


Constitutionalism with Adjectives: Conceptual Innovation in the Comparative Study of Law

Diana Kapiszewski , Deborah Groen and Katja Newman

The latter half of the twentieth century and the early twenty-first century witnessed a global wave of constitution writing. Scholarly examination of these new charters found that most embodied liberalism and democracy. Additional study, however, found that textual convergence among these “higher law constitutions” belied important heterogeneity in constitutionalism—that is, in the principles underlying these charters and associated attitudes and behaviors. Scholars adopted several conceptual strategies to accommodate this variation, including attaching adjectives to constitutionalism (for example, “globalizing constitutionalism” and “abusive constitutionalism”). This article analyzes this conceptual innovation, drawing on an original dataset of all mentions of the word “constitutionalism” paired with a qualifying adjective found in the title/abstract of articles or in the title/first substantive page of books/dissertations, written in English, published between 1945 and 2019 and referenced on the Internet. We identified 1,621 “adjective-constitutionalism combinations,” including 564 unique combinations, suggesting both extraordinary empirical variation and little coordination among scholars with regard to conceptualization. Moreover, scholars’ conceptualizations of constitutionalism rarely reference equality, justice, or state responsibility for pursuing those ideals, despite these values being logical extensions of higher law constitutions’ core precepts; indeed, some conceptualizations even reflected illiberal or rights-limiting principles of governance. These findings raise the specter of a disconnect between constitutions and constitutionalism that we hope future studies will examine.

INTRODUCTION

The tragedy of the Second World War, and the promise of decolonization and political regime transitions thereafter, triggered a substantial wave of constitution writing. Many of these new, entrenched, “higher law constitutions” had common central tenets: they established and legitimated state institutions and championed liberalism and democracy (Scheppelle 2003).¹ Indeed, scholars even coined a term—the “new constitutionalism” (see, for example, Shapiro and Stone Sweet 1994; Scheppelle 2003; Hirschl 2004)—to

Diana Kapiszewski is Provost’s Distinguished Associate Professor, Department of Government, Georgetown University, Washington, DC, United States Email: dk784@georgetown.edu

Deborah Groen is PhD Candidate, Department of Government, Georgetown University, Washington, DC, United States

Katja Newman is Owner and Managing Partner, La Cienega Vineyard, LLC, Healdsburg, CA, United States

1. This convergence likely resulted from several factors, including cross-national similarity in the overarching motivations leading to the enactment of these new charters (that is, a desire to erect barriers against a return to the past [Scheppelle 2009] and to lay the groundwork for a freer and more just and equitable political future); the strong global consensus at the time these charters were written on the need for “higher law” to structure government and embody liberalism and democracy; international pressure; and the

capture the convergence on basic textual precepts. As legal scholars and social scientists began to closely examine these new charters, they developed important theories about when and why they were written (Elster 1995; Ackerman 1997), what influenced their content (Go 2003; Osiatynski 2003; Hirschl 2004; Brown 2008), and why they endured (Negretto 2008; Elkins, Ginsburg, and Melton 2009). In turn, researchers started to explore the types of constitutionalism—understood as the principles of governance animating and emanating from written constitutions, attitudes toward them, and associated behaviors (Elster 1995; Finer, Bogdanor, and Rudden 1995; Arato 2000)—that were emerging as new charters were enacted around the world in the second half of the twentieth century and thereafter.

This article critically analyzes the increasingly voluminous empirical literature published since 1945 on constitutionalism around the world. This scholarship is penned primarily by legal scholars and focuses mainly on the West and global North, although more studies of Latin America, Africa, and Asia are appearing. We address two key conceptual questions. First, how have authors' understandings and definitions of constitutionalism evolved over the last eighty years? Second, how have scholars—individually and collectively—depicted constitutionalism over time and around the world and, in particular, to what degree have their descriptions emphasized rights, justice, or equality? Our scrutiny of the scholarship suggests tremendous—and increasing—variation in approaches to defining constitutionalism, and thus ostensibly in constitutionalism itself, across space and time. Some authors simply define the term as the implementation of an underlying constitutional text or a generalized commitment thereto. More often, however, scholars seek to reflect specific empirical features of constitutionalism in a particular place or places. Their definitions often extend beyond the traditional understanding of constitutionalism as “limited government” to embrace a broader range of ideational projects (Stone Sweet 2008).²

A few emphases emerge: intuitively, rules are core to a majority of authors' understandings of constitutionalism, and important minorities of scholars focus on rights and on the relationships that obtain between state and society. Less expectedly, some scholars highlight a global dimension of constitutionalism, challenging the traditional connection between constitutions and individual nation-states; others include in their definitions an element embodying change, departing from the customary conception of constitutions as stabilizing documents that firmly anchor governmental practice. Yet beyond these few tendencies—and in contrast to the postulated convergence on basic ideas in constitutional texts—scholars' definitions of constitutionalism reflect great variation in its constitutive elements; in the roles that the state is understood to play; and in the relationships posited between citizens and their governments,

prevalence of constitutional “migration” and “borrowing” (see, for example, Go 2003; Osiatynski 2003; Perju 2005).

2. On the tendency to conceptualize constitutionalism as “limited government,” see, for example, Sartori 1962; Pangle 1988, 7; Sturm 1996, 29–30; Brown 1998, 2008; McIlwain 2005; Frohnen 2011; Teegarden 2013, 966; Waluchow and Kyritsis 2022. McIlwain (2005, 24) is particularly clear and adamant: “[I]n all its successive phases, constitutionalism has one essential quality: it is a legal limitation on government; it is the antithesis of arbitrary rule; its opposite is despotic government . . . the most lasting of the essentials of true constitutionalism still remains what it has been almost from the beginning, the limitation of government by law.”

between branches of government, and between domestic and global governance. Moreover, authors increasingly seek to signify the essence, nuances, and emphases of constitutionalism by attaching adjectives to the noun—for example, “enlightened constitutionalism,” “abusive constitutionalism,” or “globalizing constitutionalism.”

As these varied approaches to conceptualization suggest, “constitutionalism” has undergone a multifaceted stretching process and has likely become an essentially contested concept, compromising its analytic utility (Gallie 1956). Equally importantly, scholars’ penchant for developing their own idiosyncratic adjective-constitutionalism combinations rather than adopting one posited by another author signals relatively little interchange among scholars about what constitutionalism is, to the detriment of the literature’s conceptual clarity. While conceptually worrisome, the significant heterogeneity that scholars depict in constitutionalism’s contours and content is logical. Many of the “higher law constitutions” written around the world over the last eight decades are long and detailed, as their framers contextualized, elaborated on, and supplemented the core textual precepts of liberalism and democracy. As a result, the charters likely vary in myriad ways, allowing for and encouraging variation in constitutionalism. In addition, the culture, society, politics, and economics of the countries in which these new charters were introduced varied significantly; the “refraction” of the core tenets of higher law constitutions through these different contexts likely also produced cross-national heterogeneity.

Perhaps less logically, while the ideas that scholars include in their definitions of constitutionalism often align with (or run benignly orthogonal to) the core textual tenets understood to ground higher law constitutions (that is, liberalism and democracy), few scholars’ depictions of constitutionalism specifically highlight justice and equality or the state’s obligation to advance them. We might reasonably have expected these ideas to be included in most conceptualizations of contemporary constitutionalism for two reasons: because justice and equality seem to flow naturally from higher law constitutions’ posited textual tenets, and because scholars often understand constitutionalism to entail a more empowered, activist state (doing so twice as often as they understand it to refer to limited government). More worrisome, some scholars’ depictions of constitutionalism highlight illiberal or rights-limiting principles of governance and accompanying attitudes and behaviors that blatantly deviate from the values understood to underlie higher law constitutions. This outcome might result from the constitutions themselves in the relevant contexts embodying illiberalism; however, given the ubiquity of higher law constitutions, this outcome is at least as likely to reflect a gap between parchment and practice.

Scholars of comparative politics have long observed and lamented the relatively weak coincidence between formal institutions and the behaviors that they are meant to guide in the global South in particular (Helmke and Levitsky 2004; Brinks, Levitsky, and Murillo 2019), precisely those contexts in which most third-wave regimes and, thus, many new constitutions can be found. Given that constitutions serve as the foundation for national legal systems, the degree to which constitutionalism in a particular context adheres to, or diverges from, the precepts of the constitution in force is critical to understand. For instance, weak instantiations of virtuous principles such as justice and equity, when those ideals are embedded in constitutional texts, have negative implications for citizens and society, hold the potential to delegitimize democracy

(Zakaria 1997), and could reflect a weak rule of law and further undermine it. Addressing such parchment-practice gaps requires evaluating the coincidence between constitutions and constitutionalism, mapping the substance and magnitude of any divergences, and identifying their foundations and causes. While our study, which is focused on concept formation and development, does not take on these measurement and explanatory challenges, we hope it lays some intellectual groundwork for accomplishing these crucial analytic goals.

The article proceeds as follows. The next section discusses our data and methods. The third section describes the corpus of literature underlying our analysis. Our inquiry is based on an original dataset comprising mentions of the word “constitutionalism” paired with a qualifying adjective identified in the title or abstract of articles, or in the title or on the first page of the substantive introduction of books and dissertations, published in English between 1945 and 2019 and referenced on the Internet. In total, we identified 1,405 publications including one or more “adjective-constitutionalism combinations” (ACCs), a total of 1,621 ACCs, and 564 unique adjectives. We coded each ACC on a range of attributes related to the publication in which it appeared; the empirical context to which the publication referred; the definition of constitutionalism offered; and the author’s purpose in creating, and their definition of, the ACC. The fourth section of the article describes the evolution and variation in the meaning of constitutionalism and considers how that evolution was anticipated by, and differs from, the evolution in the concept of “democracy” (to which regime scholars added adjectives in the 1980s and 1990s). The fifth and core section of the article examines the conceptual innovation of adding adjectives to constitutionalism. We consider scholars’ aims in doing so and examine trends and patterns in the adjectives themselves. We then analyze the definitions of the subset of the ACCs we identified that were clearly defined ($N = 790$), highlighting their main elements. We conclude by summarizing our findings and discussing their implications.

DATA AND METHODS

The basis of our inquiry is an original dataset comprising 1,621 instances of the word “constitutionalism” paired with an adjective found in the introductory elements of scholarship published between 1945 and 2019 and listed on Google Scholar. The start point of our analysis is the end of the Second World War which, in tandem with follow-on political change, catalyzed a wave of constitution making around the world. This section describes how we collected, coded, and analyzed the data that underlie our study.³

Data Collection

The search to identify “constitutionalism with adjectives” (that is, examples of ACCs) in published scholarship proceeded in several phases, beginning in February 2013 and concluding in July 2020. The article’s results draw on three comprehensive and systematic Google Scholar searches: one carried out between February and June

3. Appendices A, B, and C offer additional details on our methodology.

2013 (searching scholarship published between 1945 through the first half of 2013); another search in February 2014 (searching scholarship published from 2009 to 2013),⁴ and a third search between January and July 2020 (searching scholarship published from 2014 to 2019). Ultimately the full 1945-to-2019 time period was divided into seven shorter search intervals, and we reviewed the one thousand entries that Google Scholar returned for each interval.⁵ The particular intervals were selected because searching each referenced similar numbers of overall entries; moreover, after the first seven hundred or eight hundred entries, i.e., well within Google's one-thousand-entry limit (see again Appendix A), "constitutionalism" no longer appeared in the title or first page/abstract (the points in the scholarship under study that our search targeted) of the publications referenced in search results. In total, we identified 1,405 publications mentioning one or more ACCs.

We scanned the title and/or abstract of English-language articles and the title or first page of the introduction (or first chapter) of English-language books and dissertations, returned by our Google Scholar search for mentions of ACCs, and included each ACC that we identified as an entry in our dataset.⁶ ACCs that appeared in publications in any language but English,⁷ in papers that were not attributed to an identifiable author or set of authors,⁸ and in unpublished conference papers,⁹ review articles, individual book chapters,¹⁰ working papers, reports, and newsletters were excluded. In all, we identified 1,621 individual mentions of an ACC in our 1,405 publications (with 146 publications mentioning more than one ACC, and a handful mentioning more than two) and 564 unique adjectives in all.

Our search, and thus the resulting data, have several limitations. Because we were reliant on Google's search algorithm and could not control all aspects of the search (and given that Google indexes new publications, recent and older, every day), reproducing our search process might generate different results.¹¹ Unavoidably, our analysis does not include all the ACCs that have been mentioned in the literature. Further, as discussed in more detail below, some of the over-time increase we found in the use of ACCs is likely a result of our search strategy rather than an actual increase in the number of ACCs: a much larger proportion of the literature produced during the later years of the time period on which our inquiry focuses, compared with the earlier years, is

4. The main goal of the February 2014 search was to identify work that had been published in 2013 but listed on Google Scholar after our 2013 search had concluded. Appendix A explains why the February 2014 search focused on 2009–13.

5. Appendix A details these intervals and the total entries referenced by Google Scholar for each.

6. Some publications included more than one adjective-constitutionalism combination (ACC) in the title, abstract, or first page of the introduction/first chapter; each mention of an ACC represents a separate entry in our dataset.

7. We excluded articles with titles/abstracts in English but with full texts in a non-English language and articles for which we could not determine the language of the full text and suspected it was in a non-English language (for example, articles from Chinese academic journals for which accessing the full publication required a password).

8. For instance, papers produced by a think-tank or other organization.

9. If a paper was listed on Social Science Research Network and noted as forthcoming in a journal, we included it.

10. Individual book chapters are neither consistently indexed by, nor consistently returned as entries on, Google Scholar.

11. Details on Google Scholar's indexing criteria are outlined in Appendix A.

indexed on Google Scholar.¹² Moreover, the “constitutionalisms” that we catalogued are neither a random, nor a fully representative, sample of the types of constitutionalisms in the world. Our discussion of constitutionalism is limited to the places where scholars (who publish in English) have studied and to their observations and insights: these scholars, rather than the real world, are the source of our data. Also, we only searched for and collected definitions of constitutionalism in work in which authors appended an adjective to the term.

In short, our data allow us to offer a tentative analysis of the variation in, and evolution of, conceptualizations of constitutionalism in the scholarly literature treating the phenomenon written in English after 1945. To the degree that the literature accurately reflects empirical reality, we can also draw a suggestive portrait of the breadth and evolution of constitutionalism itself over time. However, our analysis likely overrepresents conceptualizations of constitutionalism based on the global North and more contemporary conceptualizations. Indeed, the focus on English-language scholarship excludes both conceptualizations and empirical contexts, skewing our findings in ways that are difficult to estimate. We keep these caveats in mind when drawing broader conclusions from our analysis about both conceptualization and constitutionalism.

Data Coding and Analysis

For each of the 1,621 individual mentions of an ACC included in our dataset, we recorded the type of publication in which it was found (article or book/dissertation), the title of publication, the title of the journal (if applicable), the year of publication, the author, the URL in Google Scholar, how accessible the text was, and the geographic area and temporal context to which the publication referred or which it described. Next, for each ACC in the dataset, we accessed and skimmed the publication in which it was found, copying into our dataset any definition of constitutionalism, discussion of the purpose of deploying one or more ACCs, and ACC definitions provided by the author. We then engaged in various types of coding.¹³ We coded each publication on whether it was legal scholarship, social science scholarship, or “other;”¹⁴ coded any discussion that the authors offered of why they deployed the ACC; and coded the content (that is, substantive emphasis) of each definition of constitutionalism that was sufficiently detailed to code (322 definitions). To develop an initial sense of how scholars were specifying or precisifying “constitutionalism,” we coded each adjective on its nominal emphases.¹⁵ Finally, we coded the content of each ACC definition that was substantive enough to code (790 definitions of the 1,621 ACCs identified).

12. This said, we found Google Scholar to be unexpectedly effective at locating older work.

13. Appendix B describes each aspect of coding in more detail.

14. For journal articles, we based our coding on the name of the journal in which an article appeared (for example, any journal with the name X Law Review or X Law Journal was assumed to be a legal journal) or the journal's stated mission when the name did not communicate to which category it should belong. For books, we based our coding on the series in which a book appeared. “Other” is a residual category including journals that did not fit in either the social science or legal category and books not published as part of a series that fell unambiguously in the legal or social science category (the majority).

15. For instance, “nineteenth century German constitutionalism” was coded as emphasizing “geography” and “time period.”

We analyzed these coded data using both quantitative and qualitative techniques. Our main analytic strategy was deriving summary and descriptive statistics. We sought to summarize and find patterns and trends (in particular, over time) in scholars' conceptualization of constitutionalism, in their creation of ACCs and the meaning they ascribed to them, and in the types of publications in which scholars generated and/or deployed these ACCs. To evaluate the degree to which rights, justice, equality, and the assigning to government of responsibility for advancing and enforcing these ideals are considered to be fundamental to constitutionalism, we engaged in additional qualitative analysis of the definitions of constitutionalism, the adjectives, and the ACCs that referenced these values.

To repeat a caveat noted earlier, the degree to which our findings about authors' conceptualizations of constitutionalism also accurately reflect the empirical reality of constitutionalism depends upon authors correctly and clearly interpreting and describing constitutionalism in the contexts they explore. Because we analyze work that studies constitutionalism, rather than constitutionalism itself, our study is one step removed from "constitutionalism in the world." Nonetheless, we trust that the conclusions about constitutionalism to which most scholars have arrived since the mid-twentieth century are revealing and suggestive of the empirical reality of this vital phenomenon.

THE PUBLICATIONS DATASET

The proliferation of new constitutions that occurred on the heels of significant political change around the globe during the second half of the twentieth century (for example, decolonization and [re]democratization),¹⁶ and the increasing attention that new government leaders appeared to pay to their charters,¹⁷ triggered an explosion of literature on constitutions and constitutionalism. At least initially, comparative inquiry into the phenomena focused more on constitutions (analyzing and assessing what motivated their drafting and their content) than on constitutionalism. Constitutions, after all, serve as the foundation for constitutionalism. Moreover, as concrete texts, they are easier to study than is constitutionalism, which is fundamentally fluid and dynamic, involving interpretation and implementation that vary across space and time (Ferejohn 2001; Katz 2006). As Paul Kahn (1993, 1148) nicely summarizes, "[c]onstitutionalism is not a single set of truths, but an ongoing debate about the meaning of the rule of law in a democratic political order." Further, as we discuss later, while "constitutions" are generally tethered to particular nation-states, the

16. This graph (<http://comparativeconstitutionsproject.org/wp-content/uploads/figure1.png>) clearly demonstrates that, while there has not been a monotonic increase in the number of constitutions written annually over time, on average, the number of constitutions written per year since about 1950 is far greater than the number written earlier in the twentieth century or in the nineteenth century.

17. The struggles that often ensued over writing (and rewriting) these charters substantiate this claim. Consider, for example, the protracted and complicated process in South Africa in the early 1990s; the importance of the round table talks in Central and Eastern Europe in 1989 and later; and the continuous contestation over constitutional content in the Andean region of Latin America in the first decade of the twenty-first century.

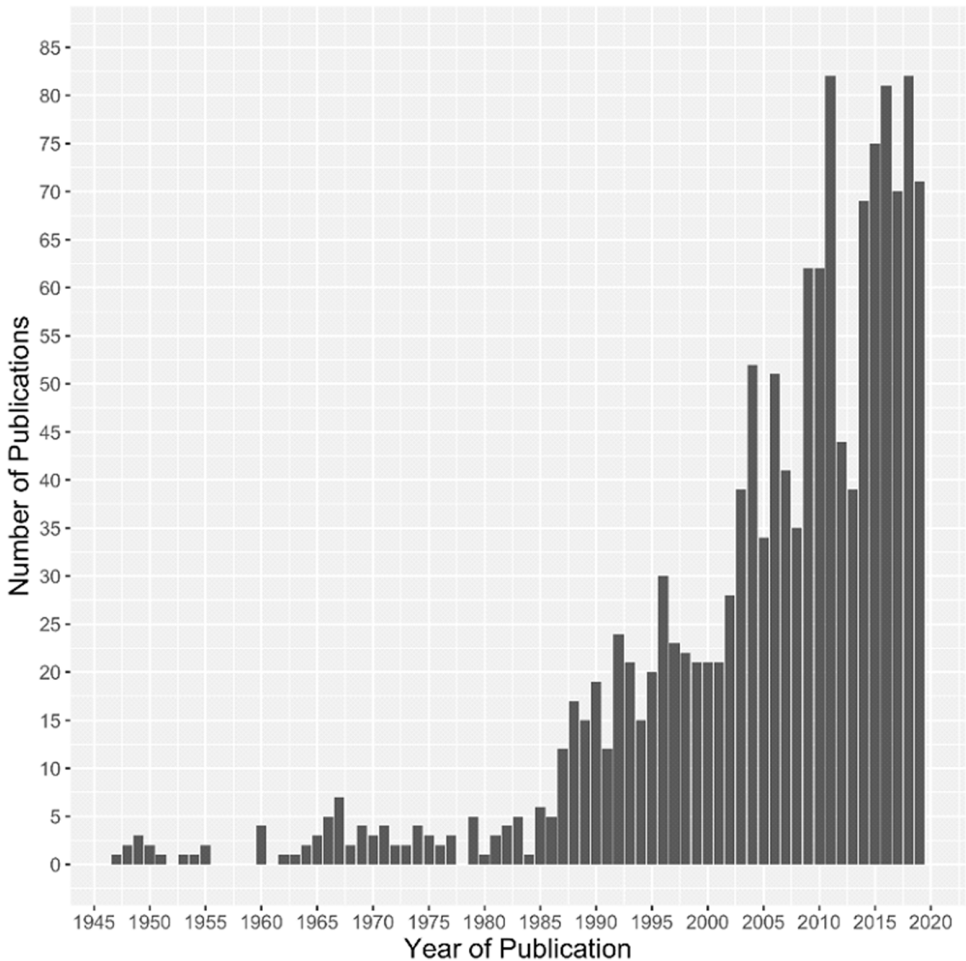


FIGURE 1.
Number of publications mentioning an ACC over time (1945-2019).

notion of “constitutionalism” can transcend territorial boundaries.¹⁸ All of these characteristics complicate analysis.

Nonetheless, as [Figure 1](#) shows, a significant amount of scholarship focused on constitutionalism was published between 1945 and 2019. Moreover, the 1,405 publications that we identified are only a subset of the total scholarly production, given the limitations of our search process mentioned earlier. Also of note, the overall amount of published scholarship in which an ACC was mentioned has trended upward over time. While the number of publications per year in which we identified one or more ACCs stayed somewhat stable from mid-century through 1985, it began to increase thereafter, growing particularly quickly since 2002 with several small spikes in the

18. As Zumbansen (2012, 82) notes, “[a]rguably, the relevance of the concept of ‘constitutionalism’—as opposed to ‘constitution’—lies in its potential to build bridges between the constitutional law discourses within the nation-state and the investigations into legitimacy of global governance in the ‘post-national constellation.’”

2010s. This increase is likely driven by several factors, including the large number of constitutions written during the third wave of democracy, as well as both the greater meaning afforded to written law under democracy and scholars' concerns about the weakness of the rule of law in some new democracies. The increase over time in the number of outlets in which such scholarship can be published probably also played a role. Regardless of why they did so, over time, authors increasingly saw fit to qualify constitutionalism with an adjective in order to describe its substance and trajectory.

Several caveats about this finding, reprising those offered earlier, bear noting. At least some of the significant over-time increase in the number of publications in our sample since 2000 is likely due to a growing amount of scholarship being accessible (and searchable) online via Google Scholar.¹⁹ In particular, our literature searches for ACCs proceeded in waves, and our 2020 search for work published between 2014 and 2019 identified significantly more publications mentioning an ACC than did our previous searches (in 2013 and 2014).²⁰ We thus must be cautious when making claims about changes in publication volume over time. With regard to content, however, we have no reason to believe that the “missing literature” (that is, literature matching our search parameters and within our time frame of analysis that is not included in our sample) for any year or period is systematically different from the literature on which our analysis draws.

Our search identified 248 books (18 percent of the sample) and 1,157 articles (82 percent of the sample), with a shift in emphasis toward articles in the last ten years. The overall proportions are unsurprising given that books can take more time and effort to write. Our inquiry into the literature also suggests that most journal articles on constitutionalism are written by legal scholars: of the total number of articles in our sample, 67.2 percent (778 articles) were published in law outlets; 17 percent (197 articles) were published in social science outlets (often political science); and 10.3 percent (119 articles) were published in “other” outlets (interdisciplinary, non-social science, or non-legal journals).²¹ With regard to change over time, the amount of both legal and social science scholarship on constitutionalism published annually has increased (the former more steadily, the latter proceeding in fits and starts), whereas the change in the amount of “other” scholarship published annually has been less consistent and has decreased somewhat over the last decade. In short, while more political scientists began to study legal institutions from a comparative perspective in the twenty-first century (Ginsburg 2003; Scheppele 2003; Elster 2005), conversations about constitutionalism are being conducted primarily—though not exclusively—among legal scholars.

We also considered the empirical terrain reflected in the scholarly work in our sample—that is, the geographic area and time period on which the work focused or

19. That said, Appendix A (final sub-section) discusses how we used Google Books' NGram viewer to test and substantiate the claim that the increasing density of scholarly activity focused on constitutionalism in part relates to underlying empirical phenomena.

20. Specifically, our search of work published between 1945 and 2013 (69 years) identified 997 publications and 1,031 ACCs (total, including duplicates), while our search of work published between 2014 and 2019 (6 years) identified 452 publications and 616 ACCs (total, including duplicates). Light testing suggests that we are missing literature published between 1945 and 2013 that was not available online during our initial 2013 and 2014 searches.

21. We could not determine publication type for 5.4 percent of the sample (63 articles).

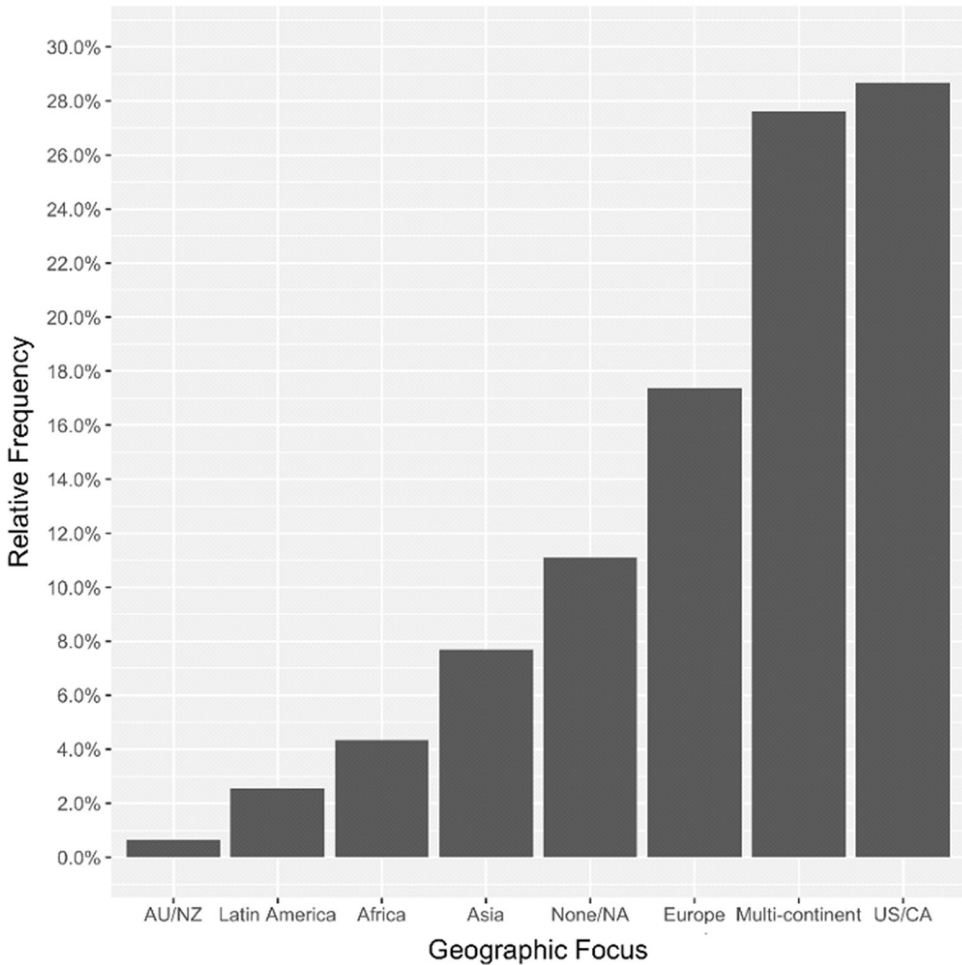


FIGURE 2.
Geographic focus of work mentioning an ACC published from 1945 to 2019.

to which it referred. With regard to geographic context, we found that authors associated the ACC they discussed with one or more countries or regions of the world in roughly 90 percent of the scholarship under study (1,249 publications). Specifically, authors focused on just one country in about 45.27 percent of the sample (636 publications) and examined multiple countries in 31.96 percent of the sample (449 publications). While authors only explored constitutionalism in “global” terms in 10.68 percent of the example (150 publications), there has been a significant increase in this focus since around 2015.²²

Regarding specific geographic location, as [Figure 2](#) suggests, we found that a plurality of the literature under study—almost 30 percent (403 publications)—referred to,

22. For 118 of the 156 publications in which we did not find a geographic reference (about 8 percent and 11.1 percent of the sample respectively), our inability was due in part to our lack of full access (or any access) to the publication text.

or focused on, the United States or Canada (with the United States dominating); another 27.62 percent of our sample (388 publications) made claims about constitutionalism on multiple continents; and 17.37 percent of the sample (244 publications) referenced Europe. Other continents were the specific point of reference far less often: 7.69 percent of the sample (108 publications) referenced Asia; 4.34 percent of the sample (61 publications) referenced Africa, 2.56 percent of the sample (36 publications) referenced Latin America, and 0.64 percent of the sample (9 publications) referenced Australia/New Zealand. The fact that examinations of the United States predominate in the literature under study is not surprising given that we analyzed work written in English and given the disproportionate focus of earlier constitutional scholars on the historic examples of Western countries (Khilnani, Raghavan, and Thiruvengadam 2013). Nonetheless, the overall emphasis on the global North and the West—the focus of roughly half of our sample (49.25 percent or 692 publications) and perhaps that of many of the studies characterized as multi-continent—is striking.

With regard to over-time trends in geographic focus, we found an increase in the number of multi-country studies since the mid-1980s, suggesting a growing tendency to study legal institutions in comparative perspective. Work on the United States and Canada has had a steady (increasing) presence since the late 1980s, and Europe has been a strong emphasis in the literature since the early 1990s. By contrast, we only begin to find scholarship focused on Africa in the mid-1990s (with almost all Africa-focused publications specifically considering South Africa thereafter) and work focused on Latin America and Asia in the middle of the first decade of the twenty-first century. This increased focus—which is likely driven by accelerated constitution making in these regions as they transitioned to more open political regimes—is encouraging. Nonetheless, the stark reality is that those who write and read (only) English-language scholarship continue to know relatively little about constitutionalism in the non-West and global South.

In terms of the time period of focus in the work in our sample, in broad strokes, we found that about one-third of the sample (32.60 percent, 458 publications) focused on the “contemporary” period (after the Second World War), while 13.74 percent of the sample (193 publications) had an earlier historical focus. Another 34.16 percent of the sample (480 publications) examined both contemporary and historical periods.²³ Thus, in aggregate, the scholarship can afford interesting insights on the evolution in constitutionalism’s substantive emphases, although mainly in the global North. In sum, the volume of literature focusing on constitutionalism has increased dramatically since mid-century, with some tapering since a high point in 2010. Most of the literature in our sample has an empirical basis: the “types” of constitutionalism reflected in the ACCs we identified were or are present (or desired) in one or more real-world contexts. The literature tends to examine the West and global North; Africa, Latin America, and Asia are new foci in the literature.

23. In another 5.41 percent of the sample (76 publications), no specific time period was referenced, and we were unable to make a determination on time period in 14.09 percent of cases (198 publications).

CONSTITUTIONALISM: CONCEPTUAL DEBATES

Clear conceptualization is a prerequisite for accurate measurement. The development of consensual definitions facilitates the accumulation of knowledge in academic fields and disciplines. Yet legal scholars and social scientists alike often struggle to define concepts that are fundamental to understanding the empirical world. This difficulty is due, in part, to the nature of the inquiry they conduct. Unlike the more concrete physical sciences, fields such as law, political science, sociology, and anthropology explore latent phenomena that are challenging to clearly identify and measure and whose contours and content are open to interpretation. Indeed, debates regarding the meaning of concepts that are central building blocks for the social sciences—“state” (Krasner 1984; Kahler 2002), “democracy” (Schmitter and Karl 1991; Collier and Levitsky 1997), and “populism” (Weyland 2001)—continue today.

Dilemmas in defining key social science terms have sparked significant scholarly discussions of concept formation in various disciplines. Political scientists have generated a corpus of excellent literature on this topic (for example, Collier and Mahon 1993; Gerring 1999; Collier and Gerring 2009; Goertz 2020). Many such treatments harken back to the foundational work of Giovanni Sartori (1970), who describes how researchers can move up and down a “ladder of abstraction” as they define terms. When one adds necessary attributes to a concept, the result is decreasing generality (the newly defined concept applies to fewer cases). Conversely, when one removes attributes from the definition of a concept, its meaning is broadened (and it applies to more cases). The latter move potentially results in conceptual stretching—that is, the “gains in extensional coverage tend to be matched by losses in connotative precision” (1035). In either case, definitional malleability can have both intellectual and practical implications.

Turning to this article’s object of inquiry, we examine in this section how scholars have defined the anchoring concept of constitutionalism over time. Conventional wisdom holds that in historical work on constitutionalism (which has tended to focus squarely on the American, or more broadly Western, cases), the term was often tacitly or explicitly understood to entail limited government.²⁴ However, our analysis indirectly suggests that, as the second and third waves of democracy brought more open politics and more forms of democracy to more contexts (Huntington 1991), constitutionalism’s emphases and configurations grew more diverse: the principles of governance underlying (often newly written) constitutions and the attitudes toward, and the behavior relevant, to them became more varied. A contributing factor was likely democracy’s tendency to generate greater societal expectations with regard to the state and the effective exercise of state power (for example, to provide services, protect rights, and entrench the rule of law). During the same period, remaining (or, indeed, emerging) autocracies introduced and implemented constitutions that were underlaid by authoritarian principles of government (Ginsburg and Simpser 2013).

In turn, political scientists and legal scholars sought to reconcile this increasing heterogeneity with the central—and relatively few—concepts used to describe political regimes and the rule of law. We posit that, because the concepts of democracy and

24. See multiple references supporting this claim in note 2 above.

constitutionalism were at different points on their definitional trajectories, scholars adopted contrasting strategies as they sought to describe evolving empirical reality using these terms. Democracy was an essentially contested concept (Gallie 1956), with myriad and varied definitions, through much of the second half of the twentieth century. However, by the 1980s, consensus was beginning to form among some scholars of comparative politics on a minimal definition including free, fair, and frequent elections and inclusive suffrage (Schumpeter 1975; Huntington 1991; Przeworski 1991). Of course, conceptual debate continued concerning what else democracy can, does, or should entail, with some of the most pitched battles centering on whether the protection of basic rights is fundamental to democracy or whether even this definitional addition brings us to a subtype of democracy (liberal democracy) (Dahl 1989; O'Donnell 2001).²⁵ Increasingly, however, those ongoing conceptual skirmishes shifted to other battlefields such as that of defining “democratic consolidation” and “democratic quality.”

With the route of expanding the definition of democracy at least somewhat foreclosed, scholars of comparative politics took two other approaches to accommodate empirical variation among the regimes that were emerging in the wake of the third wave of democracy. Some authors conceptualized new regime types, such as “competitive authoritarianism” (Levitsky and Way 2002), “electoral authoritarianism” (Schedler 2002), and “hybrid regime” (Diamond 2002). Other authors, as Collier and Levitsky (1997) described in their article “Democracy with Adjectives,”²⁶ began to attach adjectives to the noun “democracy.” Sometimes, the goal of doing so was simply to highlight a particularity or subtype of democracy (for example, “multi-party democracy” or “parliamentary democracy”). More often, however, the adjective signaled concerns or misgivings about these new regimes or a particular flaw or way in which they departed from liberal democracy—for example, “tutelary democracy” or “electoral democracy.”²⁷ Importantly, signaling these departures by adding an adjective to democracy allowed scholars to capture observed empirical variation without appearing to abandon hope that these regimes were “on their way” toward “true” democracy (Carothers 2002).²⁸

How did scholars of legal institutions seek to accommodate emerging empirical variation in constitutionalism around the world—that is, to reconcile constitutionalism’s traditional conceptualization as limited government with post-Second World War reality? We analyzed the definitions of constitutionalism offered in the publications

25. The emergence in the 2010s and continued vitality of the Varieties of Democracy (V-Dem) measurement project (<https://www.v-dem.net/>) likewise reflects continued conceptual debate; we thank an anonymous reviewer for suggesting this point.

26. Published in *World Politics* a quarter century ago, the article is a key inspiration for the present piece.

27. The adjectival additions thus tended to reduce democracy’s specificity, entailing a move up Sartori’s ladder of abstraction and to signal simultaneously (implicitly or explicitly) a scholar’s assessment of whether the relevant political regime met “standard expectations” for democracy.

28. Notably, some of the adjectives that authors added to democracy simultaneously suggested variation in constitutionalism. For instance, Zakaria (1997, 22) denoted as “illiberal democracies” regimes in which the formal trappings of democracy were present (or at least nominally established in the constitution) but “constitutional liberalism” (that is, “the rule of law, separation of powers, and the protection of basic liberties”) was not. Others used adjectives such as “delegative” (O’Donnell 1994), “electoral” (Hadenius 1994), or “hard” (O’Donnell, Schmitter, and Whitehead 1986) to describe democracies with weak protection of civil liberties (Collier and Levitsky 1997, 440).

in our sample in search of an answer. While we found interpretable definitions in fewer than a quarter of those publications (22.92 percent or 322 of the 1,405 publications), we have no reason to believe these definitions are unrepresentative of those in the broader corpus of literature. Most authors offered their own definition of constitutionalism, with just a handful of scholars citing or debating another scholar's definition.²⁹ This finding suggests that there is relatively little conversation or interchange among scholars about what constitutionalism is, inhibiting the accumulation of knowledge about this critical topic. We identified three strategies that authors (in aggregate) adopted when developing their definitions of constitutionalism (with many authors employing more than one). Some scholars shifted the definitional emphasis from constitutionalism's substantive content to the practicalities of implementing the constitutional text via the empowerment of government or to a generalized commitment to that implementation. Other analysts expanded the definition of constitutionalism, including content instead or in addition to "limited government." Still other scholars added content to constitutionalism by appending adjectives to the noun. This section considers the first two strategies, while the next section considers the third strategy.

Table 1 outlines the types of content found in the interpretable definitions of constitutionalism that we identified in the literature (N = 322), many of which referenced more than one type of content.³⁰ For the scholars in our sample in aggregate, constitutionalism primarily involves entrenching rules, institutions, and law—in particular, 11.80 percent of definitions suggested constitutionalism entails a commitment to interpreting and implementing the constitution. For example, Kommers (1991, 838) understood constitutionalism to refer to the "principles and ideas flowing from the written constitution;" others understood it as the task of governance through the rule of law (Belz 1998; Gerstenberg 2012); and others saw it as "a method of organizing government that depends on and adheres to a set of fundamental guiding principles and laws" (Holmes 1995, 299). Table 1 also suggests that scholars who sought to accommodate empirical variation by expanding the substantive content of constitutionalism moved in multiple directions. While many scholars included the traditional notion of limitations or constraints on government power in their definitions (40.37 percent), almost twice as many scholars understood constitutionalism to entail empowering government or institutions to implement the constitution (77.02 percent). In all, then, the definitions we identified tended to emphasize the application of written charters and government's involvement in those endeavors.

Building on our previous conceptual concerns, we contend that the greater descriptive precision that scholars achieved through generating their own idiosyncratic definitions of constitutionalism likely came at a conceptual price: many authors arguably "stretched" constitutionalism's definition. Weiner (2011, 4) makes this point cogently: "[T]he growing interest in and enhanced reference to constitutionalism are not necessarily leading to conceptual precision thus risking to turn it into a

29. The definitions posited by McIlwain (1947) and Ackerman (2015) were among the few to be referenced by other scholars.

30. Appendix B describes each aspect of coding in more detail.

TABLE 1.
Elements of Content of Definitions of Constitutionalism

Content Elements	Percentage of 322 Definitions Including Content Elements (Count of Publications)
Establish legitimacy/empower government/rules/law/ institutions or institutional/application of the written constitution	77.02% of sample (248 publications)
Limit government/protect citizens/accountability	40.37% of sample (130 publications)
Rights/freedom/liberty	21.74% of sample (70 publications)
Popular will /sovereignty/people/democracy	17.70% of sample (57 publications)
Commitment to interpreting/following/instituting/ implementing the constitution	11.80% of sample (38 publications)
Judicial/courts	10.56% of sample (34 publications)
Other	6.21% of sample (20 publications)
Process/procedure/practice/debate	4.97% of sample (16 publications)
Justice/equality	2.48% of sample (8 publications)
Global/transnational	1.24% of sample (4 publications)

catch-all concept.” This outcome is clearly at odds with the literature on constitutionalism gaining conceptual coherence.

We see a more profound issue than the conceptual one, however: rights, the empowerment of the people, and justice and equality were not strongly emphasized in the definitions of constitutionalism that we considered. Only 21.74 percent of the definitions we analyzed included some reference to rights, just 17.70 percent focused on popular sovereignty, and only 2.48 percent understood constitutionalism to entail justice and equality. Even among definitions emphasizing the role of government, few mentioned the state’s responsibility for pursuing these ideals, despite their logical connection to the posited emphasis on liberalism and democracy of higher law constitutions. How should we interpret scholarly consensus that justice and equality are not among the main principles animating and emanating from countries’ foundational legal texts since the mid-twentieth century—in particular, given that those same charters have included increasingly dense and detailed catalogues of rights (Glendon 1992; Peruzzotti and Smulovitz 2006; Hilbink 2008)?

Summing up this section’s findings, “constitutionalism” has undergone a multifaceted stretching process over time as scholars have sought to capture conceptually empirical variation, and the concept is now likely essentially contested (Gallie 1956). While many scholars sought to refocus the definition of constitutionalism or redefine it, few conceptualizations entailed, or suggested that constitutionalism should entail, a core focus on rights, justice, or equality or on governmental responsibility for enforcing and strengthening these values. We address this theme in more detail in the article’s next section, in which we consider the practice of tailoring or adapting constitutionalism to individual or sets of cases by adding an adjective to the noun.

CONSTITUTIONALISM WITH ADJECTIVES

In this section, we delve more deeply into the adjectival proliferation that marks the literature on constitutionalism and its conceptual consequences. We first briefly consider scholars' analytic goals in deploying an ACC. Next, we discuss the 1,621 ACCs that we identified in the literature (in particular, the 564 unique adjectives that we found), exploring trends and tendencies in their use. The main focus of this section is on constitutionalism's content—that is, on the types of constitutionalism created through the addition of adjectives. We identify the main strands in the definitions of the 790 ACC instances we identified that were accompanied by a codable definition (48.74 percent of the total instances), considering, in particular, how often rights, justice and equality, and government responsibility for pursuing those ideals were understood to be core components of constitutionalism.³¹

Analytic Purpose of Deploying an ACC

Our first question about the 1,621 ACCs in our dataset concerns what analytic purpose scholars seemed to be pursuing in deploying an ACC. We were able to interpret the authors' goals in connection with 1,192 ACCs (73.5 percent of the total number of the ACCs we identified). Our analysis revealed that, in aggregate, authors were pursuing a range of goals (with many authors pursuing more than one) when using an ACC. Six goals were most prominent: “conceptual innovation“ (arguing for a new conceptualization or type of constitutionalism); “conceptual development/revision“ (speaking to an ongoing debate and/or actively seeking to revise or otherwise elaborate on an existing notion of constitutionalism); description (highlighting the behavioral instantiation of a constitution or considering whether a particular definition of constitutionalism applies to a particular context); normative evaluation/judgment (arguing for or against a particular type of constitutionalism or the way in which a particular concept of constitutionalism has been applied in the scholarship); prescription (advocating for or against the practical adoption of the tenets of a particular type of constitutionalism); and explanation (suggesting the causes or consequences of a particular type of constitutionalism).

A key observation about the addition of adjectives to constitutionalism arises from this analysis. As mentioned earlier, Collier and Levitsky's (1997) examination of the addition of adjectives to democracy suggests that, in adding adjectives, scholars often have sought to highlight what was lacking or missing from, or problematic about, democracy in particular contexts.³² By contrast, only a minority of scholars were engaging in normative judgment when adding adjectives to constitutionalism. This contrast likely results from the difference between the two adjective-adding enterprises. In adding adjectives to democracy, scholars were flagging divergence from, and concern about divergence from, a contemporary ideal—a type of regime to which many aspire and a phenomenon whose definition had somewhat stabilized by the time scholars began

31. Appendix B describes all aspects of coding in more detail.

32. Collier and Levitsky (1997) did not systematically evaluate what goals scholars were pursuing with the adjectival additions they identified in the literature.

adding adjectives with vigor. For many, adding an adjective was implicitly or explicitly judgmental and normative. Scholars of constitutionalism, by contrast, were not flagging divergence from a broadly agreed upon ideal. Our study suggests that any previous consensus on the meaning (and value) of constitutionalism as “limited government” had begun to give way in the early phases of adjectival proliferation, as did any notion that constitutions (and, thus, constitutionalism) were inherently virtuous. In adding adjectives to constitutionalism, then, scholars were less often pursuing a normative end and more often seeking to achieve a descriptive one: capturing and expressing variation in constitutionalism.

What Is in an Adjective?

As noted previously, we identified 1,621 ACCs and 564 unique adjectives in the literature under study. Our main interest is in their definition—that is, in how scholars use them to describe different types of constitutionalism. However, as we have noted, only about half of the ACCs that we identified (that is, 790 instances or 48.74 percent of all instances identified) were accompanied by a definition. As such, we briefly analyzed the adjectives themselves as a first step toward understanding historical and contemporary constitutionalism as seen through the eyes of the authors who penned the literature in our collection. We coded each of the 1,621 adjectives that we identified with one or more of twenty-five inductively derived codes (coding each instance of the same adjective in the same way).³³ As [Table 2](#) suggests, the adjectives that scholars added to constitutionalism often referred to specific geographic areas: more than a quarter of adjectives referred to “America” or another specific region, country, province/state, or city, reinforcing our contention that the scholarship in our sample in fact examines the empirical world rather than considering constitutionalism in the abstract.³⁴ Another 8.6 percent of adjectives referenced the global or the international. As noted earlier, the idea that scholars are increasingly exploring constitutionalism in “global” terms is surprising given that constitutions are generally understood to be country-specific texts that guide national governance. Three other common adjectives focused on elements of regime, aspects of society, and political ideologies, which is a logical trio.

Our findings regarding unique adjectives diverge a bit from these results (see the last column of [Table 2](#)). References to particular locations still dominate, with almost 25 percent of the unique adjectives we identified referring to a specific region, country, or lower-level jurisdiction. Adjectives focused on elements of regime and aspects of society were again commonly used. Interestingly, almost 6 percent of unique adjectives referenced or accommodated some sort of change: constitutions, often understood to be the most stable and stabilizing building block of the rule of law, and the most difficult

33. Relatively few adjectives received more than one code (note the “counts” in the middle column of [Table 2](#) sum to 1,769). Also, “normative valence/negative” and “normative valence/positive” were only used when no other code was used; the percentage of adjectives coded in this way is thus smaller than the overall proportion of adjectives with a negative or positive valence.

34. By contrast, less than 1.5 percent of the adjectives in the sample referred to a particular time period, a less-specific descriptor (as all contexts experience time).

TABLE 2.
Foci of Adjectives Modifying Constitutionalism

Adjective	Percentage of All 1,621 Adjectives (Including Duplicates) (Count)	Percentage of 564 Unique Adjectives (Count)
Geography - specific region/country/ province/state/city	15.73% (255)	21.28% (120)
Geography - American (confederate)	9.44% (153)	2.66% (15)
Geography - global/international/ transnational (cosmopolitan)	8.57% (139)	4.26% (24)
Political/regime type/branch of gov't./ political party/political philosophy	8.08% (131)	7.62% (43)
Social/of society (religion) (civic) (indigenous)	6.17% (100)	7.80% (44)
Liberal/illiberal/conservative/post-liberal/ progressive	5.98% (97)	4.61% (26)
Other/uncoded	5.43% (88)	13.83% (78)
Modern/post-modern/contemporary/ ancient/early/traditional/historical	5.24% (85)	3.72% (21)
Geography - generic state/nation/post- national/subnational/federal/local	5.0% (81)	4.43% (25)
Popular/populist/of the people	4.75% (77)	2.13% (12)
Change/transformation/transition (revolution)	4.69% (76)	5.67% (32)
New (neo)	4.19% (68)	3.72% (21)
Normative valence/negative	4.13% (67)	7.80% (44)
Law/legal/legal system/institutions (rights)	3.33% (54)	4.96% (28)
Normative valence/positive	3.02% (49)	6.03% (34)
Economic/monetary/financial	2.53% (41)	3.19% (18)
Personal (referring to particular person)	1.91% (31)	4.96% (28)
Environmental	1.73% (28)	1.77% (10)
“Comparative”	1.67% (27)	0.53% (3)
Time period (specific)	1.48% (24)	3.19% (18)
Administrative/rules/procedures	1.48% (24)	1.24% (7)
“Multi-level”	1% (16)	0.001% (1)
“Digital” or “e-”	.06% (9)	0.003% (2)
“Colonial/Anticolonial/post-colonial/ postcolonial”	.06% (9)	0.007% (4)
“Organic”	.02% (3)	0.001% (1)

aspect of the legal infrastructure to modify, can simultaneously be understood to accommodate, embody, or even create change. Finally, 14.83 percent of adjectives were uncat-egorizable but unmistakably positive or negative in their valence (for example, cooperative, collaborative, respect worthy, and empowering and abusive, violent, failed, and tabloid, respectively); and 13.83 percent of unique adjectives neither aligned with any of our codes nor had an identifiable valence. This finding is not unexpected: scholars' apparent desire to depict in detail the constitutionalism under study, and their

penchant for terminological creativity, complicated developing a usable, meaningful set of categories encompassing all 564 unique adjectives.³⁵

Reinforcing our findings with regard to constitutionalism, none of the 1,621 words appended to constitutionalism referred to “justice,” only two adjectives referred to “equality” or “equity,” and fewer than ten (0.02 percent) referenced rights. To be sure, there are limits to what we can infer about constitutionalism, and scholars’ conceptualizations thereof, from these individual adjectives. Nonetheless, it is surprising that scholars studying constitutionalism around the world from the second half of the twentieth century forward—a time span during which constitutions were often written in celebration of a country’s emergence from the bonds of colonialism or the repression of authoritarian or totalitarian regimes, and which included more rights than at any time in history—so infrequently named these important ideals when precisifying constitutionalism.

The number of unique adjectives that we identified (564) is greater than one-third of the total number of adjectives mentioned in the literature under study (1,621). This suggests that few adjectives have “gained traction”—that is, been used by more than one scholar to discuss or describe constitutionalism in the contexts they study. Rather than employing an ACC coined by another scholar, authors appear to prefer generating their own term. Specifically, of the 564 unique adjectives we identified, only twelve adjectives were used in twenty-five or more publications;³⁶ just thirteen adjectives were used in ten to twenty-four publications; twenty-nine adjectives were used in five to nine publications, and 101 adjectives were used in two to four publications. The remaining 409 unique adjectives that we identified—almost three-quarters of our sample (72.51 percent)—were used in just one publication.

One interpretation of this conceptual innovation is that scholars sincerely aim to differentiate their context of study from others and believe that existing ACCs do not accurately reflect the reality they seek to portray. Another interpretation relates to the incentives of scholarly production. Academia prizes originality, and scholars are rewarded for distinguishing themselves in the literature; additional accolades are possible when a scholar’s catchy and compelling term is adopted by other authors. All these dynamics encourage the generation of new ACCs.³⁷ No matter its cause, the observed adjectival proliferation reinforces our contention of little cross-scholar coordination and few attempts to arrive at consensus on varieties of constitutionalism, boding ill for the literature’s healthy advancement.

We see some weak yet suggestive trends in the over-time deployment of the ten most frequently used adjectives. Some adjectives have a relatively long trajectory and have been used increasingly over time, tracking the overall increase in the amount of published literature (for example, “liberal”). Others have a shorter trajectory and steady deployment over time (and thus appear proportionally less over time as the literature has grown); this is the case with “state” and “new” since around 1990. “American” has a long trajectory with a notable uptick in use since the mid-1980s. Given the relative

35. Moreover, it bears repeating that our categories did accommodate almost 95 percent of all of the adjectives that authors used, including the most frequently used adjectives.

36. These adjectives are: American (122), global (68), popular (62), liberal (51), state (45), new (41), democratic (40), European (40), modern (39), political (29), transformative (27), and comparative (25).

37. We thank an anonymous reviewer for pushing us to elaborate on this point.

stability in American constitutionalism, this increase may result from more scholars comparing American and other types of constitutionalism as the literature has taken a more comparative turn.

Indeed, adjectives referring to “global” or “international” have only been used since 2000 (with two exceptions) and are increasingly deployed, both tracking the literature’s expansion and suggesting a metamorphosis in how scholars think about constitutionalism and its geographic moorings. There was something of a peak in references to “popular” constitutionalism between 2005 and 2015 as legal scholars hotly debated this type of constitutionalism (see, for example, Chemerinsky 2004; Kramer 2004; Post and Siegel 2004). Finally, “political” appeared for the first time in our sample in 2007, perhaps reflecting recognition of the unavoidable intersections and interactions between law and politics.

Considering the appending of adjectives to constitutionalism over time more broadly, a few trends stand out (again interpreting the data cautiously given their skew toward more recent publications). First, as Figure 3 depicts, we identified increasingly more adjectives in the literature under review over time.³⁸

Adjectival use between 2010 and 2020 eclipses that in earlier time periods, with 38.1 percent of all uses occurring between 2014 and 2019. Complementing this finding and suggesting that it is not solely attributable to a growth in the number of publications including ACCs, Figure 4 shows that the number of publications in which authors use more than one adjective increased dramatically over the same time period. This could suggest that scholars are starting to use the same terms to a greater degree; alternatively, it might mean that, as the field of comparative constitutional law grows, scholars are increasingly identifying and comparing different types of constitutionalism.

Figure 5 helps with interpretation. It depicts the number of new (unique) adjectives that appeared in the literature for the first time each year between 1945 and 2019. If scholars were starting to use the same terms to a greater degree (that is, if a stable stock of adjectives were being created), we might have expected a steady increase and then decrease in the number of new adjectives over time. Instead, beginning from a baseline of more than one hundred fifty unique adjectives in use by 2000, we see more than two hundred unique adjectives by 2005, more than three hundred by 2010, and then unprecedented innovation since 2014. This acceleration in adjectival proliferation has multiple possible interpretations: it might be due to more scholars paying more attention to constitutionalism in more parts of the world over time; to scholars’ increasingly seeking to depict constitutionalism precisely and to increasing dissatisfaction with how well existing adjectives capture empirical reality; to constitutionalism increasing in heterogeneity; or to the professional incentives mentioned earlier.

In sum, we see extraordinary conceptual innovation among scholars of constitutionalism. While a few adjectives were used repeatedly by many scholars (for example, “American,” “global,” and “liberal”), hundreds of others were used just once in the literature under study; moreover, scholars continue to proliferate adjectives. Adjectives are most often used to pinpoint a geographic area and are also frequently deployed to signal regime type, an aspect of society, or political ideology. Rarely, however, do they directly refer to rights, justice, or equality, raising the question of why these critical

38. This figure includes duplicates: it maps all 1,621 adjectives identified in the literature.

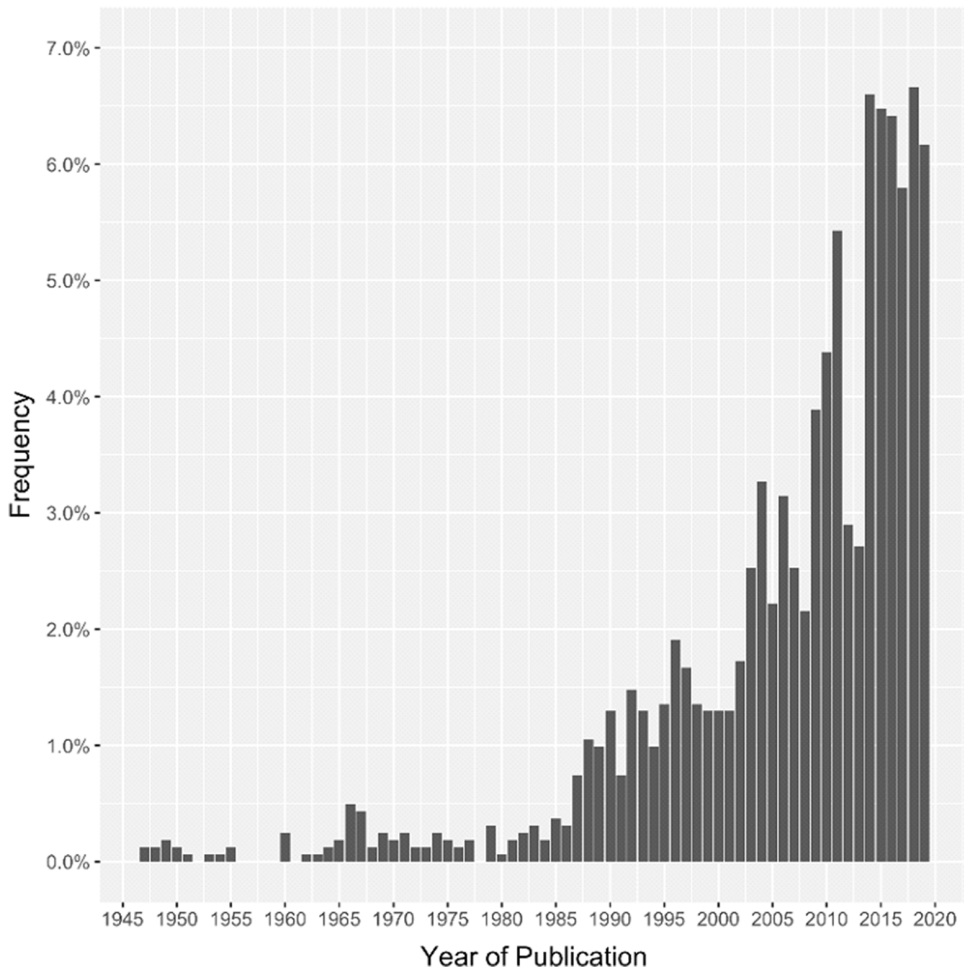


FIGURE 3.
Frequency of Adjective Usage in the Literature by Year of Publication.

ideas—closely linked to the posited emphasis on liberalism and democracy in higher law constitutions and often a clear focus in contexts of constitutional creation—do not seem central to understandings of constitutionalism. We consider this query more in the next subsection.

Amending Constitutionalism

A logical next step after considering the adjectives that scholars have added to constitutionalism is analyzing the definitions of the resulting ACCs—the ideas or empirical reality that scholars have sought to capture and express when “amending” constitutionalism. As noted earlier, only 48.74 percent of the ACCs that we identified in the literature (790 of 1,621) were accompanied by a definition with sufficient detail

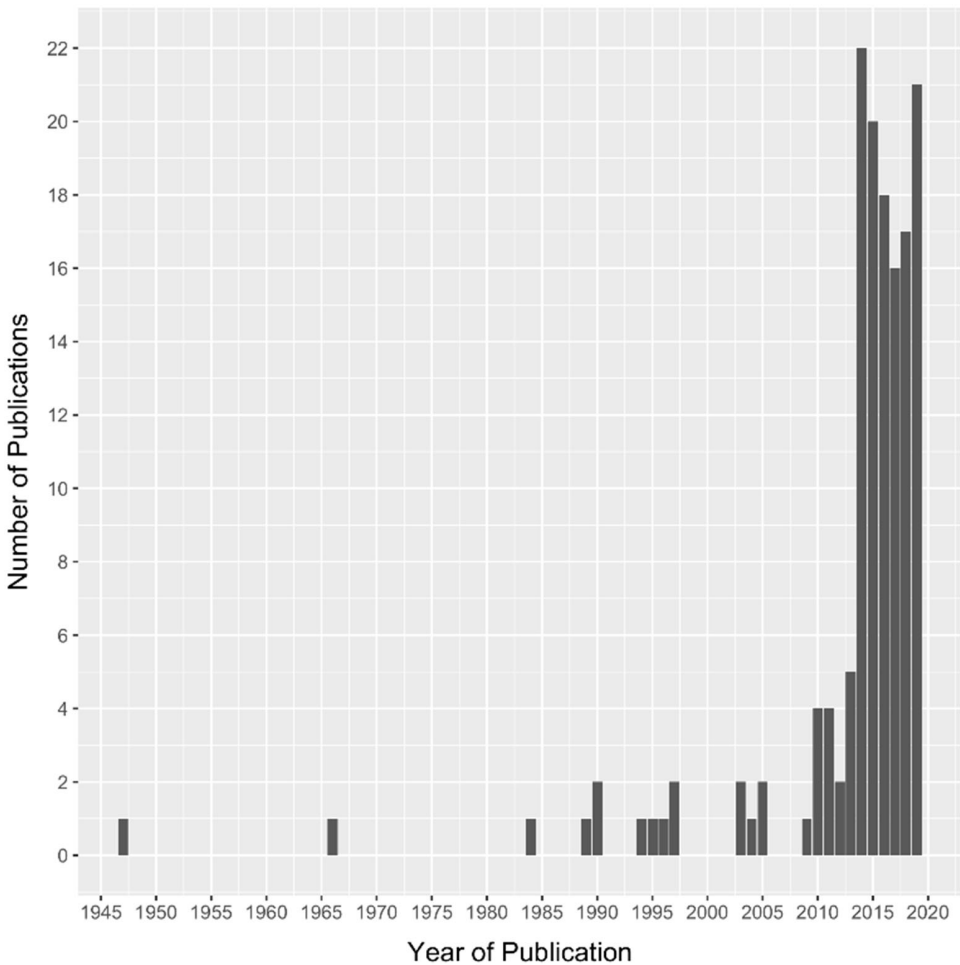


FIGURE 4.
Number of Publications with More than One Adjective by Year of Publication.

to analyze. Nonetheless, our examination of trends and patterns in scholars' ACC definitions offers suggestive insights about how scholars view empirical variation in constitutionalism around the world. Table 3 outlines our findings with regard to the content of the 790 interpretable ACC definitions we identified in the literature. The twenty-one "elements of content" reflect the features and facets of constitutionalism that scholars emphasized when conceptualizing constitutionalism (that is, defining particular ACCs).³⁹

Constitutions are often understood to comprise two parts: one regulating the relationship between state and society (for example, where rights appear) and the other

39. Appendix B offers a description of each element of content. We only considered an ACC definition to include a particular element when the definition mentioned that element directly, not when the element was implied or when the definition mentioned the element only to say that it was not constitutive of the constitutionalism being described.

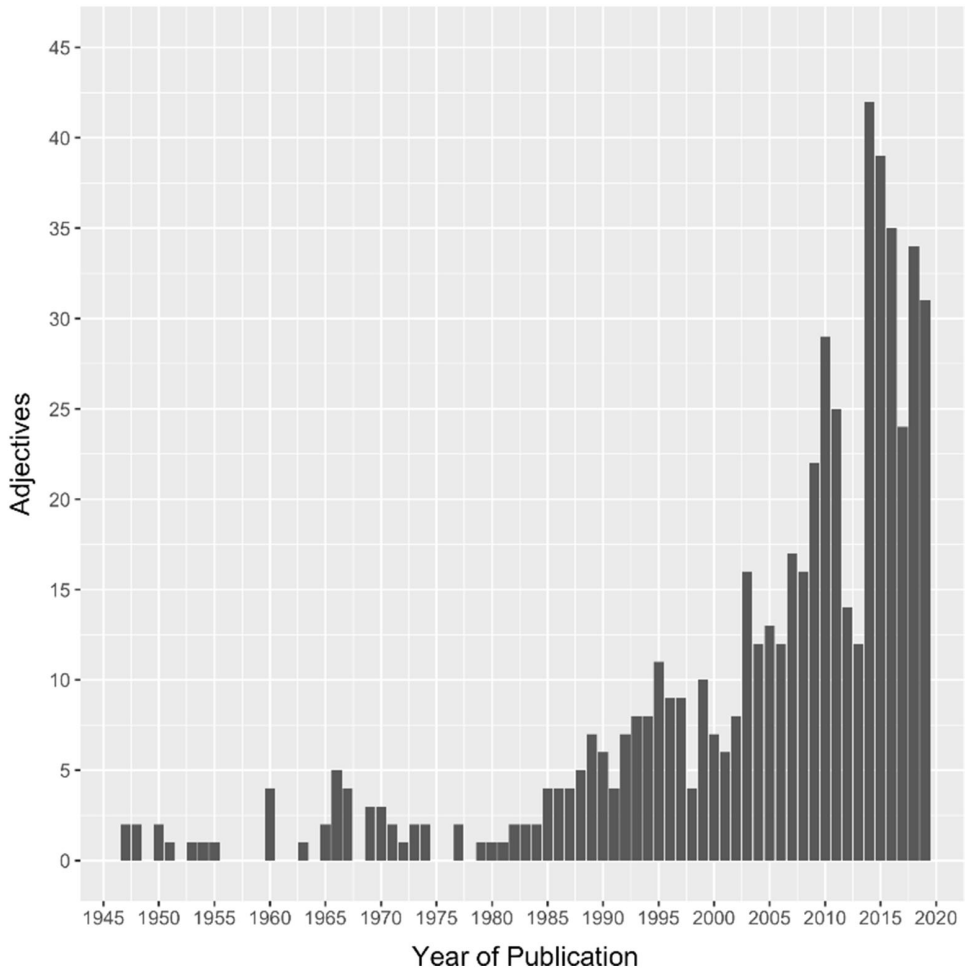


FIGURE 5.
Number of New Adjectives by Year of Publication.

articulating the roles and responsibilities of the branches of government and the relationships among them (that is, Gargarella’s [2014] “engine room”). Both parts comprise rules. We would thus expect that scholars’ descriptions of the ideas inherent in, attitudes toward, and behaviors and practices that emerge around constitutions would also emphasize rules. This was indeed the case: the “rules” element of constitutionalism was included in more ACC definitions in our dataset than any other element. Yet 42.03 percent of ACC definitions did not focus on rules, simultaneously suggesting that scholars do not consider rules to be a *sine qua non* of constitutionalism.

Scholars were almost twice as likely to consider the “vertical” relationships defined in constitutions—between state and society, including (but not exclusively) issues of sovereignty and democratic values and practices—to be core elements of constitutionalism than they were to focus on “horizontal” relationships among government actors. This emphasis may reflect the waves of democracy that occurred during the time period

TABLE 3.
Elements of Content of Definitions of ACCs

Content Elements	Percentage of 790 ACC Definitions Including Content Elements (Including Duplicates) (Count)
Rules	57.97% (458)
Relationship between state and society (includes sovereignty and democracy)	29.87% (236)
Transnational	26.96% (213)
Rights	24.30% (192)
Change	24.18% (191)
Judicial neutral or empowering	20% (158)
Relationship among branches of government	15.82% (125)
Government neutral/empowering	10.63% (84)
Economy	10.13% (80)
Government limiting	8.73% (69)
Societal	8.10% (64)
Justice or equality	7.59% (60)
Relationship between domestic and global	6.46% (51)
Illiberal	6.46% (51)
Entirely unique	5.19% (41)
Religion	4.05% (32)
Government responsibility for pursuing equality or justice, fulfilling basic needs, or making/make rights real	2.41% (19)
Rights limiting	2.28% (18)
Judicial limiting	2.03% (16)
Pluralist	2.03% (16)
Universal	1.90% (15)
Environment	1.77% (14)

in which the publications under study were written. Nonetheless, the weak emphasis on “horizontal accountability” is mysterious given the importance of the state’s ability to constrain itself to the lawful (including constitutional) exercise of power (O’Donnell 1998). Indeed, the minority of scholars who included overall government power in their ACC definitions were slightly more likely to emphasize the empowerment than the restraint of the state, again suggesting a fading of the traditional understanding of constitutionalism as limited government.

With regard to focus on particular parts of the state, the judiciary was mentioned far more often in the ACC definitions studied than were executives or legislatures, with a particular emphasis on courts’ empowerment (rather than limitation). This finding is of course in line with the conventional association between constitutions and courts, given the increasing prevalence of judicial review since the mid-twentieth century and consonant with scholars’ emphasis on an empowered state (Calabresi 2020). Nonetheless (and despite the relative frequency of their mention), just one-quarter

of ACC definitions highlighted rights as constitutive of constitutionalism,⁴⁰ and most ACC definitions that did so were multifaceted, simultaneously pointing to other elements; rights were the main focus in less than 25 percent of ACC definitions that included them.⁴¹

Scholars' slight tendency to highlight the empowerment (rather than restraint) of the state might have implied an understanding of constitutionalism as entailing the enforcement of positive rights. However, scholars mentioned individual (civil and political) rights six times as often as socioeconomic rights and more than twice as often as human rights (although "rights" in aggregate was mentioned more often than any particular type). It is somewhat surprising that scholars remain more likely to include individual rights than socioeconomic rights in their conceptualizations of constitutionalism, given the growing global emphasis on the latter (for example, the International Covenant on Economic, Social and Cultural Rights) and the increasing inclusion of such rights in constitutions since the late twentieth century (Christiansen 2007; Hershkoff and Loffredo 2011).⁴²

Further, there were few explicit references to justice and equality in scholars' conceptualizations of constitutionalism around the world, although most of the small minority of ACC definitions that included these ideals focused on them exclusively. With regard to the particular type of justice and equality considered, just over one-third of definitions mentioned social justice or equality, just under one-third mentioned political justice or equality, and smaller percentages mentioned racial/ethnic or economic justice or equality, security, or dignity. It bears reemphasizing that we do not know whether, in discussing these elements, scholars were describing an empirical phenomenon or prescribing a path forward. Either way, this meek emphasis on justice and equality in scholars' definitions of ACCs is unexpected: as previously noted, at least since the mid-twentieth century, constitutions have often had democracy and liberalism as core tenets, to which justice and equality seem closely related, and have been written at moments of political transition by hopeful societies aspiring to greater freedom, equality, and justice (Elster 1995).

Likewise, only a tiny minority of scholars considered state responsibility for pursuing equality or justice, fulfilling basic needs, or making rights real to be a key aspect of the subtype of constitutionalism they were studying. Perhaps not surprisingly, all the conceptualizations of constitutionalism that did include these notions were found in work published after 1985 (during the third wave of democracy) and focused on non-US cases. This finding again raises questions about the role and power of states over the last half century and about the degree to which governments actually work to implement ideals on which there is global constitutional consensus and to which there is domestic commitment. Interestingly, more than one-quarter of ACC definitions represented constitutionalism as a transnational, or global,

40. A tiny minority of scholars who included rights in their conceptualizations of constitutionalism focused on their limitation, an important reminder that constitutions and constitutionalism do not necessarily embody values generally understood to be positive.

41. Scholars did not disproportionately emphasize rights as an element of constitutionalism with respect to any world region or time period, and their prevalence tracked over-time trends in the number of publications mentioning an ACC.

42. International Covenant on Economic, Social and Cultural Rights, 1966, 993 UNTS 3.

phenomenon. This contrasts with the empirical reality that constitutions are attached to single nation-states. Indeed, scholars who referenced globalism were four times as likely to be referring to globalism itself rather than to the relationship between the domestic and the transnational. The idea that constitutionalism can flow beyond and over state and national boundaries highlights the importance of its comparative study: if the edges of certain types of constitutionalism are not consonant with the boundaries of the constitutions that underlie them, what guides and disciplines them?

As noted earlier, one might have expected that scholars' descriptions of constitutionalism would infrequently reflect or accommodate "change" given that constitutions are often the least flexible type of law and are expected to lend stability to politics. However, almost one-quarter of ACC definitions did suggest that constitutionalism embodies or catalyzes change—from incremental alterations to profound transformations. Of course, since constitutions are often put in place at moments of turmoil and evolution, perhaps it is unremarkable that constitutionalism is sometimes understood as accommodating, or even creating, social change; most of the ACC definitions mentioning change envisioned types of change with a generally positive valence and reflected progress rather than backsliding or reversion.

Summing up, given that the publications in our sample focused on many time periods and countries, we expected to find great variation in how they imagined and described constitutionalism. Considering the figures and percentages in [Table 3](#) in aggregate, we see that only one element of constitutionalism was common to more than half of the definitions of ACCs that we identified; the rest were common to fewer than one-third of those definitions. These findings suggest extraordinary heterogeneity in scholars' conceptualizations of constitutionalism over space and time. In fact, the 790 ACC definitions in our dataset represent 360 unique combinations of elements—360 different types of constitutionalism.

To further interrogate the substance of these hundreds of types of constitutionalism—and hypothesizing that some constitutive elements of constitutionalism would tend to appear together in different scholars' conceptualizations—we generated a simple correlation matrix to determine which of the twenty-one elements of constitutionalism that we identified in ACC definitions appeared in pairs most often (see [Appendix C](#)). Overall, we found very little correlation: among the 210 possible pairs of elements, only a handful appeared together with any frequency. We found a (weak) correlation between two seemingly conflicting elements of constitutionalism—government empowerment and government limitation (0.21)—perhaps because definitions sought to highlight state activity in some areas and restraint in others or to contrast the two. We also found a weak correlation between "justice and equality" and "government responsibility" (0.24), suggesting that when constitutionalism includes such ideals, it also envisions a role for the state in enforcing them.⁴³ We found a slightly stronger correlation between a definitional focus on courts and their empowerment and on the relationship between branches of government (0.37),

43. Intuitively, we also found a weak correlation between "illiberal" and "rights limiting" (0.24).

a result that is in line with the increasing prevalence of judicial review around the world since the mid-1900s.⁴⁴ These findings reinforce the impression of great heterogeneity and few common threads in the ways in which scholars conceptualize constitutionalism and represent it in their writings.

CONCLUSION

Constitutions are fundamental building blocks of governance in the contemporary world. They limit, structure, focus, coordinate, and catalyze government action. And they serve as contracts between society and the state, assigning duties and responsibilities to citizens and government actors and mandating how they should interact. Intense debates about the form and content of constitutions, and the design and powers of the institutions that protect them (courts and judicial review), are held in parliaments and constituent assemblies around the world. Equally important is constitutionalism, understood here as the principles of governance animating and emanating from constitutions and the attitudes and behaviors associated with them. This article has systematically analyzed the English-language literature addressing constitutionalism published since the mid-twentieth century in which scholars sought to precisely characterize empirical instances of constitutionalism around the world by appending an adjective to the noun. We discovered 1,621 instances of an ACC in this literature, and 564 unique ACCs. We noted trends in the authorship of the work and in the geographic areas and time periods in which scholars studied constitutionalism. We also categorized the adjectives they used and pinpointed scholars' main analytic goals in deploying an ACC.

Seen through the eyes of the authors in our study, there is enormous heterogeneity in constitutionalism around the world and over time. Indeed, our analysis of the way in which scholars have defined ACCs uncovered few trends or patterns in how they described the principles and practices of governance they studied. Rules were found to be fundamental to most conceptualizations of constitutionalism, and about one-quarter of those conceptualizations included the relationship between state and society, transnationalism, rights, and change—accommodated or catalyzed by constitutions—as core elements. Yet beyond these points of weak convergence, scholars' definitions varied dramatically. Unexpectedly, given the understanding that liberalism and democracy are foundational to higher law constitutions, scholars rarely considered justice and equality, and government responsibility for pursuing those ideals, to be core components of contemporary constitutionalism. This finding, which suggests that pursuing these ideals is not paramount for national leaders, even when constitutionalism entails empowering states and governments, is troublesome and merits further analysis.

Our examination of constitutionalism certainly raises more questions than it answers. Nonetheless, we highlight two sets of implications of our analysis. The first

44. The strongest correlation we identified—between an emphasis on a “transnational” element of constitutionalism and the relationship between the domestic and global spheres (0.41)—was likely an artifact of our coding (most definitions that were coded on the latter were also logically coded on the former).

concerns conceptualization. Given that legal scholars penned the majority of the work under study, the proliferation of adjectives and its accelerating pace over time (and, indeed, those scholars' focus on empirical constitutionalism more generally) may signal a broadening of legal research beyond its more traditional focus on doctrinal analysis.⁴⁵ Yet the multiplication of adjectives simultaneously implies that scholars are speaking past, rather than with, each other, creating a conceptual maze that is ultimately analytically counterproductive. If our goal is to understand the forms and patterns in which constitutionalism emerges, there could be some merit to focusing on the adjectives that have gained traction and abandoning the rest. To be sure, the hundreds of ACCs that scholars have developed hint at fascinating empirical variation and represent a crucial opportunity for vivid description. Yet a great deal of conceptual work remains to be done before constitutionalism can be effectively operationalized and measured, prerequisites for its systematic analysis and solid theorization over space and time.

The second implication concerns the substance of scholars' depictions of constitutionalism. As noted, the time period during which the work under study was published and on which a majority of it focuses (that is, the second half of the twentieth century and beginning of the twenty-first century) was one of increasing institutional isomorphism—a convergence on democratic political orders and “higher law” constitutions that established and legitimated state institutions and emphasized liberalism and democracy. While scholars' descriptions of constitutionalism rarely perfectly matched (or remained limited to) these key constitutional precepts, most scholars' conceptualizations extended beyond those values in ways that aligned with them or were benignly orthogonal to them.

Yet, in some instances, scholars' descriptions of constitutionalism were at odds with these fundamental tenets. It is of course possible that the constitutionalism described by these scholars was tracking underlying illiberal constitutions. Yet given the ubiquity of higher law constitutions in the period examined by the scholarly work in our sample, it is at least as likely that constitutionalism in these contexts was departing from the core ideals of the “higher law” constitutions in force there. Both interpretations are concerning given their implications for the societies living in those contexts. Yet the latter interpretation is particularly troublesome given its negative implications for the rule of law and its suggestion of a waning of governmental responsibility for enforcing constitutions' central ideals. Evaluating and explaining such parchment-practice disconnects should be major goals of legal scholars and social scientists who are interested in understanding constitutionalism and diagnosing problems of social justice. We hope the present analysis has laid some initial groundwork for doing so.

SUPPLEMENTARY MATERIAL

To view supplementary material for this article, please visit <https://doi.org/10.1017/lsi.2023.1>

45. We thank an anonymous reviewer for suggesting this point.

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