

***Reemplazos Constitucionales en Regímenes Democráticos
El Desafío del Cambio con Continuidad***

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Argumento

- Los procesos constituyentes en regímenes democráticos tienden a preservar la continuidad del régimen y profundizar la democratización cuando el marco legal provee controles institucionales para la activación e implementación del proceso, cuando las reglas electorales y de decisión inducen una representación plural en el cuerpo constituyente y cuando la participación popular complementa y no sustituye el pluralismo representativo.
- Dado que la mayoría de las constituciones no regulan su reemplazo antes del evento, un proceso que es al mismo tiempo consensual, incluyente y participativo sólo puede ser provisto cuando el nivel de conflicto entre fuerzas pro-reforma y anti-reforma es bajo o cuando su balance de poder es relativamente parejo

Procesos Constituyentes en Regímenes Democráticos, 1900-2015

Country	Year	Region	Sub-region	Reason for replacement
DENMARK	1915	Europe	Western	Democratization
DENMARK	1953	Europe	Western	Democratization
FINLAND	2000	Europe	Western	Modernization
FRANCE	1958	Europe	Western	Political crisis
ICELAND	1944	Europe	Western	Democratization
IRELAND	1937	Europe	Western	Balance-of-power shift /Democratization
SWEDEN	1974	Europe	Western	Democratization/Modernization
SWITZERLAND	2000	Europe	Western	Modernization
HUNGARY	2011	Europe	Eastern	Balance-of-power shift
POLAND	1997	Europe	Eastern	Democratization
UKRANIE	1996	Europe	Eastern	Democratization/State-building
KENYA	2010	Africa	Sub-Saharan	Political crisis
THAILAND	1997	Asia	East	Democratization
SRI LANKA	1972	Asia	South	Balance-of-power shift
ARGENTINA	1994	Latin America	South	Balance-of-power shift
BOLIVIA	2009	Latin America	Andean	Political crisis/ Balance-of-power shift
COLOMBIA	1991	Latin America	Andean	Political crisis
ECUADOR	1998	Latin America	Andean	Political crisis
ECUADOR	2008	Latin America	Andean	Balance-of-power shift
URUGUAY	1942	Latin America	South	Democratization
URUGUAY	1952	Latin America	South	Democratization
URUGUAY	1967	Latin America	South	Democratization
VENEZUELA	1999	Latin America	Andean	Balance-of-power shift
TRIN & TOB.	1976	Caribbean	South	Political crisis/ Democratization

Características Procedimentales, 1900-2015

Country	Year	Legal Continuity	Institutional Checks	Constituent Legislature	Plural Representation	Public Consultation/ Submissions	Referendum
DENMARK	1915	YES	YES	YES	YES	NO	YES
DENMARK	1953	YES	YES	YES	YES	NO	YES
FINLAND	2000	YES	YES	YES	YES	NO	NO
FRANCE	1958	YES	YES	NO (EXECUTIVE)	NO	YES	YES
ICELAND	1944	YES	NO	YES	YES	NO	YES
IRELAND	1937	YES	NO	YES	YES	NO	YES
SWEDEN	1974	YES	YES	YES	YES	NO	NO
SWITZERLAND	2000	YES	YES	YES	YES	YES	YES
HUNGARY	2011	YES*	NO	YES	NO	YES	NO
POLAND	1997	YES	YES	YES	YES	YES	YES
UKRANIE	1996	YES	NO	YES	YES	NO	NO
KENYA	2010	YES	YES	YES	YES	YES	YES
THAILAND	1997	YES	YES	YES	YES	YES	NO
SRI LANKA	1972	NO	NO	YES	NO	YES	NO
ARGENTINA	1994	YES	YES	NO (CONVENTION)	YES	NO	NO
BOLIVIA	2009	YES	YES	NO (CONVENTION)	YES	YES	YES
COLOMBIA	1991	NO	YES	NO (CONVENTION)	YES	YES	YES
ECUADOR	1998	YES	YES	NO (CONVENTION)	YES	NO	YES
ECUADOR	2008	NO	NO	NO (CONVENTION)	NO	YES	YES
URUGUAY	1942	YES	YES	YES	YES	NO	YES
URUGUAY	1952	YES	YES	YES	YES	NO	YES
URUGUAY	1967	YES	YES	YES	YES	NO	YES
VENEZUELA	1999	NO	NO	NO (CONVENTION)	NO	YES	YES
TRINI & TOB.	1976	YES	NO	YES	NO	NO	NO
TOTAL	24	20 (0.83)	16 (0.66)	17 (0.71)	18 (0.75)	11 (0.46)	16 (0.66)

*Contested

Relación entre variables procedimentales

Procedural Feature	Procedural Feature				
	Legal Continuity	Institutional Checks	Constituent Legislature	Plural Representation	Popular Participation
Legal Continuity	—	0.39 (*)	0.34	0.43 (**)	- 0.59 (***)
Institutional Checks	0.39 (*)	—	-0.11	0.56 (***)	-0.25
Constituent Legislature	0.34	-0.11	—	0.27	-0.48 (**)
Plural Representation	0.43 (**)	0.56 (***)	0.27	—	-0.47 (**)
Popular Participation	-0.59 (***)	-0.25	-0.48 (**)	-0.47 (**)	—

*** p < 0.01; ** p < 0.05; * p < 0.1

Proceso Constituyente y Diseño Constitucional

Process	Executive Power	Legislative Power	Judicial Independence	Number of Rights
Legal Continuity	0.17	0.20	0.20	-0.29
Institutional Checks	0.18	0.11	0.05	0.08
Constituent Legislature	-0.34	0.52 (***)	0.16	-0.09
Plural Representation	-0.13	0.32	0.19	0.32
Checks+ Legislature + Representation	-0.29	0.45 (**)	0.20	0.18
Popular Participation	0.21	-0.48 (**)	-0.13	0.44 (**)

*** p < 0.01; ** p < 0.05; * p < 0.1

Proceso Constituyente, Cumplimiento de la Constitución, y Democracia

Process	Legislative Constraints	Judicial Constraints	Equality & Liberty	Liberal Component	Electoral Democracy
Legal Continuity	0.52 (***)	0.33	0.06	0.41 (**)	0.33
Institutional Checks	0.46 (**)	0.47 (**)	0.29	0.48 (**)	0.39 (*)
Constituent Legislature	0.31	0.13	-0.12	0.17	0.33
Plural Representation	0.31	0.26	0.12	0.29	0.21
Checks + Legislature + Representation	0.48 (**)	0.38 (*)	0.12	0.42 (**)	0.41 (**)
Popular Participation	-0.60 (***)	-0.31	0.09	-0.39 (*)	-0.39 (*)

*** p < 0.01; ** p < 0.05; * p < 0.1

Casos Comparados

Hungary 2011-Kenya 2010

Similarities: Legal continuity, constituent legislature, citizen involvement.

Difference: institutional checks and plural representation in Kenya and lack of them in Hungary

Outcome: deterioration of liberal and electoral democracy in Hungary and improvement in Kenya

Extra-procedural explanatory variables: high conflict but even distribution of power in Kenya, high conflict but uneven balance in Hungary

Colombia 1991-Ecuador 2008

Similarities: Legal discontinuity, special convention, citizen involvement.

Difference: institutional checks and plural representation in Colombia and lack of them in Ecuador

Outcome: deterioration of liberal and electoral democracy in Ecuador and improvement in Colombia

Extra-procedural explanatory variables: low conflict and even distribution of power in Colombia, high conflict and uneven balance in Ecuador

Discusión

1. The main challenge of constitutional replacements in democratic regimes is how to produce transformations that deepen democracy while preserving the institutions that make the regime democratic.
2. The best way to achieve a balance between democratic transformation and continuity is to have a constitution that regulates its own replacement according to certain procedures: institutional checks in activation and implementation, plural representation in the constituent body, and popular participation that complements inclusiveness at elite level.
3. When constitution-making procedures are created for the occasion they are themselves a by-product of precedent conditions, in particular the factors that led to replace the constitution and the level of conflict and distribution of power between pro-reform and anti-reform forces.