

# Heterogeneity at the Constitutional Level: A Comparison of India, Pakistan, Egypt, and Slovenia

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# Heterogeneity at the Constitutional Level: A Comparison of India, Pakistan, Egypt, and Slovenia

## **Abstract:**

In constitutional political economy, heterogeneity is acknowledged as an important factor in post-constitutional collective action (Boudreaux and Lipford 1998), but the literature largely neglects heterogeneity as a factor at the constitutional level. We examine a sample of nations to observe how heterogeneity played a role in their constitutional structures, and what steps were taken to mitigate negative effects of heterogeneity. Investigating the constitutions of India, Pakistan, Egypt, and Slovenia, we conclude that heterogeneous countries at the constitutional level have found that the best way to cope with potential conflicts in a diverse population is greater flexibility in their constitution. Furthermore, successful constitutions of diverse populations employ multi-tier governance structures to allow more homogeneous local government spheres to exist under a central government that is heterogeneous overall.

## **I. Introduction and Discussion of Literature**

Russell Hardin pointed out that “[a successful constitutional order] is an improbable prospect in any society that is riven by deep conflicts between politically efficacious groups, especially conflicts over the distribution of fixed or limited resources, including social position and government jobs, or over intractable matters of language or religion” (1999, 321). We believe that heterogeneous countries like India have developed workable constitutions despite these “deep conflicts.” Heterogeneity is the degree of difference within a population, including beliefs, values, cultures, religions, languages, and more. Wider diversity in these factors can make unanimity more difficult at the constitutional level. We investigate the way in which diverse countries cope with differences in their population constitutionally compared to more homogeneous countries.

Boudreaux and Lipford (1998) show that heterogeneity affects the model for voting rules introduced by Buchanan and Tullock (1962). More heterogeneity increases the cost of collective action because there are higher external costs and decision-making costs, which increase interdependence costs. However, this model only applies at the post-constitutional level. We investigate how heterogeneity affects decision-making at the constitutional level, where research is generally lacking.

First, we argue that successful heterogeneous countries employ more flexible constitutions than homogenous countries to ensure that all groups in the population will acquiesce. Second, we argue that heterogeneous countries find more success with a stronger multi-tier governance structure than homogeneous countries. We discuss a few factors when evaluating “success,” including political and economic freedom, and economic growth.

Strong theoretical support for flexible constitutions comes from Russel Hardin’s analysis. Hardin denied Lockean contractarianism and instead supported David Hume’s view of constitutions as conventions. In this conception, constitutions merely need to be workable, which occurs if the population acquiesces and “the politically effective groups” benefit from a mutual advantage (Hardin 1999, 316). Harden’s emphasis on workability and his denial of contractarianism led to a concern that constitutions could become obsolete. David Strauss posed this issue as “Thomas Jefferson’s famous question: why should we allow people who lived long ago, in a different world, to decide fundamental questions about our government and society today?” (2010). Since constitutions are conventions rather than contracts, Hardin justifies a more

flexible constitution that can be reinterpreted over time. For example, he commends the United States Constitution for being “neutral” between economic theories and allowing economic policy to adapt over time (Hardin 2001, 328-331). This idea has been called a “living” constitution. Strauss defines a living Constitution as “one that evolves, changes over time, and adapts to new circumstances” (2010).<sup>2</sup> We show that heterogeneous countries need to have flexible or living constitutions to a greater extent than homogeneous countries.

Next we show that heterogeneous populations benefit more from multi-tier governance structures. In such a structure, the central governing body leaves smaller bodies under its jurisdiction with some autonomy, which can also leave smaller bodies within it with autonomy, and so on. A noteworthy historical example is the United States, which originally had a very strong multi-tier governance structure due to states’ autonomy. This structure is shown in *Barron v. Baltimore* where the Supreme Court ruled that the United States Constitution applies to the federal government but not to state constitutions, thereby distinguishing two separate tiers of governing bodies. Local governments also existed under state governments.

Economic research supports this framework. In general, multiple spheres of governance under a central government gives a population more options. Charles Tiebout showed that when local governments employ different policies, citizens move based on which policies they want to live under, which creates competition between local governments (Tiebout 1956). Citizens also move between spheres to escape wealth-reducing government policies (Glaeser and Shleifer 2005). In *Anarchy, State, and Utopia*, Robert Nozick described a framework for utopia. The movement of people between different communities that exist within a state causes the state to adapt toward utopia (Nozick 1974, 297-334). These well-known examples in the literature on multi-tier governance help show the importance of having smaller spheres of authority under a central government. Bache and Flinders (2004) note that “more decentralized jurisdictions can better reflect heterogeneity of preferences among citizens” (16). However, they explain that this benefit is only captured if heterogeneity is geographical and if information about different

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<sup>2</sup>Strauss also includes “without being formally amended” in his definition. For our purposes, it is not necessary that a living constitution is not amended. We are interested in constitutional flexibility more generally, which includes amendments. Amendments also provide one easy way to quantify the flexibility of constitutions, so we include them in our treatment of living constitutions.

jurisdictions is available to citizens, which pose limitations to multi-tier governance (16). Overall, we find that more spheres of authority under a central government allows pockets of homogeneity, which contribute to the workability of the constitution and solve the problems of “deep conflict” posed by Hardin.

We selected India, Pakistan, Egypt, and Slovenia as representatives of our two arguments. They differ geographically, historically, and in their heterogeneity. Egypt and India are notoriously diverse, but India has dealt much better with its heterogeneity than Egypt has dealt with its heterogeneity. Though Pakistan shared much of its history with India, it deserves a separate analysis owing to its creation as a Muslim nation separate from India with a much different economic performance since partition. Slovenia is an outlier from the other selected countries in its relative homogeneity and its cultural difference. Egypt, India, and Pakistan were British colonies. Upon achieving independence, they maintained many British institutions and ideals of governance. As part of the USSR, Slovenia instead was influenced by Soviet institutions. Since its independence, it has performed well compared to its formerly-communist neighbors. These four countries comprise a useful sample for exploring how heterogeneity matters at the constitutional level.

Lerner (2009) did a similar analysis on constitutionalism in deeply divided states, specifically India, Ireland, and Israel. Lerner concluded that constitutional reform must be incremental in countries with divisions. We complement this discussion by expanding conflicts to heterogeneity in general. Furthermore, we expand the idea of incrementalism to constitutional flexibility, which we attempt to evaluate in four countries. We also incorporate the idea of multi-tier governance. Still, the incrementalist perspective is consonant with our conclusions. Beken (2007) analyzed Ethiopia’s response to tribal divisions and found that multi-tier governance is one strategy employed by the government. Beken is similar to our analysis, but we pay special attention to constitutional resolutions.

Before proceeding to a qualitative discussion of these countries’ constitutions, we examine quantitative data to determine if living constitutions can be consonant with economic freedom. Strauss (2010) notes that living constitutions are criticized for arbitrarily changing according to the beliefs or desires of those in power. If so, they would not be workable. However, we find no evidence that this is the case.

## **II. Constitutional Length and Flexibility Data**

We consider the possibility that “living” constitutions might subject a country to arbitrary rule where governments abuse their constitutions. Alternatively, a rigid constitution may prove to restrict a country’s economic freedom. To test these possibilities, we correlated countries’ constitutional amendment rate and word length with economic freedom using the Heritage Foundation’s 2019 Freedom Index (so that both datasets are consistent between years). Low amendment rates and high word lengths are indicators of more rigid constitutions. However, they affect different aspects of constitutional flexibility and are therefore distinct variables. We also controlled for political stability, which likely impacts economic freedom (Lawson, Murphy, and Powell 2020).

Tsebelis and Nardi (2014) argue that longer constitutions are more rigid and therefore need to be amended more often in OECD countries. We also expect that longer constitutions are more rigid, but in this discussion we treat amendment frequency as another independent variable rather than a dependent variable (in the next section we treat amendment frequency as a dependent variable impacted by heterogeneity). We use data from the Comparative Constitutions Project on the word length of constitutions. Word length could vary based on cultural or linguistic differences rather than substantive differences between countries, but this factor is unlikely to interfere with our results.

For amendment frequency, we adopt a method similar to Ginsburg and Melton (2015), who argue that “amendment culture” is a good predictor of amendment frequency. For this discussion, we remain interested in amendment frequency as an independent variable. Using the same dataset, we adopt amendment frequency as a measure of constitutional flexibility, since more flexible constitutions are changed more often. The Comparative Constitutions Project gives constitutional events for 225 countries extending back to countries’ first constitution in many cases and going through 2019. We calculate an average amendment number by finding which years have included constitutional amendments under these countries’ current constitutions and dividing that number by the number of years their constitution has been in place.

For some countries, this method underestimates amendments per year, since the dataset did not account for the possibility of multiple amendments in one year. For countries whose

constitution is older than the last year of the dataset (such as the United Kingdom), we used the same method, treating the first year in the dataset as the year of the newest constitution. There is likely no strong correlation between the number of amendments and years since the constitution has been implemented, but this lack of data may be a weakness of our analysis in a few cases. We excluded countries that do not have a constitution in place and countries with constitutions under ten years old, as their sample size is too low.

Finally, we control for political stability. Countries that repeatedly adopt new constitutions undergo a political change that is far more radical than constitutional amendments. The Comparative Constitutions Project gives a year for the implementation of each constitution. For each country, we subtract 2019 from the most recent year in which each constitution was implemented to control for political stability.

**Table 1: The Effect of Frequency of Constitutional Amendments, Constitutional Word Length, and Years Under the Current Constitution on Economic Freedom as of 2019**

<b><u>Variable</u></b>	<b><u>Parameter Estimate</u></b>
<b>Intercept</b>	57.23532 ( $< 0.01$ )
<b>Number of words in the constitution</b>	-0.00012953 ( $< 0.01$ )
<b>Number of years since the institution of the most recent version of the constitution</b>	0.04847 ( $< 0.01$ )
<b>The average number of years in which the constitution is amended at least once</b>	20.19217 ( $< 0.01$ )
<b>Number of observations</b>	175
<b>R<sup>2</sup></b>	0.24

\*p-values in parentheses

These data demonstrate that countries with longer constitutions that are amended more have greater economic freedom. This holds true controlling for political stability, measured by years under the current constitution. Therefore, living constitutions can provide countries with a greater chance at success. On its own, this result presents two ways to evaluate constitutions quantitatively. Next we investigate whether this result is exacerbated by the presence of greater heterogeneity in a population.

While these results are consistent with our hypothesis, they do not show that more heterogeneous countries in particular need flexible constitutions. Empirical data supporting this hypothesis are likely to be limited. A natural empirical test of our hypothesis would correlate countries' heterogeneity at the constitutional level with the rigidity of their constitutions. However, there are no data to our knowledge comparing the level of heterogeneity across countries over time. That is, there is not likely to be quantitative data ascertaining the historical heterogeneity of countries at the time their constitutions were written. Useful proxies in this regard are also likely to be limited. Furthermore, an attempt to collect these data quantitatively would rely on an author's judgment on factors like what weight to assign different kinds of differences within a population (there is no reason to assume that different kinds of heterogeneity in a population all affect constitutional culture equally).

Heterogeneity (especially historical heterogeneity) can best be measured qualitatively. Therefore, our analysis requires a historical investigation and cross-country comparison, for which we selected India, Pakistan, Egypt, and Slovenia. In our analyses, we discuss each of the variables involved above in addition to these countries' constitutional allowances for multi-tier or polycentric governance.

### **III. Analysis of Sample Countries**

#### **A. India**

##### **1. Pre-Constitutional Background and Heterogeneity**

Economically, India is considered one of the great success stories of escaping poverty in the twentieth century. We argue that its Constitution played a role in allowing its growth by 1. avoiding conflict among its heterogeneous population and 2. giving autonomy to regions of the nation to harness local knowledge and institutions.



India was a British colony that gained its independence in 1947 (Pylee 2017, 3). One challenge the framers of the Constitution faced was deciding which British institutions to codify and which to discard. For this reason, India's constitution drew heavily from those of the United States and the United Kingdom (Pylee 2017, 4). Dasgupta (2014) identifies instances of "break" from or "continuity" with colonial India in the 1949 constitution. Far from making a fresh start, "in the given historical and ideational terrain on which the Indian Constitution was created, a break from the colonial past required, even demanded, maintaining certain continuities with the same" (Dasgupta 2014, 229).

Pylee (2017) gives one example of a "break" from British India: about 600 separate states had to merge or integrate into 16 states to facilitate governance by a central government (29). Moreover, most of these states had to yield their autocratic structure of government to representative government. This appears to be part of what Pylee explained as protecting democracy where "democratic traditions had yet to develop" (5).

Pylee also gives an example of "continuity." India's Constitution kept the socialist institutions it developed under Britain, which were only expanded by subsequent amendments (14). As a result, India ranked 131st in economic freedom as of 2023 (Heritage Foundation 2023).

Dasgupta (2014) argues that India's colonial heritage made unanimity on how to balance its own culture with British institutions impossible. Certainly finding a viable transition to independence was an important challenge for India. However, we argue that even without a colonial past, a united India would find unanimity impossible because of its cultural heterogeneity.

The framers of India's Constitution also had the challenge of setting up a viable governance structure for a large, diverse population. At the time, India had at least one million speakers of 18 languages, which varied over 700 different dialects (Lerner 2009, 76). India had three major races and many major religions, including Hinduism, Islam, Judaism, Christianity, Buddhism, Sikhism, Jainism, and Zoroastrianism (Pylee 2017, 5).

## 2. Constitutional Length

India wrote one of the world's longest constitutions at 78,255 words (see Appendix A). Pylee (2017) gave 10 reasons for this unprecedented length (3-5). Two reasons are explained above: the framers had to protect democracy as a formal institution when it did not yet exist as an

informal institution and they had to maintain some continuity between their new system of government and the old system of British governance. Also, India's Constitution laid out the powers of states as well as the central government, limited government powers, separated powers in the judicial branch, addressed India's economic system, protected minority rights, protected a long list of fundamental rights, included a non-enforceable "directives" section, and dealt with India's many tribes and languages.

Of these 10 reasons, several involve the framers' conscious effort to deal with India's heterogeneity constitutionally. In particular, protecting rights and provisions on India's culture limited the potential for a systemic bias toward or against groups. Even with a majority in government, one group discriminating against others is difficult under the constitution.

Another reason India's Constitution successfully dealt with heterogeneity was its avoidance of controversy. While unanimity was not possible, the founders still had to avoid favoritism of any groups so they could accomplish Hardin's standard of acquiescence. Therefore, they tabled and eventually abandoned the issue of choosing a national language among the dozens commonly used, and they chose a secular constitution that would be neutral among India's many religions (Lerner 2009, 76-77; Pylee 2017, 14).

### 3. Heterogeneity and Multi-Tier Governance

Before the Constitution, some Indian activists like Gandhi wanted a decentralized government with strong autonomy for villages (Dasgupta 2014, 234). His proposed system would have respected India's indigenous institutions and followed a multi-tier governance framework to a great extent.

Instead, India's Constitution set up a strong central government with several regional governments. The merging and integration process described by Pylee (2017) reduced the number of regional governments to 16 (29). However, India's Constitution still left room for different regions to develop differently and for India to improve in a process of trial-and-error. As a result, Sen and Dreze (1998) showed that parts of India have performed as well as some European countries in development. Pellissery (2019) also points out that two amendments in 1993 gave villages greater autonomy under the regional distinctions in the Constitution, so Gandhi's vision was not totally unfulfilled (2).

One example of villages' autonomy leading to local problem-solving is in the milk industry. Pellissery (2019) explains that many villages form farmer cooperatives to purchase

equipment that would otherwise be unaffordable (3). This system has made India a top exporter of milk globally. However, their local governance system has limitations, as this system has been less successful in related industries.

#### 4. Post-Constitutional Changes

As a result of India's continued heterogeneity and its long constitution, constitutional changes have been frequent, showing that India's Constitution is very flexible. It has been amended 51 times since being ratified in 1949, which equates to 0.729 amendments per year (see Appendix A).

#### 5. Analysis

India's Constitution needed to deal with a lot of sociopolitical issues after India achieved independence. Its framers tried to find common ground among many different groups and blended lasting British and Indian institutions. Those factors may have allowed India's economic growth. The Constitution's high amendment rate implies its flexibility, owing to India's heterogeneity, in part. With 74 years under the same Constitution, India has been politically stable. Its Constitution successfully employed what Lerner (2009) called "incrementalism rather than revolution" (77).

### **B. Pakistan**

#### 1. Pre-Constitutional Background and Heterogeneity

Pakistan has had a long history of political and geographical change. A part of India and a colony of Great Britain until 1947, Pakistan has had a wide range of influence intertwined within their development of institutions (Kamran, 2008, 43). Unlike its neighboring country India, Pakistan is not a model of escaping poverty or forming sound political institutions. We argue that the influence of British common law and the large Islamic population laid the foundation for great tension and political turmoil which continues to this day.

After the Partition of India (creation of Pakistan and India as separate states) about 33% of Muslims lived in India. There were high levels of rioting and violence between Muslims and Hindus in Pakistan and India at the time they became separate nations (between 200,000 and 2 million people died as a result of these conflicts). This led to Muslims residing in India to migrate to Pakistan, and Hindus residing in Pakistan to migrate to India (around 14% of Pakistan's population was Hindu in 1941, compared to 1.6% in 1951). In 1951, 97% of the

population were practicing Muslims, in large part due to Pakistan being an Islamic state and the migration that took place following the partition (Khan, 2017, 18-21). This may lead one to the conclusion that Pakistan was very homogeneous during its development, but this is not true outside of religious practice.

Even with a high level of religious homogeneity, there existed deep division on the proper balance between Islamic fundamentalism and modernism. The proper role and structure of government, especially toward the end of creating a unified Islamic state, has led to numerous conflicts within Pakistan and massive changes to their political system. Although Islam appears in all three Pakistani constitutions, it appears among several different goals and policies. Its appearance is more of a limitation rather than a positive end itself, which is likely a result of the influence of British common law, which could also have implicitly pushed many toward modernism (Rahman, 1970, 275-281).

During the early 19th century, Lord Macaulay's educational reforms led to numerous changes to the introduction and teaching of Western languages, history and philosophy. Religious studies and the Arabic, Turkish, and Persian languages were banned from the state universities. English became the official language in 1835 instead of Persian. Traditional Hindu and Islamic studies were no longer supported by the British Crown. This likely led to the influence of British common law on Pakistan, leading to the struggle for a balance between the goal of having an Islamic state and the ideal structure of government, especially federalism (Rahman, 282-284).

## **2. Constitutional Length**

Pakistan has had three different Constitutions in their short history: one in 1956, one in 1962, and another in 1973. In 1956, it contained 234 articles divided into thirteen parts and six schedules. In 1962 it contained 250 articles divided into twelve parts and three schedules. In 1973 it became even longer, containing 280 articles divided into 12 parts and 7 schedules. The increasing length of each subsequent constitution has a lot to do with the tension that existed between Pakistan as an Islamic State and Pakistan as a supporter of British common law.

## **3. Heterogeneity and Multi-Tier Governance**

The Constitution of 1956 provided for the parliamentary form of government, where real executive authority was vested in a cabinet, collectively responsible to the legislature. The cabinet was presided over by the Prime Minister. The Constitution declared that there would be only one house of parliament known as the National Assembly and equality between the two

Wings (i.e. East Pakistan and West Pakistan) was maintained in it. The Queen of Pakistan was replaced by a President, who was to be elected by the Electoral College of Pakistan composed of members of the National Assembly and Provincial Assembly. (Newman, 1962, 284-288)

The Constitution of 1962 was adopted via executive order. The central legislature had one house known as the National Assembly. There were 157 members of the National Assembly. The constitution provided for a presidential form of government, as opposed to the parliamentary form of government under the 1956 Constitution. President had to be a muslim 35+ years of age. Elected by the electoral college. Proper safeguards were introduced in the 1962 Constitution to ensure the independence of the judiciary (Newman, 290-294).

West Pakistan went to war with India in 1965, which ended in a stalemate. East Pakistan did not intervene, creating tension between the two sides of Pakistan. The Awami League (East Pakistan/Bangladesh political party) led the six point movement, which claimed East Pakistan did not have equal representation and called for further autonomy for East Pakistan. The Pakistan People's Party, a West Pakistan political party, greatly opposed this movement (wanting Islamic and geographical unity, especially out of fear that the Awami League was part of an Indian plan to destroy Pakistan). Pakistan faced a civil war and Indian military intervention in 1971 resulting in the secession of East Pakistan as the new country of Bangladesh (Iqbal, 2008, 64-71).

The current Constitution was ratified in 1973. Several ideas in the Constitution were new, and guaranteed security to each citizen of Pakistan. The first part of the Constitution introduced the definition of State, the idea of life, liberty and property, individual equality, prohibition of slavery, preservation of languages, right to fair trial, and provided safeguard as to arrest and detention as well as providing safeguards against discrimination in services (due process finds its origins in British Common law). The Constitution states that all laws are to conform with the injunctions of Islam as laid down in the Quran and Sunnah. The 1973 Constitution also created certain institutions such as the Shariat Court and the Council of Islamic Ideology to channel the interpretation and application of Islam. The Constitution established a "Bicameral Parliament" as a legislative authority that consists of the Senate as Upper house (providing equal provincial representation), and National Assembly as Lower house (providing the will and representation of people). Only Muslim's of age 40+ could become president or prime minister. (Kamran, 81-94)

The separation of East Pakistan (Bangladesh) and the frequent changes of Pakistan's political system stems from the heterogeneity of opinions within their territory in spite of their shared religious values. Over time these opinions began to stray further away from each other, leading to civil war and multiple political reconstructions.

#### 4. Post-Constitutional Changes

The Constitution of 1973 has twice been suspended by military coups of General Zia-ul-Haq (1977-1985) and General Musharraf (1999-2002). In both cases, the ruling military regime amended the Constitution in ways that changed the fundamental structure of the government. (Kamran, 101-112, 171-176)

23 amendments have been made to the Constitution since its ratification in 1973. Among 3 rejected amendments, there were proposals to make sharia law the supreme law of Pakistan, as well as an attempt to give women a larger role in government. The 8th amendment (1985) granted the president more powers (prior to this, the president was more symbolic of unity and could only act on the advice given to him by the prime minister). The 13th amendment (1997) stripped the president of his power to dissolve the National Assembly and replace (via election) the prime minister. The 17th amendment (2003) reversed the 13th amendment. The 18th amendment (2010) removed the president's power to dissolve the parliament unilaterally (Kamran, 121-124, 174-187).

#### 5. Analysis

Pakistan is a curious example of constitutional political economy. Although they have a high level of religious homogeneity, Pakistan is deeply divided on the proper mix between Islam and representative government. They have had three different constitutions, several military coups, and a plethora of amendments to their current constitution. This divide developed from British colonial influence on Pakistan's concept of government and law. The heterogeneity of opinions on this matter is in large part responsible for Pakistan's messy history. This example illustrates the difficulty in establishing a government limited by a constitution while still adhering to strict religious principles. Furthermore, it shows the problem of maintaining this structure of government in a culture filled with disagreement over the fundamental principles of what government ought to look like.

In summation, turmoil in Pakistan has been the result of great heterogeneity of ideas despite apparent homogeneity in religion. Pakistan's constitutions have been too rigid and have not allowed enough autonomy for spheres under the central government.

## **C. Egypt**

### **1. Pre-Constitutional Background and Heterogeneity**

The constitutional turbulence of Egypt provides an example of the difficulty of crafting a strong and binding constitution in areas with greater heterogeneity; in this case, the heterogeneity comes from the democratic contention between a marginal religious majority and a united minority. In his article "We Start from Here," Russell Hardin analyzes the Egyptian constitutional moments between 2011 and 2014 and establishes the "virtual impossibility of coordination of two implacably hostile groups" (2016, 250). A parallel article by Mohamed Abdelaal, "Egypt's constitution: What went Wrong," discusses the same time period of Egyptian history, and how the nation's journey through "the throes of democratization" did not, as one might hope, lead to immediate political enfranchisement for all of its citizens (2013, 200). Both articles focus on the militant nature of the religious group seeking to establish their vision for the new constitution, and how that focus led to the subsequent failure of that constitution.

The short lived 2012 constitution of Egypt showcases the impossibility of constructing an inflexible constitution in nations with high levels of heterogeneity. Morsi and the Muslim Brotherhood were committed to establishing an Islamist constitution, under which "Muslims would have written original laws" (Hardin, 2016, 251). This reality imposes very strict restrictions on the post constitutional state by only allowing a certain sect to create laws. The ability of a nation to have adaptability at the post constitutional stage is vital for the survival of constitutions written in heterogeneous nations. By its very nature, Morsi's proposed constitution would attempt to eradicate heterogeneity by creating an Egypt focused on promoting Islam and sharia legislatively. This is a foolish ideal under the circumstances and level of heterogeneity within the nation. As stated by Hardin, "[w]e cannot expect that a mere constitution will substantially reorganize the society" (2016, 251). Morsi and the Muslim Brotherhood committed this error in attempting to write a homogeneously focused constitution in a heterogeneous culture.

Some may argue that the Egyptian constitution of 2012 did not attempt to create a homogeneously Muslim nation; these contenders would argue that the “freedom of belief” clause within the constitution allows people of all faiths to exist. Abdelaal contends that, based upon the context of the clause within the constitution, this optimistic construction is not the only possible legal reading:

[O]ne could construe the last part of the Article, ‘the State shall guarantee the freedom to practice religious rites and to establish places of worship for the divine religions, as regulated by law,’ as a restriction on freedom of belief. In fact, this phrase may be seen as a restriction on the freedom of belief simply because it requires the State to guarantee the freedom to practice religious rites and to establish places of worship only for the divine religions, Islam, Christianity, and Judaism. (2013, 207)

As read by Abdelaal, then, it seems as though the “freedom of belief” clause may not even establish de jure freedom of religion. Freedom of religion becomes even murkier when one considers the de facto implications of the Egyptian constitution. Is it really possible for a constitution predicated upon the promotion of a specified religion to have religious freedom? It seems pretty obvious that there must exist some form of separation of church and state in order to allow for a true freedom of belief.

## **2. Constitutional Length**

The 2012 Constitution of Egypt was around 16,000 words, putting it roughly in the same general area as Slovenia in terms of length.

## **3. Heterogeneity and Multi-Tier Governance**

The 2012 Constitution had very limited allowances for a multi-tiered or polycentric model of governance due to the rigidity imposed on it by the emphasis on Sharia law. Because of the system of Sharia law Morsi sought to impose, there would be little to no ability for small groups to self-organize into smaller localities with different sets of rules.

## **4. Post-Constitutional Changes**

The 2012 Constitution does allow for amendments, but they may only be submitted by the President or the Legislature. This, combined with the fact that the structure of the



Constitution is meant to favor Islamic lawmaking, creates a situation in which it is unlikely that amendments will be able to fall under the will of the people.

It is very likely that this rigidity imposed by Morsi's 2012 Constitution was part of its eventual demise and replacement in 2014. How can a marginal majority continue to hope that it may oppress close to 48% of the population inevitably?

## **5. Analysis**

The Egyptian nation, closely divided between Muslim and non-Muslim people, had a new Constitution of 2012 jammed through by the Muslim President, who sought to establish a nation governed by Islamic ideals. Because of this, the resulting Constitution was very rigid and constrained by the rigidity of sharia law. As a result, the people quickly rejected this Constitution, leading to the establishment of a second new Constitution in 2014. This example shows the difficulty of attempting to establish a rigid constitution in heterogeneous nations; perhaps if the Muslim Brotherhood had been focused on long-term success with their Constitution, they would have been able to construct one allowing for a multi-tier governance structure.

## **D. Slovenia**

### **1. Pre-Constitutional Background and Heterogeneity**

As part of the USSR, Slovenia was exposed to long-term Communist ideology. From 1989-1992, the small nation made the shift to a constitution and in the years since has become one of the greatest success stories in Eastern Europe (Bebler 2002). Slovenia's adoption of a constitution was instrumental in its economic prosperity in the post-USSR era because 1. The Constitution came from a willful and legal change by government elites and 2. The high level of homogeneity found among Slovenia's people combined with a collective dislike of being controlled by an outside party as Slovenia was until it gained independence in 1991 (Bebler 2002).

As part of Yugoslavia from 1948 until 1991, Slovenians enjoyed more liberty than allowed to much of Eastern Europe because of the Tito-Stalin split in 1948 where Yugoslavia broke off from Stalin's direct control. During these decades Slovenia developed important institutions that led to a smooth independence transition to constitutionalism. One example is that

years of exposure to capitalist countries in the West (Italy and Austria) with relatively open borders created a kind of “demonstration effect” on the Slovenian people (Bebler 2002).

Soon after Slovenia gained its formal independence from Yugoslavia, the Slovenian government (led by a member of the Communist Party) adopted a constitution. The framers of the Slovenian Constitution drew heavily on the institutional structure of Germany and Hungary, particularly in having a prime minister as head of a cabinet government and an elected president as head of state (Bukowski 1999). As a result of this and other institutions set up in Slovenia’s constitution, today Slovenia is ranked 37th in economic freedom (Heritage Foundation).

Slovenia is the most homogenous of all the former Yugoslav nations (Zagar). This reduced the challenge of creating a constitution with institutions that most of the population would approve of. Slovenia’s homogeneity coupled with the low population (1.7 million people, 88% of whom shared the same ethnic identity) aided in releasing an effective constitution in under 6 months from when independence was achieved (Statistical Office of Slovenia).

## 2. Constitutional Length

Slovenia’s Constitution has about 15,000 words, ranking Slovenia near the average constitutional length. The framers wrote the constitution for an already established and a relatively well-functioning country, meaning that they could implant many parts of western constitutions into their own and have it work (Bukowski 1999).

There have only been seven amendments since its adoption in 1991. It does not appear overly arduous to seek a constitutional amendment (Slovenian Constitution, Part IX, Articles 168-171), so the constitution is probably generally effective.

## 3. Heterogeneity and Multi-Tier Governance

Prior to the adoption of Slovenia’s constitution, there was some degree of political conflict. Throughout the 1980’s there was a shift in the population’s political preference from communism towards democracy. Communist party leaders recognized this and, despite the democratic political parties being small and heterogeneous in their political agendas, arranged for a smooth transition towards the democratic state desired by the people (Bebler 2002). Much of this shift could be attributed to a declining Slovenian economy. Until independence, it was attached to the Yugoslavian economy which followed similar directives to the Soviet economy. In 1991 the Slovenian interest rate was at 250% (Svetin 2018). The first election following Slovenian independence was marked by many democratic parties each winning a few seats

in Slovenia's legislative body, while the communist party won about 51% of the vote (Bebler 2002).

The constitution created a bicameral legislative branch designed to maximize homogeneity in decision-making. One of the legislative houses, the National Council, plays only an advisory and delaying role to the main legislative body. The lack of a voting agenda in the National Council aids in decreasing selfish tendencies commonly found among legislative politicians (Bukowski 1999).

#### 4. Post-Constitutional Changes

Slovenia remains a very ethnically homogenous state, with over 80% of the population identifying as ethnic Slovenians (Statistical Office of Slovenia). Even with the governmental transition to democracy, no one democratic party has gained enough of a following to control the government. This caused a large conflict for the first 10 years of independence about what kind of electoral system the country should use. As far as the economy, Slovenian parties and its population are very homogeneous on economic policy. The introduction of a free market in 1991 has increased average wealth drastically.

#### 5. Analysis

Slovenia's Constitution was a necessary product of Slovenia's exit from Yugoslavia and the social movements of its people through the 1980's. Decades of open borders with Western nations exposed its people to the strong economies of countries who allow their citizens to make their own economic decisions. Because of Slovenia's shift to democracy and its adoption of a constitution, Slovenia has become a great success story in Eastern Europe following the fall of the USSR and Yugoslavia.

### IV. Conclusion

Based upon our examples, in nations with more heterogeneity at the constitutional level, structures that allow for constitutional change and multi-tier governance will have a better shot at overcoming the difficulties posed by cultural heterogeneity. The example nations were chosen with specific structures in mind. India is an example of a nation which has been able to overcome its heterogeneity through a flexible constitution and multi-tier governance structures. Egypt is an example of a nation whose constitutional structure and heterogeneity led to political instability. Pakistan shows a culture and structure of government aimed at reconciling different conceptions

of the distinction between church and state, and the huge difficulty associated with such a structure. Lastly, Slovenia shows the easier nature of constructing a constitution in a more homogeneous culture. The nations selected for sampling come from different continents, cultures, and stages of development, which is why we believe it provides solid representation of nations. However, we encourage further research into other countries to test our hypotheses.

Heterogeneity forces constitutional flexibility because each group in a country wants the opportunity to protect their own agenda. Rigid constitutions make the goals of some groups impossible, so those groups are more likely to try to replace the political system and there is more political instability under such constitutions. Flexible constitutions facilitate the acquiescence of a population. Allowing for multiple layers of governance also helps heterogeneous countries by giving individual groups autonomy within a larger governing body.

In addition to overcoming the challenge of unanimous consent or acquiescence at the constitutional level, changes in a country's heterogeneity at the post-constitutional level could render the country's constitution somewhat obsolete. Countries that start out homogenous might not predict significant changes in their population, so they could write a constitution that fails to update itself accurately to reflect increased heterogeneity. An interesting study in this regard would be the United States, which went from fairly homogeneous at the time of its founding to increasingly heterogeneous today. More modern examples include European countries that have experienced increased immigration, increasing their cultural heterogeneity. This could be an area of future study.

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