

# The politics of constitutional amendment in postcommunist Europe

Andrew Roberts

Published online: 5 September 2008  
© Springer Science+Business Media LLC 2008

**Abstract** This paper analyzes the causes and consequences of constitutional amendments in Eastern Europe. Its results challenge the conventional wisdom that constitutional change is a consequence of institutions and that major changes will increase executive powers and limit rights. It finds that the political and social context rather than institutions is the main cause of amendments. These amendments moreover tend to reduce the power of executives and strengthen guarantees of human rights. The paper attributes these results to the particular circumstances of the postcommunist transition.

**Keywords** Constitution · Constitutional amendment · Democracy · Democratic transition

**JEL Classification** H11 · K00 · P37

## 1 Introduction

The choice of constitutional forms is perhaps the fundamental political act and has been shown to have large effects on human welfare (e.g., Lijphart 1999; Persson and Tabellini 2003). But no constitution is permanent and unchanging. All constitutions admit the possibility of amendment. Given this possibility, it is important to know what factors lead to constitutional change and what effect these changes have.

This paper considers these questions in the context of the new democracies of postcommunist Europe. After the fall of communism, there was much theorizing on the proper constitutional forms these new democracies should adopt. One question that attracted considerable attention was whether constitutions should be flexible or

---

A. Roberts (✉)  
Department of Political Science, Northwestern University, Evanston, IL 60208, USA  
e-mail: aroberts@northwestern.edu

rigid, easy or hard to change. Most scholars argued that new democracies should adopt rigid constitutions which would limit amendments and in turn constrain executive power and protect minorities from majority tyranny (Buchanan and Tullock 1962; Riker 1982). Others, however, argued that the transition required a more flexible form of constitutionalism to deal with the enormous changes taking place (Holmes and Sunstein 1995).

This paper examines these issues with new evidence from 17 Eastern European countries. It considers both the causes of amendments and their consequences. It finds that the causes of amendments rest less in formal institutions—the conclusion of most research—than in the political context. Countries alter their constitutions as circumstances change. The amendments that have been passed moreover have been more likely to promote democracy and extend rights than the converse. The amendment process has not usually been abused by power-hungry leaders. Both conclusions are at odds with the conventional wisdom and suggest that constitutionalism in new democracies may take novel forms.

The paper consists of six further parts. Part 2 presents hypotheses on the causes of amendments. Part 3 describes the data. Part 4 analyzes the causes of amendments. Part 5 presents hypotheses on the consequences of amendments. Part 6 analyzes the consequences of amendments. Part 7 concludes.

## 2 The causes of amendments

There is an emerging literature on the causes of constitutional amendments. Its main finding is that formal institutions are the main factor leading to more or fewer amendments. In this sense, the changeability of constitutions is under the control of political actors. However, there is also the possibility that the political, social, and economic context in a country may have a larger effect on amendment. This is particularly true in countries undergoing important changes and possessing new institutions. This section lays out a set of hypotheses that reflect these considerations.

The main institutional constraint on amendments are the procedures that govern them. Constitutions that put significant obstacles in the way of amendments (e.g., supermajorities, multiple majorities) should be amended less frequently. The logic behind this relation is simple. The larger the group and the number of groups required for amendment, the less likely it is that sufficient support will be found, all else equal. Lutz (1994) has confirmed this hypothesis in the experiences of both American states and a sample of countries around the world.<sup>1</sup>

### **H1:** More restrictive amendment rules lead to fewer amendments

Lutz (1994) also finds that longer constitutions tend to be amended more frequently. To the extent that constitutions have elements that resemble ordinary

---

<sup>1</sup> Lutz develops a point system for scoring difficulty. In a reanalysis of his data, Ferejohn (1997) finds that it is mainly legislative procedures rather than referenda or initiatives that affect amendment rates. See also Rasch and Congleton (2006). Sharlet (1997) has argued that difficult procedures explain Russia's lack of amendments.

legislation, they will tend to be altered like ordinary legislation, that is to say, frequently. Long constitutions tend to possess exactly such features and thus present more targets for amendment (but see Hammons 1999).

**H2:** Longer constitutions are amended more frequently

Institutions, however, may not be as binding in new democracies where rules are novel and change is rapid. One alternative explanation would emphasize the legislature. Since amendments typically require legislative supermajorities, the composition of forces in the legislature may affect the frequency of amendments. In particular, countries with few parties should find it easier to cross the threshold for amendment because fewer actors can block a change. Countries with fragmented legislatures, by contrast, should find it more difficult to assemble large majorities. The latter situation has often emerged in postcommunist Europe where fragmentation has been particularly severe (Roberts 2006).

**H3:** Fragmented legislatures produce fewer amendments

The manner in which a constitution is adopted may matter as well. Constitutions adopted in haste may be more vulnerable to amendments either because they contain correctable flaws or because they do not satisfy important interests who were excluded from the drafting process. This problem was particularly important in the postcommunist region where interests were undeveloped and uncertainty high (Bunce and Csanádi 1993). Conversely, a measured adoption process will be more likely to produce a constitution that commands broader assent.

**H4:** Delay in adopting a new constitution leads to fewer amendments

The explanations so far imply that the speed of change is mainly under the control of constitutional designers who can choose different rules and procedures.<sup>2</sup> But the political, social, and economic context may be as important as rules. As the context changes, the constitution will lose touch with current circumstances. Political actors will in turn try to adopt amendments that allow them to better deal with the problems of the day. One implication is that constitutional change will increase over time. Early in its lifespan a constitution may be a relatively good fit to problems because it was drafted in response to them, but as time passes this fit should decrease. Since Eastern European countries underwent very large changes in the transition era, radically reforming their economies and experiencing social upheaval, misfits between institutions and current circumstances might become particularly important.

**H5:** Amendment frequency increases over time

Political competition is an especially important contextual factor in new democracies. Authoritarian leaders should have less compunction and face less opposition to changing the constitution. Conversely, competitive politics gives opposition groups a stronger say in amendments.<sup>3</sup>

<sup>2</sup> Even legislative fragmentation has roots in institutional choices, particularly electoral rules.

<sup>3</sup> On the other hand, authoritarian rulers may simply ignore the constitution.

**H6:** Less democratic regimes produce more amendments

On the other hand, optimists about amendment can make the opposite point. Holmes and Sunstein (1995), for example, argue that amendments can be used to improve a poorly-written or inappropriate constitution and thus may occur only after democrats replace dictators. Just as the end of communism saw the adoption of new constitutions, so might further democratization lead to more constitutional change.

**H7:** Democratization produces more amendments

### 3 Data

To test these hypotheses, I consider 17 Eastern European countries whose politics has been at least partially competitive in the postcommunist era.<sup>4</sup> The sample excludes only the out-and-out authoritarian states of Central Asia, Azerbaijan, Belarus, and Serbia.<sup>5</sup> It makes little sense to consider the politics of amendment in countries dominated by a leadership which can change the constitution at will or ignore it altogether. All of the 17 countries have been rated either fully or partially free by Freedom House (2007) throughout the transition period.<sup>6</sup>

These countries form a particularly interesting natural experiment. They shared nearly identical communist constitutions and exited communism at approximately the same time, adopting a variety of new constitutional forms in the process. They also faced similar challenges in the transition to democracy—creating new democratic institutions and engaging in comprehensive economic reforms—but negotiated them in different ways (Offe 1991). While their choice of constitutional forms was widely analyzed (Roberts 2006), there has been little study to date of their amendment experiences.

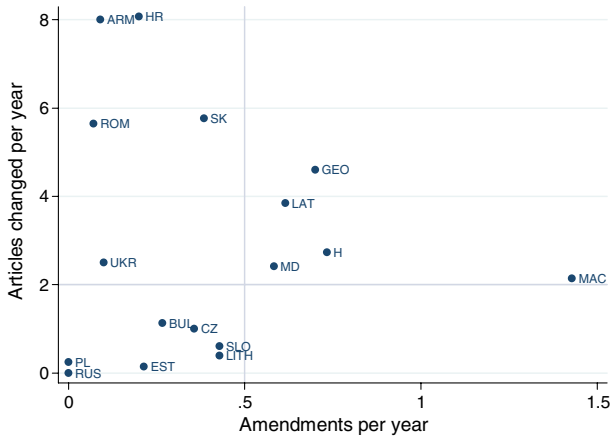
I gathered data on all constitutional amendments in these countries from the adoption of a new constitution to approximately 2005. Of the 17 countries, all but Hungary have adopted a new constitution. For Hungary amendments are counted after the major revisions of 1989–1990 which left the old constitution unrecognizable. Most of the data came from Blaustein and Flanz (1971–Present) *Constitutions of the Countries of the World*, which was supplemented by the reports of the Venice Commission of the Council of Europe and country specific legislative archives.

To give a brief sense of the data, the horizontal axis of Fig. 1 presents the aggregate amendment rate for all of the countries. This rate is the number of amendments passed per year since the adoption of a new constitution. An amendment is defined as a single law changing one or more clauses of the constitution. The rate in Eastern Europe ranges from 0 in Poland and Russia to nearly 1.5 in Macedonia. Macedonia, however, is a relative outlier for reasons that

<sup>4</sup> The countries are Armenia, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, and Ukraine.

<sup>5</sup> One country, Albania, was excluded due to an inability to find data.

<sup>6</sup> The exception is Russia which has been rated unfree for the period 2004–2006.



**Fig. 1** Amendment and article change rates

will be discussed later. The unweighted average for all of the countries is 0.4. An amendment is passed about once every two and a half years in a typical country.

In a global context, this is a fairly low amendment rate. Lutz (1994) reports a frequency of 2.5 amendments per year in a sample of developed and developing countries outside of Eastern Europe.<sup>7</sup> Even the most stable countries in his sample, sixteen Western European countries, had an average rate of 1.8, more than four times that of Eastern Europe. The Eastern European countries to date have not been aggressive amenders.

These numbers, however, treat all amendments equally. This may understate the degree of constitutional change. Some amendments change only one clause in the constitution, while others alter many constitutional provisions. Such large amendments have been relatively common in Eastern Europe.

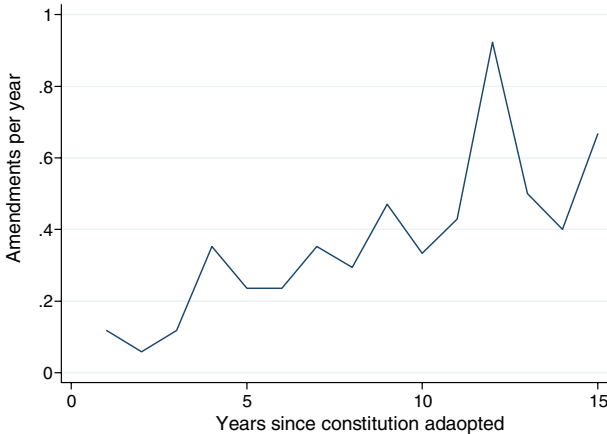
The vertical axis in Fig. 1 thus presents an alternative measure of amendments: the number of constitutional articles changed—added, altered, or deleted—in each country per year. All countries in the sample divide their constitutions into articles; on average their constitutions have 143 articles (s.d. 37.8).<sup>8</sup> The number of articles changed is not a perfect measure of significance—some are more or less consequential—but it is a relatively objective gauge of the extent of change.

The average number of articles changed by year is 2.9 and ranges from 0, again in Poland and Russia, to 8.1 in Croatia.<sup>9</sup> While amendments may not be frequent in Eastern Europe, they do tend to introduce significant changes at least in the text. In some countries, for example Romania, a single amendment altered almost half of the articles in the constitution.

<sup>7</sup> Lutz is not clear on his counting rule for amendments.

<sup>8</sup> There is some fuzziness in this measure due to different numbering systems.

<sup>9</sup> Precise data on the number of articles change was not available for Armenia. Blaustein and Flanz (1971–Present), however, report that “There are only a handful of provisions of the original constitution which have not been amended one way or another.” I conservatively assumed that three-quarters of articles were amended.



**Fig. 2** Amendment frequency since adoption

It is worth noting that there is little correlation between the amendment rate and the article change rate ( $r = -.04$ ).<sup>10</sup> Macedonia which has passed by far the most amendments (18) has changed relatively few articles. Conversely, Croatia, Slovakia, and Romania—the leaders in article change—have passed relatively few amendments. These differences point to a more nuanced understanding of constitutional alteration than that currently on offer.

There are significant time trends in these amendments. Figure 2 shows the average amendment rates since a new constitution was adopted.<sup>11</sup> The number of amendments passed rises gradually during the first decade after adoption and then increases significantly at around 12 years before falling back somewhat. Equivalent graphs for articles and calendar years (not shown) produce similar patterns. Amendments have become more common over time as H5 predicts.

#### 4 Analysis of causes

What explains these patterns? I created quantitative measures of all the variables described in Sect. 2. I measured amendment difficulty on a four-point scale representing less than 2/3 majorities, 2/3 majorities, 2/3 majorities plus other provisions, and greater than 2/3 majorities (Lijphart 1999). The modal category in Eastern Europe is a 2/3 majority which encompasses seven countries. The three countries with the most difficult to amend constitutions are Bulgaria, Romania, and Russia, while the three easiest, requiring only a 3/5 majority, are the Czech Republic, Estonia, and Slovenia.

<sup>10</sup> It is even smaller,  $r = .02$ , if Macedonia is excluded.

<sup>11</sup> The amendment rate is the total number of amendments adopted across all countries in a given year divided by the number of countries. The figure excludes Macedonia's anomalous experience in 2001 when it passed 15 amendments. Note also that some countries adopted a new constitution later than others and thus have not reached the final points.

The length of the constitution is measured as the number of words in the English language translation. Legislative fragmentation is operationalized by the effective number of parliamentary parties, the reciprocal of the sum of the squared seat shares of each parliamentary party (Laakso and Taagepera 1979). A dummy variable was created for countries that delayed the adoption of their constitution until after 1994. I also created a dummy variable for countries that did not adopt a new constitution because old constitutions are likely to be poor fits to current circumstances. (This applies to Hungary which retained its communist-era constitution and Latvia which revived an inter-war constitution.) Degree of democracy is measured by Freedom House (2007) scores which range from 1 which represents the most democratic to 7 the least.

Table 1 presents the results of multivariate tests of these causes. Models 1 and 2 show OLS results where the dependent variables are the amendment and article change rates from Fig. 1 and the independent variables are country averages over the period from the adoption of a constitution to 2005. No variable achieves significance in these estimations for either dependent variable, though the directional associations are correct in every case except length and constitutional delay. Eliminating variables does not change the significance levels. Even univariate regressions show only weak associations between the independent variables and measures of constitutional change.

**Table 1** Causes of constitutional change

Model	1	2	3	4
Dependent variable	Amendment rate	Article change rate	Number of amendments	Number of Articles
Method	OLS		Pooled Negative Binomial	
Difficulty (1 easiest to 4 hardest)	-0.14 (0.16)	-0.82 (1.15)	-0.52 (0.33)	-0.42 (0.27)
Length (thousands of words)	0.00 (0.03)	-0.26 (0.22)	-0.03 (0.06)	-0.05 (0.05)
Fragmentation (ENP)	-0.05 (0.06)	-0.45 (0.41)	-0.09 (0.10)	-0.12 (0.09)
Democracy (FH score)	0.08 (0.10)	1.28 (0.68)	0.00 (0.18)	0.04 (0.16)
Old constitution (dummy)	0.35 (0.31)	1.02 (2.23)	0.92 (0.50)	0.97** (0.37)
Constitutional delay (dummy)	-0.27 (0.30)	2.60 (2.12)	0.40 (0.58)	0.57 (0.47)
Years since adoption			0.13** (0.04)	0.12** (0.04)
Democratization (dummy)			0.20 (0.43)	0.87* (0.40)
EU negotiations (dummy)			-0.11 (0.30)	-0.02 (0.31)
Constant	0.68 (0.53)	6.01 (3.73)	0.16 (1.21)	-1.84 (1.02)
Observations	17	17	219	219
Adjusted R-squared	-0.01	0.10		
Log-likelihood			-165.0	-282.7

\*\* Significant at 1%, \* Significant at 5%. Standard errors in parentheses

It is, however, possible to utilize more of the variation in amendment experiences. Indeed, the contextual hypotheses demand tests more sensitive to changes over time. Models 3 and 4 present results from panel data where the dependent variables are the number of amendments and the number of articles changed in a given year. I estimated these models with pooled negative binomial regressions which are appropriate where the dependent variable is an event count (King 1989).

I added three additional independent variables to these models. A count of the number of years since the constitution was adopted captures timing effects. A dummy variable indicating the three years following an improvement in Freedom House scores accounts for democratization. I also included a dummy variable for years in which a country was in negotiations with the European Union (EU) after being declared a candidate country. Countries may have adopted amendments in order to bring their constitutions up to EU standards. Other independent variables are measured as before but for country-years.

While the variables from the previous regressions remain insignificant in these regressions (with one exception), two of the new variables do have significant effects. Years since adoption has a significant effect on both the number and comprehensiveness of amendments adopted. Over time countries are adopting more and more significant amendments as H5 predicted.

More interestingly, in line with H7, countries adopt more significant amendments when they become more democratic. In the three years immediately after an improvement in their Freedom House scores, countries change a larger number of articles in their constitutions.<sup>12</sup> It is worth emphasizing that it is not the level of democracy that matters—neither democracies nor non-democracies are more aggressive amenders—but changes in the level of democracy. As a country democratizes, it engages in significant constitutional change.

The only other variable with significant effects is whether a country retained an old constitution which increases the number of articles changed. Both Hungary and Latvia introduced larger amendments, presumably because their constitutions were not good fits to current circumstances. None of the other variables—including EU negotiations whose sign is contrary to expectations—are significant in any specifications.<sup>13</sup>

I conducted several robustness checks on these results. First I excluded Macedonia's anomalous experience of 2001 when it adopted 15 amendments compared to a maximum of 3 in other country-years. I also used an alternative measure of amendment difficulty drawn from Armingeon and Careja (2004). Finally I considered a dichotomous dependent variable (whether any amendment was introduced in a given year) and conducted pooled logit analyses. The results remained similar in all of these analyses.

---

<sup>12</sup> Countries who experienced improvements in their democracy scores were Bulgaria, Croatia, Georgia, Macedonia, Romania, Slovakia, and Ukraine.

<sup>13</sup> I also considered an interaction between difficulty and fragmentation; greater fragmentation might reduce amendments only when procedures are difficult. This variable was not significant in any specification.



These findings challenge the customary focus on institutions. Prior studies emphasized the difficulty of procedures and length, two variables that had fairly weak effects here.<sup>14</sup> The present results indicate that more important is the social and political context. As this context changes—whether over time or due to democratization—countries change their constitutions.

This makes sense for these countries because of the rapid changes they were undergoing. In less than a decade, they massively altered their existing political, economic, and bureaucratic institutions (Offe 1991). Over time countries found that their initial constitutions did not fit current circumstances either because they were a poor fit from the start—in the case of old constitutions—or because they became poor fits as the context, particularly the democratic context, changed. In more established political systems, by contrast, these background conditions are more stable and so institutional effects are more powerful.

## 5 The consequences of amendments

How have these amendments affected politics in the region? There has been a long and distinguished debate on the desirability of constitutional amendment.<sup>15</sup> Radical democrats like Paine and Jefferson argued that constitutions should be maximally flexible so that every generation could write its own laws and keep pace with the advance of science. On the other side, conservatives like Burke and Oakeshott worried about the uncertain consequences of changing political institutions.

The modern debate focuses on more practical issues. The predominant recommendation in the literature is to adopt a rigid constitution in order to limit amendments. A number of considerations, most of them flowing from a public choice perspective, are behind this argument. The strongest concerns limiting the power of the state. Executives are assumed to desire greater power, and, where they have the ability to do so, they will alter the constitution to achieve this.<sup>16</sup> Particularly in countries that have emerged from dictatorship, limiting the potential for abuse of power is a key goal in constitution writing. In fact, strong executives have been found to have a negative impact on both democracy and economic reform in Eastern Europe (Commander and Frye 1999).

**H8:** Amendments tend to increase and concentrate executive power

A similar argument, best expressed in the works of Buchanan and Tullock (1962) and Riker (1982), worries about the threat that democratic majorities pose to liberal rights. In this view, populist majorities continually try to restrict the rights of vulnerable minorities. Again, the concern is particularly acute in new democracies where liberal rights have weak historical roots (Zakaria 2003; Snyder 2000). Only fixing strong rights provisions will prevent such majority tyranny.

<sup>14</sup> The particular institutions adopted in Eastern Europe do not explain the general low rates of amendment relative to other countries. Eastern European constitutions had very similar amendment procedures and lengths to those in other regions (Roberts 2006).

<sup>15</sup> For a comprehensive review of these historical arguments, see Holmes (1988).

<sup>16</sup> A common occurrence is presidents amending the constitution to remove term limits.

**H9:** Amendments tend to restrict civil liberties

More economically-minded scholars tout the benefits of rigid rules for economic growth (North and Weingast 1989; Hellman 1997; Metelska-Szaniawska [forthcoming](#)). Investors prefer a stable environment and will not invest if they believe that conditions will change rapidly. A rigid constitution gives investors these assurances and thus helps to spur productive investment. A particular worry during the postcommunist transition was that if property rights were not strongly entrenched, they would be violated by politicians and citizens used to state control of the economy (Sunstein 1993).

**H10:** Amendments tend to limit economic freedom

Finally, the rule of law has been a particular worry in postcommunist countries. Having emerged from dictatorships with little respect for law, they may have difficulty entrenching the rule of law. It can be argued that rule of law will not develop if the higher law, the constitution, is constantly changing.

**H11:** Amendments tend to weaken the rule of law

While these arguments dominate the literature, there are some who argue that new democracies need more flexible constitutions. Holmes and Sunstein (1995) have made this point most forcibly. They argue first of all that constitutions in Eastern Europe were made under non-ideal circumstances. There was both a considerable degree of uncertainty about the future and a great deal of self-interested behavior in the writing of new constitutions. Flexibility would allow mistakes that had been included in the document to be corrected. They call this approach “stop-gap constitutionalism”. Of course, there is no guarantee that these corrections would come. Indeed, one might challenge whether any constitution has been written under “ideal” circumstances.

A separate argument refers to the rapidly changing circumstances of the transition. What has been called the triple transition (Offe 1991)—creating independent countries, democracies, and free markets—puts a premium on government capacity. The worry then should be less on limiting government power than on making sure the government has the tools to overcome these problems. As Holmes (1997) argues about Russia, the problem is not too strong a state, but too weak a state. Moreover, one might predict that in the absence of flexibility, governments will simply ignore the constitution to do what needs to be done. Better, it is argued, to ratify these actions constitutionally through amendments than ignore the constitution. According to this argument, the rule of law is supported by a flexible rather than a rigid constitution.<sup>17</sup>

<sup>17</sup> More speculatively, it could be argued that flexible constitutions create both democratic accountability and a constitutional culture. In the first place, they force legislatures to make decisions. Legislative bodies cannot defer to courts or excuse non-action with reference to the restrictiveness of the constitution. This may be important for new democracies because accountability has been missing for so long. Similarly, debate over constitutional changes might introduce citizens to the substance and importance of the constitution. Neither possibility is considered here because they are difficult to measure. See Holmes and Sunstein (1995).

## 6 Analysis of consequences

How well do these predictions comport with the substance of amendments in Eastern Europe? Did amendments produce changes more in line with the predictions of the optimists or the pessimists? The low rate of constitutional amendment might suggest that few important changes were passed. But the comprehensiveness of many amendments that were passed points in the opposite direction. The following sections focus in greater depth on four sorts of changes: the structures of government, the rights of citizens, international obligations, and societal outcomes.<sup>18</sup> I again look at the 17 countries in Eastern Europe with competitive politics.

### 6.1 Government structures

Some of the most significant amendments have altered executive-legislative relations, and contrary to expectations they have typically weakened presidential power.<sup>19</sup> Croatia, for example, severely limited the powers of its president and in fact switched from a presidential to a parliamentary regime with substantial amendments in 2000 and 2001. Moldova moved in the same direction by making its president indirectly elected by parliament rather than by citizens at large. In both cases, the intent was to rein in over-powerful executives.

The same situation applies to several post-Soviet states. Armenia instituted a weaker president, limiting his/her role to foreign and defense policy, while strengthening parliament and government.<sup>20</sup> Georgia moved from a presidential to a semi-presidential regime and gave the government more power over the budget. Ukraine's sole amendment strengthened parliament and curbed presidential powers, returning to parliament control over government formation. While none of these three amendments was fully coherent—ambiguities about presidential powers remained—their direction was clear (Venice Commission 2004, 2005a, b).

In Romania, an amendment prohibited the president from dismissing the prime minister after controversies over such actions. Poland's new constitution in 1997 limited presidential powers in comparison to the previous constitution as a reaction to Lech Wałęsa's perceived abuse of these powers. Contrary to the main trend, Slovakia instituted direct presidential elections after the office remained vacant due

---

<sup>18</sup> Several amendments did not fit these categories, for example, Hungary's amendment to change its coat of arms.

<sup>19</sup> Even countries that did not change the powers of presidents witnessed important debates over the nature of the presidency. Few countries seem to be satisfied with the state of presidential powers. Their concerns mirror the findings of political scientists that the strength of the presidency has a strong effect on democracy, economics, and the party system.

<sup>20</sup> The opposition urged a boycott of the referendum on this amendment and claimed fraud in the counting of votes. Its main criticism was that the amendment still left too much power in the hands of the president. On the other hand, the Council of Europe gave the amendment a positive evaluation (Venice Commission 2005a).

to a power play by the local strongman, Vladimir Mečiar, but the president's power remained limited.<sup>21</sup>

The finding that amendments have generally limited presidential powers seems to contradict Frye's (2002) conclusion that presidential powers were expanded in 9 of 23 Eastern European presidential administrations. The reason for the discrepancy is that all of Frye's examples of increased powers involved the adoption of a new constitution (Armenia, Georgia, Poland's Little Constitution of 1993, Russia, and Ukraine) or occurred in resolutely non-democratic countries (Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan). The present result shows that the presence of a constitution and at least some degree of competitive politics limits expansions of presidential power. It is noteworthy that leaders as hostile to democracy as Ion Iliescu, Vladimir Mečiar, Vladimir Putin, Eduard Sheverdnaze, Franjo Tuđman, and Boris Yeltsin did not alter existing constitutions to expand their power.<sup>22</sup>

On legislative structure, the most eye-catching change was in Croatia where a weak upper house was eliminated.<sup>23</sup> At the same time, the power of the legislature was increased relative to the executive. In addition to the relative strengthening of legislatures implied by the reduction in executive powers described above, the powers of the legislature were expanded in Armenia, Hungary, Moldova, Romania, Slovakia, and Ukraine. Romania specified more clearly the relation between the two chambers of parliament. These changes are significant, because, as Fish (2005) argues, a strong parliament is a central cause of democratic success in the postcommunist region.

The judiciary has been one of the most frequently amended parts of these constitutions. Thirteen of the seventeen countries in the sample adopted some changes to the judiciary and these changes were generally in the direction of greater judicial independence. Two countries—Croatia and Latvia—introduced judicial review where it did not exist before. Eight other countries took steps to make their courts more independent. These changes often came on the heels of international criticism of the functioning of courts or were an attempt to prepare for EU accession. Indeed, most of these amendments tried to conform to EU standards even in states like Macedonia and Ukraine that were far from accession. Though some of these amendments fell short on this score, their direction was clear.

Twelve countries amended the structure of local government mostly in the direction of greater local autonomy. Several countries created new regional divisions or autonomous regions (sometimes in controversial ways), others expanded the powers of local governments.

In sum, the most surprising finding here is that amendments did not expand the powers of executives, disconfirming H8. In fact, they generally limited their powers. Powerful presidents were reined in, the legislature strengthened, the judiciary made more independent, and the powers of local government expanded. Insofar as weaker executives and greater checks and balances are correlated with better democratic

<sup>21</sup> An amendment passed under Mečiar actually transferred presidential power to parliament, though this was in his self-interest at the time since the president was associated with the opposition.

<sup>22</sup> Though in some cases they deliberately misinterpreted or ignored the constitution to serve their ends.

<sup>23</sup> The upper house had only a suspensory veto.

outcomes in Eastern Europe (Fish 2005; Commander and Frye 1999), these changes can be viewed as positive developments, though this is not to say that they were ideal.

## 6.2 Rights

A traditional worry in constitution making is that unless they are strongly entrenched, liberal rights will be abridged by populist majorities. In fact, amendments of rights provisions in these countries were usually in the direction of greater freedom. Latvia, for example, added a new chapter on fundamental human rights. Croatia amended its constitution to include the right to a fair trial, freedom of thought, and the prohibition of double jeopardy. Bulgaria created an ombudsman who could petition the Constitutional Court and gave the Ministry of Justice an independent budget. In the wake of a near civil war, the Ohrid agreements in Macedonia provided considerable protections to the Albanian minority including language and religious rights.

Moldova meanwhile abolished the death penalty, eliminated a section on the duties of citizens, guaranteed the privacy of correspondence, and declared that no law can restrict rights and freedoms. The Romanian amendment guaranteed equal opportunity in public service, fair and speedy trials, a right to education and scholarships for the underprivileged, a right to organize unions, a right to social protection with special consideration for the disabled, and protection from state organs. Romania also gave minorities the right to use their own language in dealings with the state.<sup>24</sup> Slovenia provided protections to the disabled, created a right to social security, and encouraged quotas to increase women's representation in parliament.

On the negative side, Macedonia and Moldova lengthened permissible periods of arrest and detention. Latvia made Latvian the national language much to the chagrin of the Russian minority, though the provision was more symbolic than substantive. The Latvian government also specified that marriage applies only to the union of a man and a woman. Georgia meanwhile removed the right to a free education.

Surprisingly, where property rights were amended, they were strengthened rather than weakened. In several countries, amendments were passed to guarantee the property rights of foreigners or to allow them to buy land. Romania, for example, allowed foreigners to own property and more generally made private property inviolable. Similar amendments were passed in Bulgaria, Lithuania and Slovenia.

Such provisions were politically unpopular (Rohrschneider and Whitefield 2004). Indeed, the transitions were often seen as restoring sovereignty after the domination of a foreign power (Albi 2005). Citizens further feared that rich Westerners would buy up all of their land. EU accession, however, required these countries to allow foreign ownership. While foreign ownership remained unpopular, the perceived benefits of EU accession were enough to overcome opposition.

In short, fears of populist majorities abridging the rights of minorities or property owners were mostly unfounded (with the exceptions of Russians and gays in

---

<sup>24</sup> A further provision stipulated that international rights treaties would trump Romanian law.

Latvia). Amendments typically expanded liberal rights and sometimes did so in ways repugnant to majorities. There is little support for H9 and H10.

### 6.3 International obligations

A number of countries adopted amendments allowing European integration and affirming their commitment to adhere to international obligations. Eleven different amendments were in some way connected to international integration. This is not including numerous amendments to government structures or rights that were adopted under international pressure.

The most comprehensive amendments were in Romania where two new sections were added to the constitution, one dealing with NATO integration and the other with EU accession. Provisions were even made for adopting the Euro. The Czech Republic, Hungary, Latvia, Lithuania, Slovakia, and Slovenia all adopted provisions recognizing the binding character of international obligations. Several countries passed amendments stipulating a referendum on EU accession. Macedonia meanwhile adopted two amendments renouncing any territorial claims against neighboring states and declaring a policy of non-interference.<sup>25</sup>

Albi (2005), however, notes that, with the exception of the Czech Republic and Slovakia, these amendments did not bring the constitutions entirely into line with the requirements of EU membership.<sup>26</sup> He attributes this to both political controversies over the loss of sovereignty and difficult procedures for amending sovereignty clauses. As a result, some countries are using creative interpretation of the constitution to coordinate with the EU. The same, however, is true of many member states.

Nevertheless, these amendments are significant in a number of ways. First, they indicate the importance of the international arena for domestic politics. There is typically a presumption in the study of constitutions that they are entirely a domestic matter. The many amendments allowing international integration plus the even more numerous amendments helped along by international pressure and advice (described in the conclusion) indicate that at least in these countries constitutions have an international dimension.

Second, these amendments reveal the depth of support for accession to the EU and NATO. The fact that large majorities could be assembled for amendments indicates that support for integration was broad-based, at least among political representatives. Finally, they show the benefits of some degree of constitutional flexibility. Few countries included strong provisions for recognizing international obligations in their new constitutions because they were hesitant about surrendering sovereignty.<sup>27</sup> Indeed, Albi (2005) argues that the new constitutions in Eastern

---

<sup>25</sup> These provisions replaced ones proclaiming solidarity with Macedonians living outside the country's borders. Pressure from Greece was behind these changes.

<sup>26</sup> For example, several countries have a provision that gives the national bank the sole right to emit currency.

<sup>27</sup> Future accession to the EU was not forefront in the minds of constitution writers operating at the start of the transition because they had other more pressing concerns.

Europe were what he calls *souverainist* documents. This is understandable for countries that had been trapped behind the iron curtain. Over time, this hesitancy dissipated. Amendments allowed countries to change their constitutions along with changing circumstances.

#### 6.4 Societal outcomes

The judgments so far have been based solely on the text of these amendments. But the text is merely a parchment barrier that may not have real effects. As a check on these judgments, this section considers measures of actual political and economic outcomes to determine whether they were affected by the adoption of constitutional amendments. I am particularly interested in whether amendments are associated with declines in democracy, liberty, and rule of law as the skeptics predict.

The measures of outcomes are ones commonly used in evaluations of Eastern European politics. Freedom House's annual evaluation of political rights and civil liberties, described earlier, captures changes in democracy and rights (Freedom House 2007). The Heritage Foundation's index of economic freedom includes measures of property rights, government intervention, and trade barriers and should capture limitations on economic freedom (Gwartney and Lawson 2007). Finally, the World Bank's Governance indicators include assessments of accountability and voice and rule of law (Kaufmann et al. 2007). Accountability and voice refers to the "extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media" while rule of law measures "the extent to which agents have confidence in and abide by the rules of society." These measures are derived from surveys of country observers.

Ideally, I would construct multivariate models of the causes of all of these variables and include a variable representing constitutional amendments. Unfortunately, models of the determinants of these variables are not well-developed enough to perform such an exercise. There is a very large danger of omitted variable and model specification bias.

Instead, I perform a simpler evaluation. Focusing on the less democratic and less economically successful countries in the region—Armenia, Bulgaria, Croatia, Macedonia, Moldova, Romania, Russia, Slovakia, and Ukraine—I calculate the differences in their ratings in the years before and after major amendments. The problematic democracies are the ones where effects should be most noticeable. The consolidated democracies tend to have high scores on all of these outcomes and experienced little change. Major amendments are defined as ones that change ten or more articles and are the ones most likely to have visible effects. This exercise will not capture subtle effects because of the multitude of other forces affecting these outcomes, but should reveal large effects.

Table 2 presents the results. Improvement is defined as a change in the direction of greater democracy, freedom, accountability, and rule of law, while decline is change in the opposite direction. In all five cases, these indicators almost unequivocally improved or stayed the same in the period bracketing constitutional amendments. The results are most definitive for rule of law, but in all cases the

**Table 2** Consequences of amendments

	Political rights	Civil liberties	Economic freedom	Voice and accountability	Rule of law
Improved	5	3	7	8	9
No change	5	8	0	0	0
Declined	1	0	3	3	2

*Note:* “Major” amendments were Armenia (2005), Croatia (1998, 2000, 2001), Georgia (2004), Macedonia (2001, 2005), Moldova (2000), Romania (2003), Slovakia (1999, 2001), and Ukraine (2004)

number of amendments preceding improvement is at least double the number preceding declines. There is little support for H8–H11.

Particularly interesting are the results from the measures of political rights and civil liberties. Recall from Sect. 4 that a change in these measures for the better prompted more significant amendments. Now these amendments are associated with further changes for the better. While causality is difficult to establish, amendments do appear to be an important part of the process of democratization. What can be stated is that there have been few cases where major amendments coincided with a decrease in democracy, freedom, and rule of law.

## 7 Conclusion

This paper draws two main conclusions. First, the politics of amendment in Eastern Europe differs from that in non-transition countries. It is less political institutions and constitutional procedures that drive amendment rates than contextual changes that occur with the passage of time. Most prominent among these changes is democratization which tends to induce major constitutional change. This makes sense given the rapid changes taking place in these countries and the novelty of institutions. The political situation is still in such flux that context trumps formal institutions.

Second, contrary to conventional wisdom, the amendments that have been passed typically reduced executive power, better guaranteed human rights, and ensured integration into international bodies. The amendment process seems to vindicate Holmes and Sunstein’s recommendation that the flux of transition requires some degree of constitutional flexibility. The results challenge the view that human and property rights are threatened by constitutional amendments. Amendments in the region were usually liberal rather than populist. Further, the amendment process was not abused by leaders with a weak commitment to democracy as one might have expected.

I would argue that two main factors were at work in Eastern Europe’s amendment experience. International pressure certainly played a role. More than other regions of the world these countries were under heavy surveillance from their democratic neighbors. Most of them desired stronger contacts with Western Europe. They wished to enter the European Union or relied heavily on Western European



markets and aid. This gave Western Europe considerable leverage over their politics. It is not surprising that improvements occurred in areas like human rights and democracy that are seen as defining characteristics of Europeaness.

This influence may be direct as when entrants to the European Union are required to change their constitutions as conditions of entry or when institutions like the UN, OSCE, and NATO brokered an end to the Macedonian civil war. It may also be indirect when states are merely encouraged to follow European norms and rewarded with closer ties (Vachudova 2005).<sup>28</sup> The multiple paths of influence may explain why EU negotiations did not have significant effects in the regressions.

Domestic publics may also play an important role. Citizens in the region generally rejected the communist experience of lawless dictatorship and embraced democracy and liberalism (Rose et al. 1998). There may thus have been pressure from citizens to avoid constitutional changes which would limit basic rights and economic freedoms and jeopardize international integration. A closer investigation of the politics surrounding amendments than that attempted here would provide a clearer sense of the validity of these mechanisms.

Does this mean that countries should adopt even more flexible constitutions and pass more amendments? One could make an argument that this would help a country like Russia whose constitution is widely regarded as flawed (Ordeshook 1996). But the present leadership of Russia does not appear inclined to expand democracy or rights.<sup>29</sup> One way of getting at this question is to consider the amendments that were proposed but narrowly failed. A closer look at the content of these amendments might show whether the present amendment rule is preventing beneficial or hazardous changes.

The present paper, however, does suggest that some constitutional flexibility is useful for countries exiting from a dictatorship and may in fact promote constitutional government. The proper domain of this conclusion is unclear. Does it depend on the particular circumstances of Eastern Europe with a regional hegemon and democratically inclined publics? Or does it hold more generally in democratizing states? Only future studies in other new and old democracies will answer these questions.

## References

- Albi, A. (2005). *EU enlargement and the constitutions of central and eastern Europe*. Cambridge: Cambridge University Press.
- Armingeon, K., & Careja, R. (2004). *Comparative data set for 28 post-communist countries, 1989–2004*. University of Berne, Institute of Political Science.
- Blaustein, A. P., & Flanz, G. H. (1971-Present). *Constitutions of the countries of the world*. Dobbs Ferry, NY: Oceana Publications.

---

<sup>28</sup> An example of indirect influence is the Venice Commission which was created in 1990 by the Council of Europe as an advisory body on constitutional issues. Consisting of experts in constitutional law, the Commission provides working groups to help countries prepare constitutional changes and independently offers written opinions on amendment proposals.

<sup>29</sup> It is still a mystery though why Putin chose not to amend the constitution to allow himself a third consecutive term as president.

- Buchanan, J. M., & Tullock, G. (1962). *The calculus of consent: Logical foundations of constitutional democracy*. Ann Arbor: University of Michigan Press.
- Bunce, V., & Csanádi, M. (1993). Uncertainty in transition: Postcommunism in Hungary. *East European Politics and Societies*, 7, 240–276.
- Commander, S., & Frye, T. (1999). The politics of post-communist economic reform. In *Transition report*. London: European Bank for Reconstruction and Development.
- Ferejohn, J. (1997). The politics of imperfection: The amendment of constitutions. *Law and Social Inquiry*, 22, 501–531.
- Fish, M. S. (2005). *Democracy derailed in Russia: The failure of open politics*. New York: Cambridge University Press.
- Freedom House. (2007). *Freedom in the world 2007: The annual survey of political rights and civil liberties*. New York: Freedom House.
- Frye, T. (2002). Presidents, parliaments, and democracy: Insights from the post-communist world. In A. Reynolds (Ed.), *The architecture of democracy: Constitutional design, conflict management, and democracy*. Oxford: Oxford University Press.
- Gwartney, J., & Lawson, R. with Sobel, R. S., & Leeson, P. T. (2007). *Economic freedom of the world: 2007 annual report*. Washington, DC: Cato Institute.
- Hammons, C. W. (1999). Was James Madison wrong? Rethinking the American preference for short, framework-oriented constitutions. *American Political Science Review*, 93, 837–849.
- Hellman, J. S. (1997). Constitutions and economic reform in the post-communist transitions. In J. D. Sachs & K. Pistor (Eds.), *The rule of law and economic reform in Russia*. Boulder: Westview Press.
- Holmes, S. (1997). What Russia teaches us now: How weak states threaten freedom. *The American Prospect*, 33, 30–39.
- Holmes, S. (1988). Precommitment and the paradox of democracy. In J. Elster & R. Slagstad (Eds.), *Constitutionalism and democracy*. Cambridge: Cambridge University Press.
- Holmes, S., & Sunstein, C. (1995). The politics of constitutional revision in eastern Europe. In L. Sanford (Ed.), *Responding to imperfection: The theory and practice of constitutional amendment*. Princeton: Princeton University Press.
- Kaufmann, D., Kraay, A., & Mastruzzi, M. (2007). Governance matters VI: Governance indicators for 1996–2006. World Bank Policy Research, June.
- King, G. (1989). Event count models in international relations: Generalizations and applications. *International Studies Quarterly*, 33, 123–147.
- Laakso, M., & Taagepera, R. (1979). Effective number of parties: A measure with application to West Europe. *Comparative Political Studies*, 23, 3–27.
- Lijphart, A. (1999). *Patterns of democracy: Government forms and performance in thirty-six countries*. New Haven: Yale University Press.
- Lutz, D. S. (1994). Toward a theory of constitutional amendment. *American Political Science Review*, 88, 355–375.
- Metelska-Szaniawska, K. (forthcoming). Constitutions and economic reforms in transition: An empirical study. *Constitutional Political Economy*.
- North, D. C., & Weingast, B. (1989). Constitutions and commitment: The evolution of institutions governing public choice in 17th century England. *Journal of Economic History*, 49, 803–832.
- Offe, C. (1991). Capitalism by democratic design? Democratic theory facing the triple transition in east central Europe. *Social Research*, 58, 865–892.
- Ordeshook, P. L. (1996). Russia's party system: Is Russian federalism viable? *Post-Soviet Affairs*, 12, 195–217.
- Persson, T., & Tabellini, G. (2003). *The economic effects of constitutions*. Cambridge: MIT Press.
- Rasch, B. E., & Congleton, R. D. (2006). Amendment procedures and constitutional stability. In R. D. Congleton & B. Swedenborg (Eds.), *Democratic constitutional design and public policy: Analysis and evidence*. Cambridge, MA: MIT Press.
- Riker, W. (1982). *Liberalism against populism*. Prospect Heights, IL: Waveland Press.
- Roberts, A. (2006). What kind of democracy is emerging in eastern Europe? *Post-Soviet Affairs*, 21, 37–64.
- Rohrschneider, R., & Whitefield, S. (2004). Support for foreign ownership and integration in eastern Europe: Economic interests, ideological commitment, and democratic context. *Comparative Political Studies*, 37, 313–339.
- Rose, R., Mishler, W., & Haerpfer, C. (1998). *Democracy and its alternatives: Understanding post-communist societies*. Baltimore: Johns Hopkins University Press.
- Sharlet, R. (1997). The politics of constitutional amendment in Russia. *Post-Soviet Affairs*, 13, 197–227.

- Snyder, J. L. (2000). *From voting to violence: Democratization and nationalist conflict*. New York: Norton.
- Sunstein, C. R. (1993). On property and constitutionalism. *Cardozo Law Review*, 14, 907–935.
- Vachudova, M. A. (2005). *Europe undivided: Democracy, leverage, and integration after communism*. Oxford: Oxford University Press.
- Venice Commission. (2004). Opinion on the draft amendments to the constitution of Georgia. Opinion no. 281/2004, 29 March.
- Venice Commission (2005a). Final opinion on constitutional reform in the Republic of Armenia. Opinion no. 313/2004, 25 October.
- Venice Commission (2005b). Opinion on the amendments to the constitution of Ukraine adopted on 8.12.2004. Opinion no. 339/2005, 13 June.
- Zakaria, F. (2003). *The future of freedom: Illiberal democracy at home and abroad*. New York: W.W. Norton.