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Empirical Self-Dealing in Constitution-Making — Empirical Evidence from 1789 to 2024

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Abstract

This study revisits the institutional self-dealing hypothesis, which posits that constitution-makers from the executive or parliament choose constitutional provisions that disproportionately benefit their branch of government. As a result, specially elected assemblies are expected to produce better and more successful constitutions. Previous analyses suffered from limited sample size and methodological constraints. Addressing these gaps, this paper analyzes novel data on all 711 constitution-making processes in independent states between 1789 and 2024, thereby significantly expanding the scope of analysis. Three results stand out. First, institutional self-dealing is measurable. Second, constituent assemblies and constituent legislatures seem to share the common goal of constraining the executive. Third, constitutions drafted by constituent assemblies are not systematically more successful. They tend to be better enforced in the long run, but have no higher life expectancy in general. We refrain from causal claims, but the patterns are stable across specifications and measurement choices. The upshot is straightforward: who drafts matters for the balancing of de jure powers, and common claims about the general superiority of constituent assemblies should be tempered.