly met over five weekends between November 2016 and April 2017. The 99 randomly selected citizens, who were broadly representative of the population of

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<sup>16</sup> Interviewed by author, July 2018.

Ireland, listened to and questioned medical, legal, and ethical experts as well as civil society leaders on both sides of the issue.<sup>17</sup> The citizens who served in the Assembly also had the power to shape the process, indicating which information they needed to help guide their decision making. The Citizens' Assembly was not only designed to promote transparency but bring the public into the debate. The Assembly received over 13,000 public comments, all of which were published online. Members of the Assembly received a random sample of the public comments to read when they met. All of the testimony and questioning, as well as the subsequent discussions of the Citizens' Assembly, were broadcast on television and the Internet, and received extensive press coverage.

When abortion rights groups testified before the Citizens' Assembly, they leveraged the reciprocity that comes from social trust. Their testimony relied on personal stories about experiences with abortion regulations in Ireland, such as traveling abroad to obtain an abortion, managing a pregnancy with fatal fetal abnormalities, or experiencing emotional and financial distress due to an unwanted pregnancy. These organizations also held "speak outs" throughout the country, with regional branches of organizations like the ARC encouraging women to tell their stories of how the Eighth Amendment impacted them in order to generate conversations within society on a topic that had been considered taboo for much of the nation's history (Carnegie and Roth 2019). This tactic proved effective in persuading both the Citizens' Assembly and the electorate. In a post-referendum exit poll, 77% of partici-

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<sup>17</sup> The Assembly selection process sought to ensure diversity in its membership with respect to region, age, gender, and social class. In any deliberative forum that relies on statistical sampling, there are concerns that those who choose to participate differ from those who decline or fail to respond. In particular, participants are often likely to be better educated, better informed, and perhaps, more progressive. In conducting their deliberative polling experiments, however, Fishkin and Luskin (2005) found that those who participated were largely representative of the public. For a detailed explanation of the selection process and Assembly membership, see <http://www.citizensassembly.ie>.



pants indicated that personal narratives, whether firsthand or reported through the media, were the most influential in their decision-making process.<sup>18</sup>

After collecting information and deliberating, the Citizens' Assembly recommended repealing the Eighth Amendment and replacing it with a provision allowing the Oireachtas to regulate abortion rights via statute. This recommendation was then approved by a joint Oireachtas committee representing the major political parties, the full Oireachtas, and finally the citizens in a referendum. Interviews conducted with members of the Citizens' Assembly, politicians who served on the Oireachtas Committee on the Eighth Amendment, and regular citizens consistently highlighted the importance of social trust in this reform effort. Many elected officials readily admit that the Eighth Amendment could not have been repealed were it not for the Citizens' Assembly. One member of the Oireachtas Committee stated his belief that the "Citizens' Assembly report gave the committee a starting point that couldn't have been agreed to without it. It was an invaluable template and I couldn't imagine the outcome happening the same way without it."<sup>19</sup>

Another member of the Oireachtas Committee argued that "with an issue as complex as [abortion], what you have to do is engage society in a way that enables society to stop and think and take a closer detailed look at what we're talking about. And I think over the process of the last couple of years that is what actually happened. Engagement in a real sense happened. Conversations happened. But they sprung from [The Citizens' Assembly]."<sup>20</sup> According to then-MP Clare Daly—an abortion rights supporter and member of the Joint Oireachtas Committee—the Assembly "provided a comfort zone for politicians to hide behind" because "it wasn't driven by a political agenda." Ultimately, she argues,

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<sup>18</sup> The full exit poll is available online at <https://static.rasset.ie/documents/news/2018/05/rte-exit-poll-final-11pm.pdf>.

<sup>19</sup> Interviewed by author, July 2018.

<sup>20</sup> Interviewed by author, July 2018.

“People were ready, it was the politicians who were behind.”<sup>21</sup>

The citizens of Ireland and members of the Assembly seemed to agree with these sentiments. According to one citizen interviewed by the *Manchester Guardian* (Bannock 2019), “[T]he Citizens’ Assembly meant the discussion about our abortion laws was led by the people rather than politicians. Crucially, a citizens’ assembly is non-partisan and so it creates a people-led discussion and understanding of an issue. I think this also helps create a debate that isn’t dominated by black-and-white mantras from political parties but a more nuanced discussion of the issue in question...Furthermore, politics can feel far removed from the average person and so the discussion and findings can feel far more relatable.” Yet another emphasized that “a citizens’ assembly has revealed itself to me to be a vital tool in a democracy – it takes the debating of a contentious issue right back down into the hands of people on the electoral roll. This is great as our politicians are so often tied into a certain viewpoint based on political agenda, party politics or personal gain.”

Many members of the Assembly felt that their work ensured that they were “widely more informed than the politicians,” which helped produce a report that citizens could trust was fair and honest. At the same time, the Assembly provided elected officials with political cover on such a contentious issue. One member emphasized that the Assembly was “more honest than regular politics” and called out “spineless and dishonest politicians” for their inability to deal with the issue sooner. Another felt that “no matter what, politicians have their own political game to play. We had no political agenda as assembly members.”<sup>22</sup>

Ultimately, the referendum passed with the support of over 66% of the public, a larger percentage than most political commentators and even pro-choice advocates anticipated. The surge of support likely flowed from the legitimacy enjoyed by the Citizens’ Assembly and widespread get-out-the-vote efforts by social movement organizations. In a post-referendum survey conducted by RTÉ, respondents stated that they had more trust in the Citizens’

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<sup>21</sup> Interviewed by author, July 2018.

<sup>22</sup> Interviewed by author, July 2018.

Assembly (6.5/10) and their fellow citizens (6.94/10) than in the political elites (4.2/10). As one citizen described the importance of the difference in trust between these two institutions: “The fact that it was citizens who recommended the terms of the referendum and informed the proposed legislation introduced greater clarity, and meant voters did not just have to trust politicians since a representative body of their fellow citizens had carefully reflected on the matter and recommended these changes following significant education and deep reflection on the situation” (Bannock 2019).

It is difficult to disentangle the lines of causality to determine if the Citizens’ Assembly or pre-existing support for abortion rights bears more responsibility for the success of the repeal of the Eighth Amendment. Of course, this is not an either/or proposition. As outlined in our theory, the Citizens Assembly created a forum through which groups and members of the public could clarify their preferences on an issue that was often considered politically taboo. This provided more accurate information to the Oireachtas about compliance costs. Nevertheless, if constitutional rigidity matters as much as some studies suggest and if pre-existing support for abortion rights was high, there would be no need to create the Citizens Assembly. Instead, it seems more likely that social capital played an important, if complex, role in creating significant constitutional change in Ireland. This case study demonstrates that when trust in political institutions is low, politicians may be able to tap into a well of social trust, even at the cost of making the amendment process more difficult.

Social capital is also essential to civil society organizations seeking to push an issue onto the agenda and rally public support for reform. Indeed, most activists, politicians, and citizens believe that it is unlikely that the Eighth Amendment would have been repealed were it not for the grassroots advocacy of civil society organizations, such as the ARC or the Coalition to Repeal the Eighth Amendment. The messaging of these organizations leveraged reciprocity produced by social capital by, for example, “retweeting” support from doctors, celebrities, and everyday people (Hunt 2019; Hunt and Friesen 2021). And social trust made it easier for the Citizens’ Assembly to earn legitimacy as an institution, as Irish voters trusted

recommendations made by ordinary people who had the opportunity to inform themselves and debate the issue openly and honestly. This legitimacy and the referendum campaign lowered information costs, making the preservation of constitutional status quo bias a less salient heuristic to voters.

## 7 Discussion and Conclusion

This study bridges a lengthy, but divided literature on an important question to scholars in multiple disciplines and subfields. The results of our cross-sectional, time-series, and qualitative analyses indicate amendment frequency is a product of amendment rules, group membership, civic activism, and levels of social and political trust, but these effects vary across contexts based on the corresponding transaction costs. These findings build upon studies that have emphasized institutional or cultural explanations of amendment success. Amendment rules clearly matter, but different polities are better equipped to navigate rules depending on their civic connectedness. And while social capital and amendment culture are different concepts, levels of trust and civic activism likely are factors that shape such a culture.

Where our approach diverges from the extant literature is the integration of grassroots-focused accounts of social movements with top-down studies of political actors. Social movements often play the role of amendment demanders, appealing to elites who can supply them. Social capital lowers status quo bias, assists in forming coalitions, clarifies constituent preferences, and makes cues to voters seem more credible. Consequently, we also contribute to the ongoing debate regarding the meaning of an umbrella term like social capital, how it works, and why it matters.

At the same time, this study has limitations and leaves other important questions unaddressed. The quantitative data presented are aggregate and observational, which limit the ability to test the causal mechanism outlined in the theory section. Furthermore, caution should be used in interpreting large-scale survey data to understand democratic views

across country contexts (Davis, Goidel, and Zhao 2021). Future research is needed using individual-level observational and experimental data to further specify the linkages between social capital and amendment-related transaction costs, especially party coalitions. Additional case studies would also demonstrate the connections between these concepts.

Constitutional theorists may not find the nature of this data satisfactory to evaluate the quality of deliberation required for the exercise of popular sovereignty (e.g., Ackerman 1991, 272-77). There is some evidence that the establishment of deliberative institutions can stimulate social capital (Talpin 2007), but further research is needed into whether the existence of social capital can generate deliberation. At the same time, our case study suggests that social capital impacts the ability for social movements to spur public deliberation.

Collective action for constitutional change is no easy task. According to the cross-national results, the average effect of constitutional rigidity is larger than the average effect of social capital indicators. Thus, successful reforms must build significant momentum to overcome the inertia created by amendment rules, which suggests amendment activity resembles a punctuated equilibrium. The U.S. Constitution, as displayed in Figure 4, is marked by periods of constitutional stasis followed by bursts of activity. On the 18 occasions when the Constitution was successfully amended, the median ratification time is remarkably short: just over one year. While punctuated equilibrium is a well-developed model of policy making (Baumgartner and Jones 1993), it has been largely unexplored as a description of constitutional change (but see Burnham 1999; Woodward-Burns 2021, 12). Before leveraging punctuation as a framework, additional theoretical and empirical research is needed to compare the underpinnings of reform in these domains and to examine whether the concept applies outside of the United States.

More generally, it remains to be seen if the larger theory tested in this paper generalizes to other contexts, including: the erosion of democratic constitutions, constitutions in non-democracies, subnational constitutions, or international legal agreements. Additional study in comparative public law is also needed to examine if these findings differ based the length

and strength of a nation's commitment to democracy. It is also not immediately clear whether our theoretical model generalizes to replacing constitutions in toto, as opposed to amending them.

We hope these findings will also be helpful to constitutional designers. Making amending more difficult than ordinary legislating helps spur deliberation and legitimacy by forcing reformers to find support from a wider proportion of citizens. Social capital can aid in this quest too. Thus, constitutional design decisions depend in part on the underlying social capital dynamics of the polity in question. Constitutional designers must be particularly cautious in their choices because of the heteroskedastic nature of these effects. Higher levels of social capital and less rigid amendment rules may increase amendment activity, but these effects are variable. On the other hand, designing rigid amendment rules without reference to levels of social capital could make constitutional change functionally impossible.

How should elites respond if amendment rules become too difficult to navigate? One option is informal constitutional change to avoid veto points created in the formal amendment process. Courts that enjoy public trust are especially helpful, according to Figure 1. However, this study also suggests that, under certain circumstances, adding a veto point can be advantageous if it redirects the amendment process towards a robust form of social capital. This paper adds to a growing body of research (e.g., Fishkin 2011) that suggests deliberative assemblies offer constitutional designers an option to leverage the constituent power that avoids some of the gridlock that can hinder governing institutions.

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