

RESEARCH BRIEF • AUGUST 2023

Constitutions and Order: A Theory and Evidence from Colombia and the United States

Based on BFI Working Paper No. 2023-105, “[Constitutions and Order: A Theory and Evidence from Colombia and the United States](#),” by Leopoldo Fergusson, Universidad de los Andes; Javier Mejia, Stanford University; James A. Robinson, University of Chicago; and Santiago Torres, University of Chicago

Absent institutions strong enough to influence a country’s distribution of resources, some constitutions deliberately allow for violence among citizens as a credible means for more powerful political parties to incentivize the less powerful to opt into governance.

“Nasty, brutish, and short—” Thomas Hobbes’ predictions about life absent a strong state have inspired countries like the US to design governments that prohibit political violence and enforce social order. While the US Constitution threatens to punish treason with death, states such as Colombia are comparatively permissive of insurrection. The Colombian Penal Code states that the penalty for treason can be as little as three years, a rule that dates back to the 1863 Colombian Constitution.

Why do some societies decide to live with disorder, rather than create a strong state to eliminate it? This paper establishes a theory of constitutional design that answers this question. The authors establish their framework first in the abstract, and then show how it applies to conditions specific to Colombia.

A constitution originates through an agreement between two groups—according to the authors’ theory—an Incumbent and a Challenger. Prior to ratifying their new constitution, neither group knows who will come to hold political power or how resources will be distributed under the new order. It is with these conditions that the framers determine what the authors refer to as the “cost of rebellion” i.e., the legal punishment for rebellion.

It may seem natural to set the cost of rebellion highly, as is the case in the United States and similar countries. Consider, however, that the Incumbent (stronger party) needs to incentivize the Challenger (weaker party) to opt into the new constitution. Under particularly unbalanced conditions, such as when there is little chance of the Challenger winning a future election or enjoying access to their fair share of resources,

the Incumbent may need to keep the “cost of rebellion” low to entice the Challenger to buy-in.

This logic underpins the authors’ theory. Put formally, they argue that there are three conditions that lead to lower costs of rebellion: unbalanced political power, inequality in favor of the more powerful political party, and, lastly, uncertainty about the distribution of resources.

The authors show that each of these conditions are met in the case of Colombia. The country features highly corrupt elections, a deep history of inequality, and state that has typically been too weak to redistribute resources. The framers of the 1863 Colombian Constitution anticipated the impacts of these features, according to the authors, and legislated accordingly. By contrast, the United States has less electoral corruption, a more level political playing field, and less inequality.

This work helps explain an otherwise puzzling part of the comparative constitutional histories of the United States and Colombia. The authors demonstrate how constitutional designs may anticipate and even facilitate a conflict-prone society. As their model predicts, Colombia has been plagued by civil wars and violence while the United States has not (except for the Civil War). More broadly, this analysis brings to the fore the necessity of seeing constitutional design in its socio-economic and cultural context.

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ABOUT OUR SCHOLARS



James A. Robinson

Reverend Dr. Richard L. Pearson Professor of Global Conflict Studies and University Professor, Harris School of Public Policy
harris.uchicago.edu/directory/james-robinson

Santiago Torres

Harris School of Public Policy



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