

Constitutional Innovation and Imitation in the American States

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Abstract

The widespread adoption of written constitutions is one of the most notable developments in institutional design in politics over the past 250 years. The American states offer a rich place to study constitutional innovation and imitation as being among the first political bodies to adopt constitutions and also given that they often replaced them, in both cases innovating and learning from one another. In this paper, we use quantitative text analysis to identify constitutional innovation and to investigate patterns of imitation. First, we find substantial textual borrowing between state constitutions. On average, 20 percent of a state's constitutional language was borrowed directly from another state constitution. Second, states were more likely to borrow text from geographically proximate states, from temporally proximate state constitutions, and from states that shared similar partisan profiles. Finally, we offer a brief discussion of the most influential constitutions as an exploratory example for extending our approach of identifying textual innovation and imitation. These findings offer new contributions to both the study of constitutional design and institutional diffusion.

Keywords

policy diffusion, policy innovation, constitutional change, state constitutions, state politics, federalism, federal, state, text analysis

The widespread adoption of written constitutions is one of the most notable developments in institutional design in politics over the past 250 years. Constitutions are commitment devices intended to overcome principal–agent problems among political actors and between representatives and the represented, and which establish and entrench political powers, institutions, and rights (Hardin 1989, 2013; Hirschl 2013; North and Weingast 1989). Yet, constitutions are also subject to revision and replacement. Indeed, although the U.S. Constitution is often taken to be a model, in actuality it is an outlier among nations in several respects. Unlike the U.S. Constitution, most constitutions endure a short time, are considerably longer and more detailed, and undergo frequent revision and replacement (e.g., Elkins, Ginsburg, and Melton 2009; Versteeg and Zackin 2014, 2016). The frequent revision and replacement of constitutions makes possible the diffusion of institutional design as states learn from one another (Goderis and Versteeg 2013).

To examine constitutional innovation and imitation, we turn to a particularly rich area for studying the origins and spread of constitutionalism: the American states. Today, there are about two hundred sovereign states across the world, and only a handful do not have written

constitutions, notably the United Kingdom. The near universal adoption of written constitutions is part of a trend stretching back over two centuries. Fifty years ago, there were about 150 written constitutions for approximately 170 states, and 100 years ago, there were about 60 written constitutions for approximately 75 states (Lutz 2006, 4). In turn, if we go back 250 years, there were precisely zero written constitutions. As Zink (2009, 442) explains, “The worldwide prevalence of written constitutions today may obscure the fact that written constitutions were virtually unprecedented in America’s revolutionary and founding era.” The principal incubator of constitutional development from the revolutionary period forward was the American states. These early state constitutions were at the forefront of a lively experiment in constitutional design that produced sixty-four constitutions by the Civil War, as compared with about twenty written constitutions

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across the entire world at that time, and to date 149 constitutions have been adopted in the American states. Furthermore, in contrast to the U.S. Constitution, these state constitutions are similar to constitutions across the world in terms of duration, length, and detail, and relatively frequent revision and replacement (especially Versteeg and Zackin 2014). If the prevalence of written constitutions across the world over the past two centuries is a notable institutional development, the active tradition of constitution-making in the American states is a prime place to study constitutional innovation and imitation.

In this paper, we identify constitutional innovation and examine patterns of imitation by analyzing the texts of the American state constitutions as well as the U.S. Constitution. Previous studies have offered useful accounts of the historical development of American state constitutions and have identified periods of constitutional development (especially Tarr 1998; see also Dinan 2006; Fritz 2002). Other studies have focused on various regions and periods of constitution-writing (e.g., Bridges 2013; Fritz 1994; Green 1930; Herron 2017). Furthermore, there are numerous anecdotal accounts of the making of constitutions in various states. Yet, these existing studies are almost entirely historical-qualitative in approach. Our aim in this paper is to build on these studies by examining constitutional innovation and imitation through systematic quantitative analysis. Such systematic analysis enables us, first, to ascertain the levels of innovation and imitation in constitutional language and, second, to identify the magnitude of the geographic, temporal, and political factors that predict imitation, including the conditional nature of these various factors, in a way that previous studies are unable to do.

Our approach to analyzing innovation and imitation in state constitutions builds on the theory and methods used in studies of policy diffusion. Much of this literature has focused on policy diffusion in the American states (e.g., Berry and Berry 1990, 1992; Gray 1973; Shipan and Volden 2006; Volden 2006; Walker 1969), but studies have increasingly examined policy and institutional diffusion in the international realm (for an overview, see Graham, Shipan, and Volden 2013). Some previous studies of constitution-making have applied the concepts used in studies of diffusion, either when developing a conceptual framework for studying transnational constitutionalism (Elkins 2010; Goderis and Versteeg 2013) or for developing hypotheses concerning the diffusion of constitutional provisions in the American states (Tarr 1998, 50–55). These studies have not, however, subjected this theoretical and methodological framework to systematic empirical testing. Within this framework, we analyze the similarity of text across state constitutions to identify innovation and patterns of imitation. Textual analysis has been employed in several recent studies of policy diffusion (e.g., Hinkle 2015; Jansa, Hansen, and Gray 2018; Linder et al. 2020;

Wilkerson, Smith, and Stamp 2015) but has not been used to study constitution-making.

We begin with an overview of constitution-making in the American states to motivate the hypotheses we test regarding constitutional imitation. In our analyses, we identify innovative constitutional text and then study the determinants of textual borrowing of these innovations in later constitutions. Our results reveal that, on average, 20 percent of a state's constitutional language was borrowed directly from another state constitution. We find that a combination of temporal, geographic, and partisan factors predict imitation, including in combination with one another. Finally, we identify the most influential state constitutions in terms of textual imitation and offer a brief discussion of their substantive influence. We find that these influential constitutions tended to be early adopters grappling with newly emerging political and economic problems. The findings of this section illustrate how our approach can be extended to identify other patterns of the diffusion of constitutional provisions.

Constitution-Making in the American States

The idea that written constitutions were requisite to frame governments and to direct the exercise of political power in accordance with the will of the people originated most importantly in the theory and practice of the newly independent United States. Indeed, one scholar has gone so far as to argue that the Americans “invented modern constitutionalism” (Lutz 1998a, 1). Present at the creation, Thomas Paine ([1791] 1984, 70–72) vociferously agreed, arguing in *The Rights of Man* that a written constitution was necessary for legitimate government, and therefore extolled the American experiment in constitutionalism and criticized the British for lacking a “proper” constitution. Constitutionalism so understood “was uniquely American” in two important ways: first, that written constitutions were held to prevail over all other sources of law; second, that the constitution itself, as well as the power to alter or abolish it, was held to derive from the people (Fritz 1994, 950; see also Fritz 2002; Wood 1969, 259–68). Writing in his *Commentaries on the Constitution*, Joseph Story ([1833] 1987, Section 315) claimed,

But considered in light of an original compact, the American Revolution seems to have given birth to the new political phenomenon [of written constitutions]. In every state a written constitution was framed, and adopted by the people in their individual and sovereign capacity and character.

When writing their constitutions, the newly independent states had few direct precedents. To be sure, they were heirs to a tradition going back over 150 years of

proto-constitutional documents such as covenants and charters, and this tradition influenced the making of state constitutions and then the U.S. Constitution (see Lutz 1988b; Stourzh 1988, 46–47). For example, most of the colonies had a separate governor (appointed by the crown), a council that advised the governor and exercised judicial functions, and an elected legislative assembly (see Green 1930, chap. 1). These general features figured in the state constitutions adopted upon independence, and later in the U.S. Constitution, but they ultimately took quite different form, for example, by replacing a royally appointed governor with an executive initially dependent on the legislative assembly and later increasingly independent and popularly elected.

The original thirteen states faced the task of constitutional design when they were asked in 1775 by the Continental Congress to amend their existing documents or to create new ones to reflect their impending independent status. Although they faced common challenges and were often aware of what one another were doing, the states largely worked independently, especially given the constraints of time and then warfare. As we shall see, there was little imitation during this early period. All but two of the original thirteen states adopted new constitutions. Some states quickly replaced their original constitutions during this period, with South Carolina replacing its 1776 document in 1778 and New Hampshire doing likewise with its 1776 constitution in 1783. What is remarkable is that these states were the only political entities in the world at the time to have such fundamental documents at all.

After the adoption of the U.S. Constitution in 1788, a wave of constitution-writing occurred for three reasons. First, like the drafters of the U.S. Constitution, who experienced the deficiencies of the Articles of Confederation as well as the successes and failures of the seventeen state constitutions adopted by that time, the states found their earlier constitutions inadequate and adopted new constitutions. The adoption of the U.S. Constitution posed new challenges for existing and then new states in structuring government within the new federal system, for example, needing to create voting districts and to determine apportionment, contributing to the need for new constitutions.¹ Throughout this process, states learned from their own successes and failures, and from those of other states.

Second, beginning with the admission of Vermont in 1791, states entering the union wrote their own constitutions. Although there is no constitutional requirement for a new state—or any state—to have a written constitution, traditional practices seem to have presumed as much. By the time of the Civil War, in addition to the thirteen original states, there were twenty-one newly admitted states; a wave of admissions in the late nineteenth century brought the total to forty-five; and then five more states were admitted during the twentieth century, concluding with

Alaska and Hawaii in 1959. In writing new constitutions, drafters need not begin *de novo* but could build on existing state constitutions.

Third, it became common for states to adopt new constitutions in the face of changing political, social, and other circumstances. Most states have had at least two constitutions; nineteen states have had at least four, including two with nine (Georgia and Louisiana). The periodic character of the adoption of new constitutions is suggested by the fact that new adoptions tended to happen in waves. For example, several states adopted new constitutions in the 1830s and 1840s for at least two reasons (see Tarr 1998, 102ff.). First, changing ideas about suffrage and demographic shifts led to the adoption of new constitutions, which expanded suffrage and addressed issues of legislative malapportionment. Second, repeated economic crises created fiscal problems for the states due to indebtedness by state and local entities, leading to the adoption of new constitutions that placed limits on public debt. Third, notable and anomalous period of constitutional activity occurred due to the Civil War: (1) with the writing of secessionist constitutions, (2) with the adoption of constitutions under Reconstruction, (3) with the adoption of new constitutions by Southern states after Reconstruction which included more restrictive voting rules and similar measures, and (4) relatedly, when the long shadow of slavery obliged some states, mostly in the South, to create new constitutions in the 1960s and 1970s due to the Supreme Court decisions regarding voting rights. We note that if there is a periodic character to the adoption of new constitutions, then the geographical, temporal, and political factors which have been identified as predicting constitutional imitation should be conditional on one another, and so we examine such effects in our analyses.

Adopting new constitutions became somewhat less common beginning toward the end of the nineteenth century as amendment became increasingly common and as provisions for constitutional referenda and initiative have been adopted (see Dinan 2006, 2018). Indeed, the past fifty or more years has witnessed a dearth of new constitutions, apparently because the alternative routes now more commonly utilized have the advantage of not having to overcome as much institutional inertia.

In sum, from the very beginning of constitution-writing in the United States, the process has been conceived as an experiment in institutional design. As states gained experience with writing and rewriting constitutions, the attitude that constitutional design was an experiment of trial and error gained force (see Dinan 2006, 4, 34; Fritz 1994, 973; Tarr 1998, 47). When adopting or replacing their constitutions, then, whether adopting new constitutions or replacing existing ones, states increasingly “looked beyond their borders for solutions” and engaged in “extensive borrowing” (Tarr 1998, 66, 70, 91). They were aided in doing so through readily available compilations of existing state

constitutions (see especially Baum and Fritz 2000), and numerous anecdotes can be found in the debates in state constitutional conventions of arguments for borrowing from other states (see Dinan 2006).

Explaining the Diffusion of Constitutional Innovations

We now turn to an analysis of innovation and imitation of constitutional text across the American states. First, as for constitutional innovation, we want to stress at the outset that we do not attempt to predict the timing of the adoption of constitutions, and therefore the innovation and imitation that occur within them, because in many important respects the need or opportunity to innovate is exogenously caused. Second, having identified constitutional innovations in terms of innovative text, we then study the determinants of how these innovations diffused in later state constitutions.

We draw on the literature on policy diffusion for our theoretical framework for analyzing constitutional diffusion captured by textual imitation. There is broad agreement with this literature on the main mechanisms of diffusion, although scholars have found it difficult to isolate and then empirically test these mechanisms: (1) *learning*, (2) *competition*, (3) *imitation* or *emulation*, and (4) *coercion* (see Shipan and Volden 2008). As for our study, constitutional imitation could involve *emulation*, for example, in text articulating individual and social rights or aspirational language in preambles. It could also reflect *competition*, although competitive actions such as tax rates are almost never parts of the body of constitutions. Except in the anomalous case of the Reconstruction constitutions forced on the defeated Southern states, diffusion among state constitutions does not involve *coercion*. Nonetheless, we do not attempt to distinguish these mechanisms, theoretically or empirically. Instead, we conceive of diffusion in our study as *learning*, broadly conceived. We do so for two reasons. First, the constitutional text we examine most often pertains to political institutions as established, defined, and regulated in that text in such a way that allows for states to learn from one another's constitutional innovations and manifest that learning through textual imitation. Second, and related, we know from previous studies that constitution-makers did precisely that, aided in part by compilations of existing state constitutions.² Finally, on a terminological note, when we use the term "imitation," we are not referring to the diffusion mechanism of *imitation* or *emulation*, as conceptualized in the diffusion literature (which focuses on the qualities of the entity someone else wishes to emulate), but instead to the similarity of textual language we identify as innovative text in an earlier constitution which is then imitated in a later constitution.

Predictors of Constitutional Imitation

We also draw on the policy diffusion literature for hypotheses to test in our analysis of constitutional diffusion. Some of these hypotheses are entertained in less formalized fashion by scholars who have studied American constitutional development, notably by Tarr (1998, chap. 2). We subject them to systematic empirical testing that enables us to identify the magnitude of the geographic, temporal, and political factors that predict imitation. Furthermore, our exhaustive systematic analysis allows us to examine the *conditional* nature of these factors. As each of these explanations are strongly correlated with one another, we offer new insight by examining each explanation's relationship with imitation, conditional on the other explanations.

Geographic influences. A common hypothesis in the diffusion literature is states (or other political entities) are more likely to adopt policies from other states that are geographically contiguous or less distant. Distance may influence diffusion in at least two ways. First, distance may reduce communication and hence diffusion may attenuate with *absolute distance*. Second, states may look to existing states and thus distance may be judged relative to other available options. Geographic proximity has been suggested as a possible explanatory variable in the literature on state constitution-making (e.g., Fritz 1994, 980) but has not been tested empirically. Diffusion should attenuate with distance relative to other potential source states at the time the document was enacted. We measure *relative distance* in three steps. First, we calculate the average distance between the focal state and each state that existed when the focal constitution was passed. Second, we subtract this average from the absolute distance in the dyad. Third, we divide this difference by the standard deviation of the distances between the focal state and existing states.

In addition to distance-based measures of geography, another potentially important geographic determinant of imitation might be found in the unique regional politics of the South. Several scholars have argued that the South had a distinct approach to constitutionalism from the outset and through its history due to the existence of slavery (e.g., Green 1930; Herron 2017; Tarr 1998, 128–31). As noted above, the primary reason for the South's distinctiveness for our purposes was due to the Civil War: constitutions written upon secession (which we do not analyze), during Reconstruction, during post-Reconstruction, and the long shadow of the civil rights era. Accordingly, we denote whether a pair of states both belonged to the Confederacy.

Temporal influences. Another common hypothesis to explain the likelihood of policy diffusion advanced in the

policy diffusion literature is time, with a policy being more likely to be imitated by a state closer in time to another state adopting the policy. We therefore examine the time that passed or *temporal difference* between the ratification of any pair of state constitutions. We can also further use the *temporal difference* variable to address patterns of constitutional development across time due to the fact, mentioned above, that there seem to be waves of states adopting new constitutions due to changing political, social, and other circumstances. This hypothesis might explain *when* constitutions are replaced, but we take this as exogenous. However, insofar as states face similar problems as other states due to these national political forces, we should see states imitating other states in close temporal proximity.

Partisan congruence. Students of institutional design have emphasized that design choices are the result of political competition and compromise. As Epstein and Knight (2003, 209) explain regarding constitutional borrowing:

Decisions are the strategic choices of the relevant political actors and reflect those actors' relative influence, preferences, and beliefs at the moment when the new institution is introduced. It is the variation in influence, preferences, and beliefs that leads actors to borrow or not from one or another society. (see also North and Weingast 1989)

Recent studies of policy diffusion have likewise stressed that policy adoptions should be viewed as strategic behavior relating to the political effects of policies, including in relation to the ideological positions of the relevant political actors (Gilardi 2010). Within studies of state constitutional development, there is also recognition that constitution-making might be part of the process of "ordinary politics" of conflicts among groups seeking power (Tarr 1998, 57–58). In this light, then, we evaluate the role of partisan conflict by examining whether states tend to imitate other states with similar political profiles. We operationalize political profiles by including a variable that identifies the composition of the state legislature at the time of the adoption of a constitution (or as close to that time as possible), distinguishing between Democratic–Republican Party, on one hand, and the Federalist, Whig, and successor opposition parties, on the other.

Examining Constitutional Imitation with Text Analysis

Previous research on state constitutional development is almost all qualitative, but simply reading the texts of 150 documents—each with numerous articles and complex subsections—makes it difficult to systematically detect trends or patterns. Moreover, reading each text in isolation

hampers the ability to identify diffusion patterns of constitutional innovations. To overcome these obstacles, we turn to a technique well suited to detecting meaningful patterns from language: machine-based text analysis. Our research strategy is to use text analysis to search for evidence of innovation and imitation across state constitutions. That is, we searched for strings of text that first appear in a certain constitution and then appear in later constitutions. Tracking borrowed text allows us to identify innovative text, observing when and where it is diffused across new constitutions.

We include in our corpus all state constitutions and the U.S. Constitution.³ We analyze the body of the texts of these constitutions as they were initially written and adopted. Although studying the patterns of diffusion of constitutional amendments is a worthy endeavor, the differences in the processes of proposing and adopting amendments as compared with constitutions, the sheer volume of amendments, and the already large amount of constitutional text we do analyze lead us to restrict our focus here.

We obtained the text of each state document from *The National Bureau of Economic Research/Maryland State Constitutions Project* (<http://www.stateconstitutions.umd.edu/index.aspx>). We then prepared the text following standard text analysis procedures (e.g., Silge and Robinson 2017), transforming all text to lowercase, removing punctuation, removing *stop words* defined by the System for the Mechanical Analysis and Retrieval of Text (SMART) information retrieval system, and then *stemming* the remaining words using the Snowball algorithm (<http://snowballstem.org/>).⁴ Substantively, removing stop words means we excluded commonly used words such as "and," "of," and "to." Stemming means to convert word variants into a single root word. For example, all instances of "legally," "legality," or "legalize" are transformed to "legal." These transformations allow us to detect substantively important cases of diffusion we would otherwise miss where text from one constitution enters another constitution with minor stylistic revisions.

After cleaning the text, we decomposed each document into its constituent five-grams—sequences of five consecutive words. No a priori method exists for choosing the optimal length of strings, but we chose five-word strings because they are long enough to convey meaningful ideas yet not so long as to exclude all but the most blatant forms of textual imitation. Although we decompose each document into its constituent five-grams, for simplicity's sake in our discussion of results we will refer to a document's five-grams as its "text."

Our focus is to identify which parts of the constitutions are innovative and which are imitated. We define *innovative text* as the set of five-grams in a focal constitution that had not been used in a prior document in our

corpus. *Imitated text* therefore reflects the complement of innovative text, including only the five-grams that can also be found in one or more prior constitutions.

With these definitions, we can examine diffusion by calculating the similarity between a new, focal constitution and a prior, source constitution. We measure similarity as the *proportion borrowed*, which equals the proportion of a focal constitution's five-grams that appeared first in our corpus in the source constitution. This similarity can shed light on the extent that a source constitution's ideas diffused to subsequent constitutions. It cannot reveal, however, whether a focal constitution took the text directly from a specific source or instead imitated it from another constitution that had previously imitated the source text (Hinkle 2015, 1004). Although we believe the choice of five-grams is appropriate given our interests, other reasonable choices may yield different conclusions (Denny and Spirling 2018). We therefore evaluated the sensitivity of our results using both three-grams and seven-grams (presented in Section B of the Supplementary Information). These alternative specifications yielded conclusions consistent with those presented below.

Results

In presenting the results of our analyses, we proceed in three stages. First, we present the patterns of constitutional innovation and imitation over time and discuss the substantive extent of imitation or borrowing in different periods. Second, we present the results of bivariate analyses to explore our main hypotheses. Third, we present the results from multiple regression analysis to assess the relative predictive power of these hypothesized factors, *conditional* on each of the other factors.

Patterns of Constitutional Imitation

The patterns of innovation and imitation for each constitution are displayed in Figure 1. To visualize both the level of borrowing and the temporal influence of constitutions, Figure 1 presents the results as area plots. For each focal constitution along the x -axis, the dotted line displays the proportion of its text first used in any previous constitution excluding the focal state's prior constitutions. For instance, Figure 1A shows that 48 percent of 1819 Alabama's text originated in other states' prior constitutions. In turn, the shaded regions display the proportion of the focal constitution's text first used in the corresponding source constitution. For example, 25 percent of the text in the 1786 Vermont Republic constitution came from Pennsylvania's 1776 constitution. The plots focus on the five most influential source constitutions, where we define influence as the proportion borrowed, summed over all constitutions within the plot's time span

(Supplementary Information Figure A1 displays the influence of every constitution by this metric). Each plot includes only focal constitutions written within the corresponding years but includes all source constitutions. Thus, for example, the U.S. Constitution and Mississippi's 1817 constitution are two of the most influential source constitutions in each plot.

To assess the substantive meaning of the magnitude of constitutional innovation and imitation, it is useful to establish a baseline of cases where the writing of constitutions is done independently and imitation is not possible. An approximation of this case exists among the original thirteen states. Between 1776 and 1780, all but two of the original thirteen states wrote new constitutions (the exceptions being Connecticut and Rhode Island). The magnitude of the imitation among these states is striking for being almost nonexistent. The average amount of borrowed text among the eleven original states that did adopt a constitution was 3 percent, with a range of 0 to 12 percent.⁵ Four state constitutions had no borrowing whatsoever, and three other states had 1 to 2 percent borrowing. North Carolina (1776) had by far the greatest amount of borrowing, with 12 percent total and approximately equal amounts from each of five states. Overall, what little borrowing there was across these states is generally scattered, with the most conspicuous case of borrowing being from the portion of the Virginia's 1776 constitution containing a Bill of Rights, which was imitated by seven other states and in most cases accounted for the majority of what little borrowing did occur.

Looking now at all the state constitutions adopted after the original thirteen states, we see the extent of borrowing, especially in relation to the baseline case of the original thirteen. We divide these cases into potential interstate borrowing, which is when a new state constitution might borrow from the constitution from a different state, and potential intrastate borrowing, which is when a state adopts a new constitution and might borrow from its earlier constitution(s). For interstate borrowing, the average proportion of borrowed text for 126 constitutions is 0.2 ($SD = 0.12$). That is, a fifth of the text of these constitutions, on average, come from another state's constitution. The range of 0.02 to 0.55 indicates that *every* constitution after the original 13 borrowed at least some text from another state's constitution. Of those 126 constitutions, eighty-eight represented new constitutions from states that had adopted a previous constitution. Looking at interstate borrowing among these eighty-eight constitutions, the average proportion borrowed was 0.16 ($SD = 0.14$) with a range of 0 to 0.73. These distributions reveal that states were borrowing as much on average from different states as they were from their own prior constitution(s). We turn now to a systematic analysis of what predicts patterns of constitutional imitation.

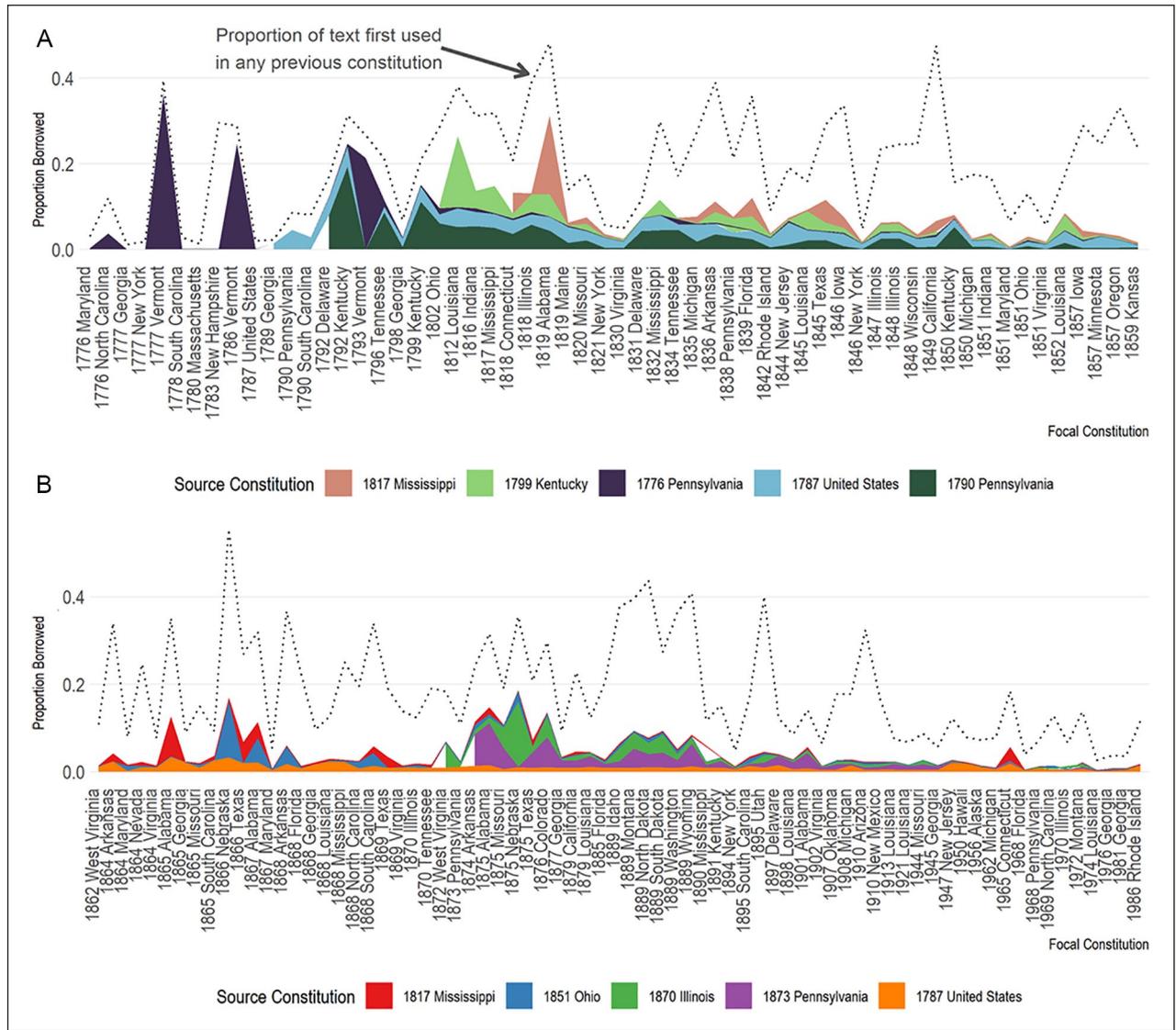


Figure 1. Proportion borrowed by state constitutions: (A) pre–Civil War constitutions, 1776–1859 and (B) constitutions after the start of the Civil War, 1862–1886.

In the plots above, the shaded regions display the proportion of all text in the focal constitution (*x*-axis) that was first used in the source constitution. The dotted lines display the proportion of all text in the focal constitution that was first used in any previous constitution.

Testing Hypotheses Regarding Textual Imitation

Geographic influences. As noted above, one conjecture is that constitution writers borrowed from geographically proximate states. This kind of geographic-based diffusion is common in modern policy adoptions. Figure 2 shows the relationship between the proportion of borrowed text and the physical distance between the focal and source states. Each point in Panel A represents a dyad that includes a new focal constitution and a potential source constitution, differentiating between states that share a border and those that do not. The *y*-axis represents the dyadic proportion borrowed and the *x*-axis represents the

distance between the centers of the two states, standardized across all dyads in the data.

Figure 2 suggests that constitutional imitation declines rapidly with distance, and also that some of the heaviest borrowing occurs in dyads that do not share a border. Panel B displays the smoothed trend.⁶ States closer to each other tend to borrow more heavily from each other and the proportion borrowed tends to decrease sharply with distance. While the expected borrowing may appear small, recall that these dyadic data average over many potential sources. Imagine a focal state borrows 30 percent from a source state, reflecting a substantively large case of borrowing. If we assume this is the only source from which it borrows among, say, fifty available

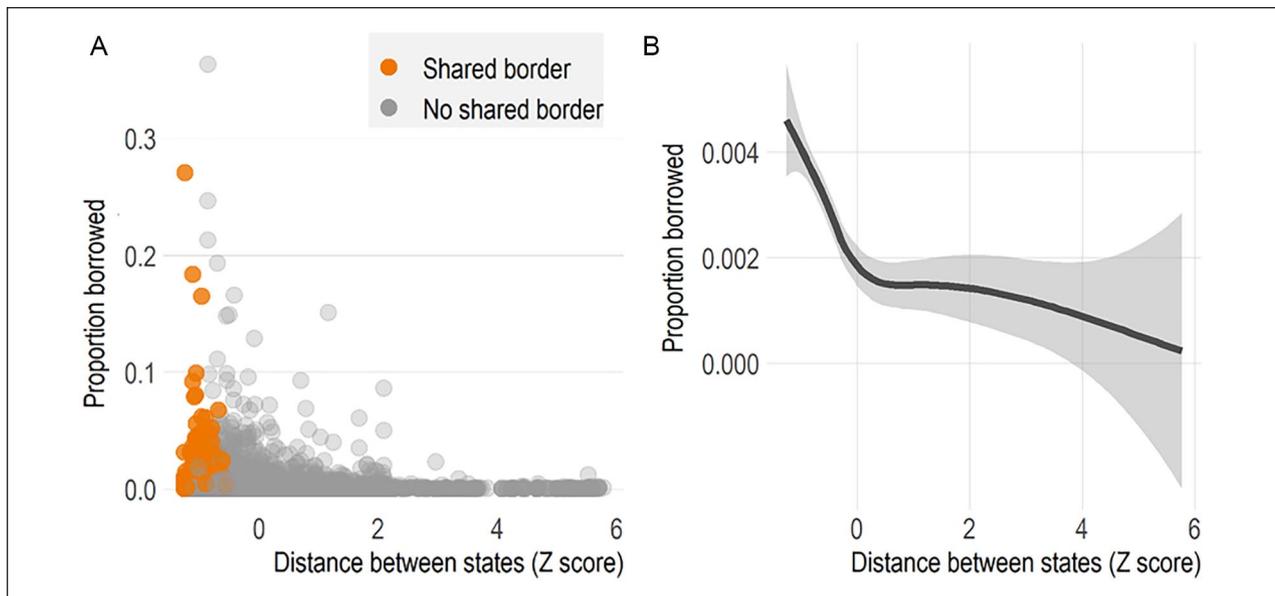


Figure 2. The proportion borrowed tends to decrease with the geographic distance between the focal and source states: (A) scatterplot and (B) smoothed relationship.

The plots include all dyads except same-state dyads and those that include the U.S. Constitution.

constitutions, the average proportion borrowed across the relevant dyads would be 0.006 $\left(\frac{0.3 + 49 \times 0}{50}\right)$. A small dyadic average in our estimates therefore reflects a great deal of borrowing within a few dyads.

Temporal influences. The next possibility is that constitution writers are more likely to imitate other state constitutions adopted in relatively closer temporal proximity, either because they were imitating the latest innovations in constitutional provisions or, as we noted above, because they were facing similar political, social, and other problems in a given time period. Figure 3 examines this hypothesis by displaying the relationship between the proportion of borrowed text and time in years between when the focal and source constitutions were enacted.

Overall, Figure 3 reveals that constitutional imitation is more likely to occur in close temporal proximity and that the likelihood of imitation declines rapidly with time, as predicted. Panel A differentiates same-state dyads from interstate dyads because a given state is likely to face many similar problems over time. Nonetheless, we see that states do not appear to borrow more heavily from their older documents than the temporal difference would predict. Panel B shows that states were more likely to borrow from constitutions written in temporal proximity. This pattern remains unchanged if we estimate separate curves for same-state and interstate dyads. After about a century, the expected proportion borrowed goes to zero.

Partisan congruence. Finally, Figure 4 examines the possibility that state constitution-making was part of the

process of political conflict and evaluates this claim by examining whether states tended to imitate other states with similar partisan profiles. Panel A shows that, on average, state constitutions borrowed more from other states that shared a similar partisan profile. Dyads with similar party compositions borrowed almost 50 percent more than opposite-party dyads. Panel B demonstrates that these differences dissipate as the source constitution grows older. States tend to borrow most heavily from *recent* constitutions from states with legislatures with the same partisan composition. After about fifty years, however, there appears to be little differences in borrowing patterns based on partisanship. This result is consistent with our general result concerning the diminishing incidence of borrowing over time, but may also be due to the fact that the parties themselves change over time, in part because they adapt to the very same political, social, and other challenges that appear to lead states to adopt new constitutions.

Comparing Explanations for Borrowing

The empirical relationships uncovered in the previous section identified the separate, independent relationship of geographic, temporal, and political factors on imitation and innovation. The next question is what explanatory power the factors hold in relationship to each other.

To achieve this, Table 1 displays a series of regression models which take the form $y_{ij} = \alpha_{ij} + X_{ij}\beta + e_{ij}$. As in the graphical analysis, the observations in the regressions

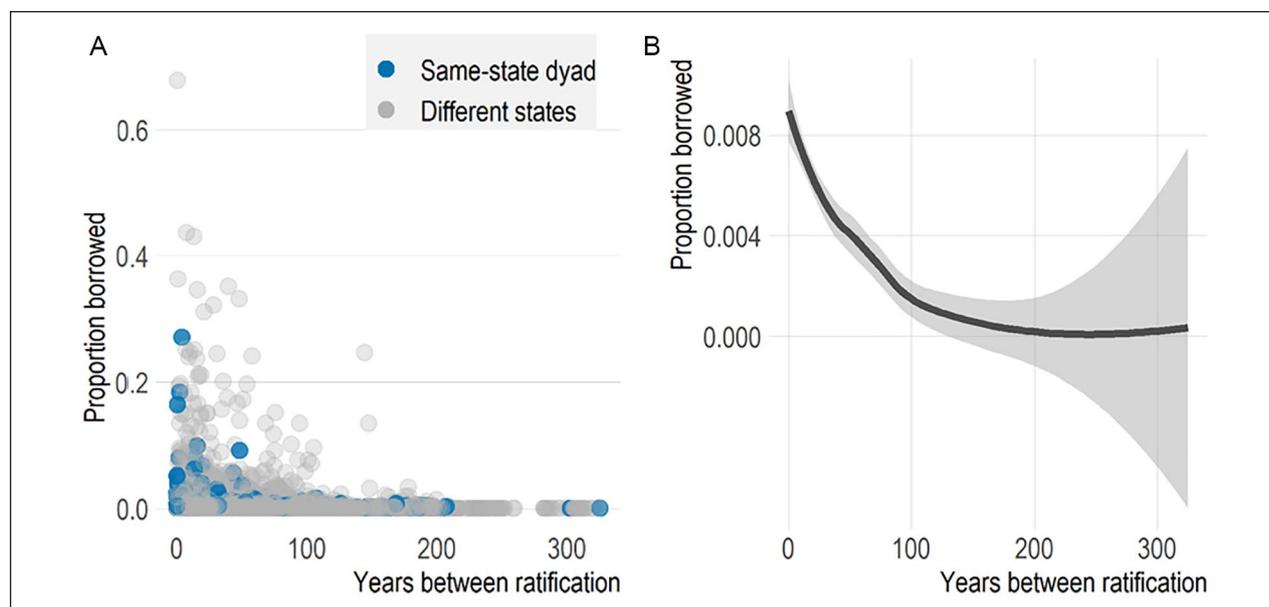


Figure 3. The proportion borrowed tends to decrease with the time between the ratification of focal and source constitutions: (A) scatterplot and (B) smoothed relationship.

are dyadic (see Volden 2006), consisting of a newer, focal constitution i and an older, source constitution j . And the outcome variable y remains the proportion borrowed, but we standardize the measure to ease interpretation. The intercept α_{ij} is subscripted because we fit multilevel models that allow the intercepts to vary across focal and source constitutions.⁷ This specification accounts for clustering that occurs through repeated observations of each document across multiple dyads. In the table, each column displays estimates from a set of explanatory variables X .

Model 1 displays the estimates for two baseline predictors: whether the focal and source constitutions come from the same state and whether the source is the U.S. Constitution rather than a state constitution. Model 2 focuses on the geographic predictors. As Figure 2 suggests a nonlinear relationship, we also include a squared term for the distance measures.⁸ If our goal was to maximize the fit, we might add a series of higher degree polynomial terms in addition to the squared terms. Such an endeavor would be misplaced, however, because no regression model can capture the variety of choices that the constitutional committees made. Rather, we see these regressions as heuristic devices to compare explanations and motivate our case studies, below.

Model 3 regresses the proportion borrowed on the temporal predictors. We again include a squared term for the temporal difference in the dyad. We also include covariates measuring the year of ratification for both the focal and source documents. These variables allow us to examine linear trends in the extent that documents borrowed or

were borrowed from. Model 4 examines partisan congruence with indicator variables. The omitted reference category reflects a mixed dyad in which one or both states featured divided government or an otherwise even division of power. Model 5 includes all the predictors from the previous models.

The models suggest that states borrowed from less distant states, particularly relative to the other existing states at the time the constitution was written. Sharing a border did not tend to predict diffusion after adjusting for the other covariates. The Model 5 coefficient associated with the same-state dyad indicator suggests that, after adjustment, states borrowed about three standard deviations more text from their own previous documents than from other states' constitutions. Likewise, states borrowed about four-tenths of a standard deviation more text from the U.S. Constitution compared with state constitutions, after adjustment. While one might expect southern states to borrow more heavily from one another, our results suggest otherwise; the Model 5 coefficient associated with the southern dyad indicator suggests a precisely estimated coefficient near zero.

After adjusting for geography and party, the temporal relationships shown in Figure 3 remain. In addition, we see that newer constitutions tend to borrow more from each potential source, as evidenced by the positive coefficient associated with the year the focal constitution was ratified. This pattern occurs in part because the newer constitutions tended to be longer, providing more opportunities for borrowing. Likewise, older sources tended to have more influence, as evidenced by the negative

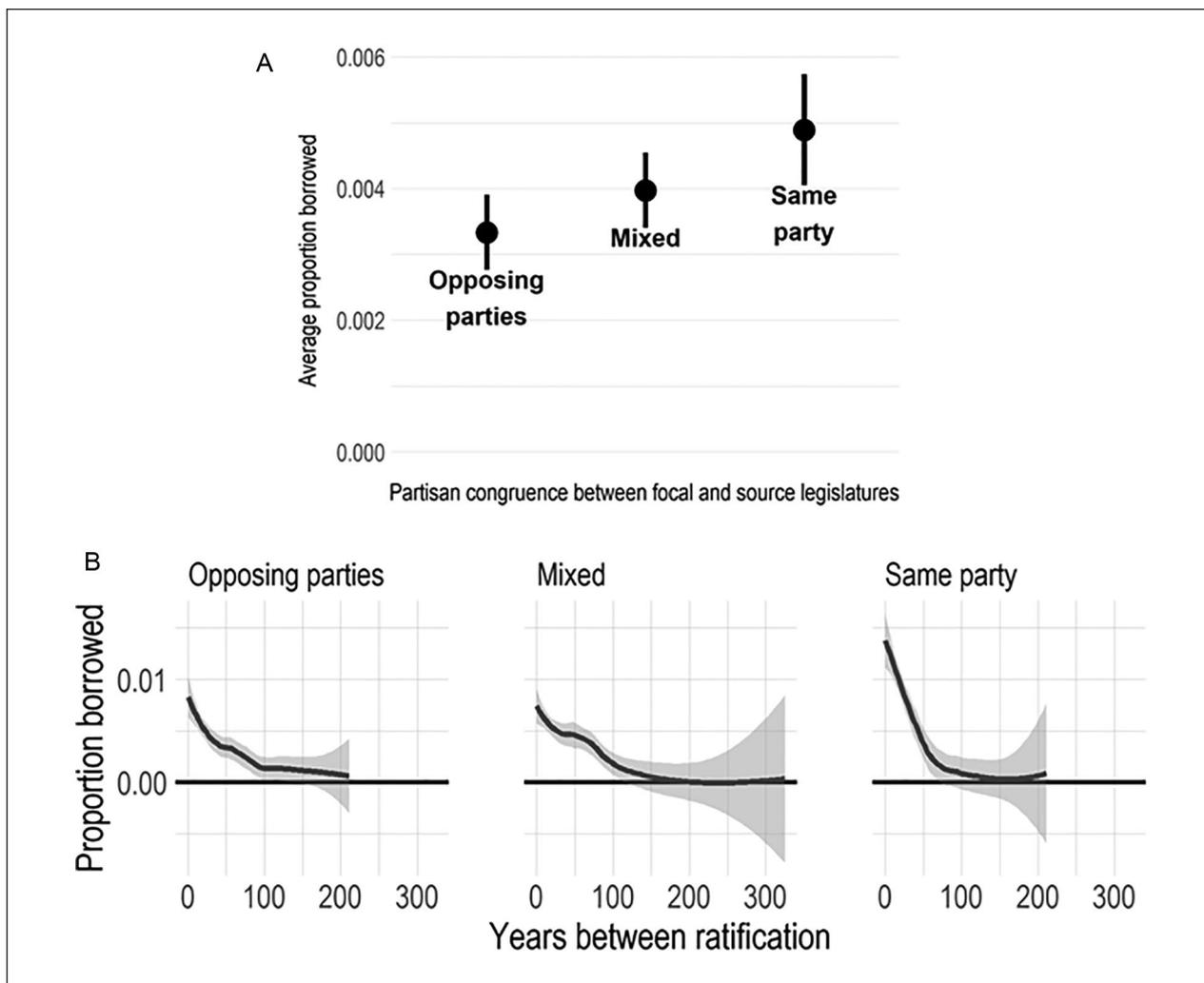


Figure 4. (A) Average proportion borrowed by the partisan composition of the states' legislatures. (B) Proportion borrowed over time by the partisan composition of the states' legislatures. In Panel A, the dots show the average dyadic proportion borrowed and the vertical lines indicate 95 percent confidence intervals. In Panel B, the y-axis shows the dyadic proportion borrowed, and the x-axis reflects the time in years between when the focal and source constitutions were enacted. The relationship is plotted separately based on the partisan congruence between the focal and source legislatures. The state-level partisanship measure is based on the partisanship composition of the two state legislative branches and, after 1790, the composition of the state's Congressional delegation. The data for state legislatures are taken from Dubin (2007). The measure reflects a state's partisan composition for the year prior to the year in which the state's constitution goes into effect or, where not available (e.g., for new states entering the unions), for the year in which the constitution was adopted. A dyad's partisan composition is coded as the same party if both states' partisan composition was controlled by Democrats or their opponents (Federalist, Whig, or Republican, depending on time period). The dyad is coded as mixed if the partisanship of either state varies across legislative branches or the Congressional delegation, or if the parties are evenly split.

coefficient associated with the year the source constitution was ratified.

Finally, we see that states with similar partisan compositions tended to borrow more heavily from one another than states with mixed legislatures. Yet, this relationship is substantively weak, reflecting a difference of only a tenth of a standard deviation. After adjustment, there is little difference in diffusion between opposite-party dyads and mixed dyads.⁹

Identifying the Substance of Constitutional Innovation and Imitation: An Illustration

We now turn to an illustration of how our approach can help identify the substance of constitutional innovation and imitation by using the textual imitation we identify as an exploratory tool to identify the substance of such innovation and imitation. As we have focused on the amount of innovation and imitation across state constitutions as a whole, we illustrate this exploratory tool by identifying

Table 1. Multilevel Linear Regressions of Dyadic Text Similarity (with Standard Errors in Parentheses).

	(1)	(2)	(3)	(4)	(5)
Same-state dyad (0 = no, 1 = yes)	3.17*	2.98*			3.00*
	(0.06)	(0.07)			(0.07)
United States is the source (0 = no, 1 = yes)	0.64*	0.29			0.41*
	(0.20)	(0.19)			(0.18)
Geographic influences					
Share a border (0 = no, 1 = yes)		-0.01			-0.01
		(0.04)			(0.04)
Absolute distance (z score)		0.06			0.10*
		(0.04)			(0.03)
Absolute distance (z score) ²		-0.00			-0.01
		(0.01)			(0.01)
Relative distance (z score)		-0.13*			-0.16*
		(0.02)			(0.02)
Relative distance (z score) ²		0.03*			0.02*
		(0.01)			(0.01)
Southern dyad (0 = no, 1 = yes)		-0.07			-0.06
		(0.04)			(0.03)
Temporal influences					
Year focal constitution was ratified			0.05		0.09*
			(0.04)		(0.04)
Year source constitution was ratified			-0.05		-0.09*
			(0.04)		(0.04)
Temporal difference (z score)			-2.98		-4.66*
			(1.91)		(2.15)
Temporal difference (z score) ²			0.04*		0.04*
			(0.01)		(0.01)
Partisan congruence (reference = mixed)					
Opposing parties (0 = no, 1 = yes)				-0.01	0.02
				(0.03)	(0.03)
Same party (0 = no, 1 = yes)				0.06	0.07*
				(0.03)	(0.03)
Intercept	0.01	0.01	-0.97	0.06	-1.77
	(0.03)	(0.03)	(2.48)	(0.03)	(2.77)
<i>N</i> —Dyads	9,589	9,589	9,589	9,589	9,589
<i>N</i> —Source constitutions	138	138	138	138	138
<i>N</i> —Focal constitutions	137	137	137	137	137
σ^2_{source}	0.03	0.03	0.03	0.03	0.02
σ^2_{focal}	0.05	0.05	0.00	0.03	0.02
$\sigma^2_{\text{residual}}$	0.72	0.72	0.95	0.95	0.71
Akaike information criterion (AIC)	24,513.8	24,477.7	26,915.5	27,027.1	24,365.5

Observations are dyadic, consisting of a newer, focal constitution and an older, source constitution. The outcome variable is the z score of the proportion borrowed.

* $p < .05$ (two-tailed).

the most influential constitutions and briefly discussing which provisions were imitated in later constitutions.

To identify which constitutions were most influential in terms of textual borrowing, we calculated the influence of every state constitution, as described in the discussion of Figure 1. Based on these influence scores, we identify the five most influential state constitutional cases: Pennsylvania (1790), Kentucky (1799), Mississippi (1817), Illinois

(1870), and Pennsylvania (1873).¹⁰ In addition, as an illustrative comparison, we also examine the influence of the U.S. Constitution on state constitutions. The central substantive theme that emerges from analyzing these constitutions is that, consistent with the observed periodic character of adopting new state constitutions, they appear to have been influential first adopters of constitutional innovations during different time periods.

U.S. Constitution. While most states adopted the basic institutional structure of separation of powers and a bicameral legislature, the influence of the U.S. Constitution of 1788 on later state constitutions is persistent but substantively quite small in terms of textual provisions. As for the basic structural similarities between the U.S. Constitution and the state constitutions, as noted above, the influence went in both directions at the time of the adoption of the U.S. Constitution because the framers drew upon experience with the state constitutions, which were themselves being revised or replaced. As for the lack of textual similarity, the specific provisions in the U.S. Constitution and the state constitutions varied substantially even within a similar institutional structure in part because these constitutions were designed for different purposes and with different assumptions about the nature of the constitution.

The influence of the U.S. Constitution on state constitutions in terms of textual similarity was quite limited. The Pennsylvania (1790), Kentucky (1792), and New Jersey (1844) were the largest adopters, each taking about 9 percent of their text from the U.S. Constitution. The most influential sections of the U.S. Constitution are those pertaining to the legislature. For instance, the language of Article 1, Section 6, which specifies rules regarding the compensation of representatives and senators shows up in a number of subsequent state constitutions. In addition, rules specifying the structure of the appropriations process in the legislature also were borrowed from the U.S. Constitution. Notably, the provision that revenue bills must originate in the House was repeated verbatim in many subsequent state constitutions. But over time, new and revised state constitutions began to share very little text with that of the U.S. Constitution. As one example, only 1 percent of the 1970 Illinois constitution has language that first appeared in the U.S. Constitution.

Pennsylvania 1790. The Pennsylvania constitution of 1790 was among the first state constitutions adopted after the U.S. Constitution went into effect. The 1790 constitution was virtually a wholesale repudiation of the original 1776 constitution, notably replacing the unicameral legislature with a bicameral body and replacing the executive council with a unitary governor wielding substantially more power. The most extensive borrowings came from the U.S. Constitution, largely procedural language regarding the legislative and executive, such as adjournment. Most of the text of the 1790 constitution was innovative and, more importantly, so were many of its specific provisions.

Pennsylvania's 1790 constitution was considerably more influential than any of the other state constitutions, by a degree of nearly twice as much as the second most

influential text, Kentucky's 1799 constitution. Three innovations were particularly influential. First, the broad outlines of the legislative power vested in the General Assembly, including the election, qualifications, and enumeration of representatives, were adopted nearly verbatim by a number of states over the next two decades, including Kentucky (1792 then 1799), Tennessee (1796), and Ohio (1802). Second, the broad outlines and specific provisions regarding the executive power, including the election, qualifications, powers, and duties of the Governor, and also the creation of the office of the Secretary of the Commonwealth, were innovations extensively adopted by a number of states over the next three decades, including Kentucky (1792 then 1799), Delaware (1792), Ohio (1802), Indiana (1816), and Mississippi (1817). Third, the provisions of the Bill of Rights influenced a large number of states for an extended period, especially by Kentucky (1792 then 1799), Tennessee (1796 then 1834), Indiana (1816), Mississippi (1817), and Illinois (1818). More fragmentary borrowings of all three of these innovations are found in many other states' constitutions, generally declining over time. An indication of the declining influence of the 1790 constitution is the fact that while 33 percent of the text was retained in the state's 1838 constitution, only 7 percent is found in the 1873 constitution.

Kentucky 1799. Kentucky replaced its original 1792 constitution in 1799. The new constitution borrowed heavily from the original 1792 constitution as well as the Pennsylvania 1790 constitution, following that state's lead in making the executive more independent of the legislative and giving it increased powers. Three notable innovations in the Kentucky 1799 constitution persisted in several future state constitutions: first were various provisions pertaining to eligibility for the general assembly, limiting eligibility for members of the clergy or former tax collectors. These provisions were then copied by Louisiana (1812 then 1845). Second, provisions relating to the executive branch—and specifically the Office of Lieutenant Governor—were copied by Louisiana (1812 then 1845), Indiana (1816), Mississippi (1817), and Illinois (1818). Third, the new Kentucky constitution included innovative provisions relating to amending the constitution. Kentucky's amendment provisions were among the first constitutions to include what would later become an almost universal practice, and was itself an innovation from its earlier constitution, which had a provision for a vote five years later on a constitutional convention but no provision for amendment. By the 1830s, however, few states were borrowing directly from Kentucky.

Mississippi 1817. Mississippi adopted its first constitution in 1817. The constitution included extensive borrowings

from Kentucky (1799) regarding the executive and Pennsylvania (1790) for the enumeration of rights. Much of the innovative elements were subsequently borrowed by states in the next few years, especially among southern states subsequently entering the union. But this influence was not limited to the South, and, for example, Connecticut (1818) borrowed heavily from the Mississippi Bill of Rights, notably regarding freedom of religious association and free speech. Alabama (1819) borrowed 15 percent of its text directly from the Mississippi constitution, much of it pertaining to legislative apportionment.

Illinois 1870. Illinois adopted its third constitution in 1870, replacing its previous 1818 and 1848 documents. The Illinois constitution was highly innovative. Notably, it was the first state constitution to establish a permanent economic regulatory agency (Kanazawa and Noll 1994). Specifically, the constitution included provisions establishing agencies to regulate railroads and grain warehouses. Much of this language was repeated by Nebraska (1875), which in fact took 15 percent of its text from the Illinois constitution of 1870. Provisions related to the regulation of railroads also appeared in West Virginia (1872) and Colorado (1876).

Pennsylvania 1873. Pennsylvania adopted its fourth constitution in 1873 (replacing that adopted in 1838), and the new constitution contained very little borrowing from earlier constitutions. Similar to the context that shaped the Illinois 1870 constitution, in the early 1870s Pennsylvania wrestled with the economic and population growth of the post-Civil War era. The new constitution was framed in the midst of distrust of the legislature and the increasing power of corporate interests (Branning 1960, 37). In particular, the revised constitution took aim at legislation favoring corporations. Under the constitution of 1838, charters and license required the passage of special legislation with the result that a whole class of lobbyists and brokers emerged to facilitate the passage of these special laws, which led to dissatisfaction with the corruptive influence of lobbyists and their business principles (Branning 1960, chap. 7). The new constitution of 1873 put into place a number of restrictions on the use of special legislation and, more generally, spelled out limits on the payments of brokers for special legislation favoring corporations. These provisions then showed up, almost word-for-word, in several subsequent state constitutions, including Arkansas (1874), Alabama (1875), Texas (1875), and Colorado (1876).

Conclusion

The modern prevalence of written constitutions is a recent phenomenon. A hundred years ago, roughly sixty

nation-states had a written constitution; 250 years ago, zero nation-states had written a constitution. Thus, at the level of nation-states, written constitutions are a decidedly modern institution. By contrast, the American states have a much longer and extensive tradition of constitutional design and innovation. In the eighteenth and nineteenth centuries, the states engaged in an unprecedented experiment of constitutional design. By the time of the Civil War, the states had already written sixty-four constitutions. In many ways, the American states of the eighteenth and nineteenth centuries were the incubators of Western constitutional democracy (Wood 1969).

In this paper, we have identified constitutional innovations and then investigated patterns of imitation in subsequent state constitutions by analyzing the textual similarity of state constitutions and the U.S. Constitution. We found that constitutional imitation is driven by a combination of geographic, temporal, and partisan factors. We find that states are more likely to borrow text from geographically proximate states, from temporally proximate state constitutions, and from states that shared similar partisan profiles. The strong temporal proximity patterns suggest that states were imitating other states facing similar political, social, and other problems. Finally, as an illustration of how our method can be extended to examine the substance of constitutional innovation and imitation, we identified the most influential state constitutions and the U.S. Constitution in terms of textual imitation. These influential constitutions were early adopters in responding to new political and economic problems.

Our findings suggest several avenues for future research. We might expect to find different patterns of innovation and influence for specific constitutional provisions, for example, the Bill of Rights included in many state constitutions as opposed to the structure of executive offices (e.g., Zackin 2013). The previous section provided some initial analysis of the different types of subjects that became influential and imitated in subsequent constitutions, for example, provisions regarding universal education or the regulation of railroads or utilities. Or our approach could be extended to constitutional amendments, which became much more common than replacing state constitutions over time and which often resemble the policy provisions (e.g., taxation and lotteries) studied in the policy diffusion literature and, as such, may exhibit similar patterns.

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Notes

- Several scholars argue that the United States has a “dual” constitutional tradition (Tarr 1998, chap. 1). Namely, the powers of the national government were considered to be enumerated, at least in principle, whereas the powers of the state governments were regarded as plenary, meaning that the powers derived from the people, and the legislative power in particular, were in principle unlimited unless constitutionally constrained or directed (Tarr 1998, 7–10; Williams 2009, 3).
- Gardner (2014) examines the similarity among state constitutions in terms of their structural provisions (e.g., unicameral vs. bicameral), focusing on the early republic and the period following the post–Civil Rights cases of the 1960s, and argues that none of the mechanisms discussed in policy diffusion literature explain this convergence. We suggest that the period of constitutional adoption and replacement after the early republic era Gardner studies shows learning as opposed to mere mimicry. We also reiterate that the availability of compilations of state constitutions and studies of the debates in constitutional conventions (e.g., Dinan 2006; Fritz 1994; Tarr 1998) reveal constitution-makers learning from their predecessors.
- We include the 1662 and 1663 Royal Charters from Connecticut and Rhode Island in all analyses as potential sources, but not as focal constitutions because the states retained them for several decades after independence. We also include in our corpus constitutions in states that have subsequently adopted a new constitution because outdated constitutions are nonetheless available to the authors of new constitutions.
- See Section A of the online Supplementary Information (SI) for software details.
- Rhode Island’s 1663 royal charter borrowed 26 percent from the Connecticut 1662 royal charter. Of course, the same political actors wrote both charters nearly contemporaneously.
- All smoothed relationships in our plots are fit via loess with 95 percent confidence intervals indicated in the shaded region.
- The intercept is modeled as $\alpha_{ij} = \gamma_0 + u_i + u_j$, where γ_0 reflects a constant intercept and the u_i and u_j terms reflect the document-specific offsets for i and j .
- We set the distance to its minimum for all dyads that include the U.S. Constitution.

- To *compare* the predictive power of these various explanations, we fit random forest models. See SI Section D for details. The results, presented in SI Figure A2, suggest temporal and geographic distance are similarly important for predicting imitation over the full period. But temporal predictors are particularly important for the pre–Civil War era (Panel A) and geographic predictors are particularly important after the start of the Civil War (Panel B). In each period, the importance of partisan congruence lags behind that of the temporal and geographic distance measures.
- Although we identify Pennsylvania’s 1776 constitution as among the most influential in Figure 1, it influenced only a very small number of other states and almost exclusively Vermont.

Supplemental Material

Replication files can be found at Dataverse: <https://doi.org/10.7910/DVN/UGKSDN>. Supplemental material for this article is available with the manuscript on the Political Research Quarterly (PRQ) website.

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