Demand for Constitutional Decentralization

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INTRODUCTION

Increasingly, decentralization has proven to be a policy fix advocated for and selected by developing countries whose new governments imply a significant regime change from that preceding it. As such, decentralization has been prioritized by numerous development agencies worldwide, as well as having received significant scholarly attention in the past decades. The subsequent analysis seeks to add to this literature by identifying the extent to which factors that lead to divergent policy preferences, such as ethnic and cultural diversity, result in greater definition and scope of decentralization in a given constitution.

This article begins with a definition of decentralization and a description of how it occurs in practice. This definition treats in detail the traditional types of decentralization including administrative, political, and fiscal decentralization. This definition is followed by a treatment of decentralization in constitutions and an identification of factors that have been theorized to lead to a demand for decentralization. Next is a section that defines measures of constitutional decentralization. In developing three measures of the extent to which a given constitution treats decentralization, an additional contribution of this analysis is the development of measures of constitutional detail more generally, for the way the measures were generated are not unique to decentralization provisions. Ultimately, this analysis treats the extent of constitutionally defined decentralization as a function of demand factors theorized to lead to greater decentralization.

Interestingly, several of these traditional demand factors prove significant in determining the extent of decentralization, whereas several others do not. Based upon a sample of 48 Muslim-majority countries, population and cultural fractionalization play a significant role in determining the extent of decentralization outcomes in these countries’ constitutions. Given this same sample, however, territorial size and ethnic fractionalization did not play a role in determining
constitutional decentralization outcomes. Beyond the interesting conclusion that population may be more important than territorial size in determining demand for decentralization, the results suggest linguistic divides could play an important role in heterogeneity of policy preferences within a given nation, more so than simple ethnic diversity.

DEFINING DECENTRALIZATION

The most common definition of decentralization highlights three subcategories: (i) administrative; (ii) political; and (iii) fiscal decentralization.¹ In the subsequent paragraphs, these traditional components are defined so as to characterize the range of forms they may take in constitutions worldwide. It should be noted there are at least two other types of decentralization that some authors highlight: (i) judicial decentralization (a combination of decentralized judicial review and legal pluralism),² and (ii) market decentralization.³ Neither of these appear often enough to merit categorization under the traditional definition of decentralization, but for thoroughness, they should nonetheless be mentioned. A further distinction that often becomes unclear in practice is the difference between deconcentration, delegation, and devolution.⁴ These can all be considered forms of decentralization, listed in increasing order of the amount of power and decision-making authority ceded to the sub-national units in a given country. However, the extent that the terms themselves are functionally applied by constitutional drafters is not entirely clear, especially if the drafters are facing significant pressure to decentralize. A better characterization of decentralization is that of a continuum, with minimal administrative

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decentralization lying at one end, and federalism (or even confederalism) lying at the other. The subsequent paragraphs treat the three traditional definitions of decentralization in greater detail.

Administrative Decentralization

Administrative decentralization involves the transfer of responsibility for public service delivery to the sub-national or local units. This can typically take two forms, one in which the local administrative unit is accountable to the central government ministry or agency, and the other in which the local agencies or ministries are minimally accountable to analogous central ministries, if at all. Administrative decentralization captures the benefit of subsidiarity cleanly: local administrative units given the responsibility and authority to implement government regulations can use their superior knowledge of the sub-national unit to exercise discretion in policy implementation to better match local needs. A degree of administrative decentralization is present in the constitution of nearly every country above a certain size. This is due to the reality that past a certain geographic size (and population), policy implementation and oversight must be delegated to sub-administrators.

It should be noted that the available scholarly evidence regarding the benefits of decentralization policies is ambiguous at best. Thus, each traditional type of decentralization has been linked in some countries to negative outcomes. Two of such disadvantages are specifically highlighted as resultant from administrative decentralization. First, if the sub-national or local administrators lack expertise and/or capacity, service delivery can actually suffer, a problem for which ample empirical support exists. The second potential downfall is that administrative

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5 White, supra n 1 at 2; Böckenförde supra n 4 at 17.
7 Böckenförde, supra n 4, at 5.
decentralization lacking effective accountability mechanisms has led to service delivery predominantly benefiting local elites, or cementing preexisting corruption or patronage networks to the detriment of the political system overall.  

A further concern is that in the absence of some degree of fiscal decentralization, administrative decentralization has been characterized as ineffective or merely a front for a high degree of centralization. In short, if local or sub-national units cannot implement policies without first receiving expenditure authorization from the central government, their discretion is greatly restricted, regardless of the guarantees to autonomy they might nominally be granted.

**Political Decentralization**

Political decentralization can involve a number of forms in practice, but at its core, it allows local populations to influence the units that govern them. This can vary from formal election of local legislative and executive bodies to merely electing or having some form of popular constraint on the local official administering centrally defined policies. One argument for political decentralization is that it promotes horizontal accountability at the local level. If local constituents can punish or reward political actors governing them, these political actors are more likely to enact or administer policies in line with local constituents’ desires. This is one of the most cited benefits of political decentralization, and is another example of the principle of subsidiarity at work.

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Political decentralization delineated in constitutions commonly involves the definition of different topical areas of policy authority. Some areas of authority are reserved to the national level, some are reserved to the sub-national level, and some are exercised concurrently through a number of mechanisms.\(^\text{12}\) Of course, a given constitution cannot exhaustively list the number of policy areas that a state and its sub-national units will be called to legislate upon. This implies that another important area is definition of where residual authority to legislate lies.\(^\text{13}\)

A concern related to political decentralization is that of definition of the sub-national units.\(^\text{14}\) This takes two dimensions, the first being how to define the units in each level, and the second being how many levels of governance to create when decentralizing. Key considerations here include the existing regional divisions of a country, the choice of electoral units, levels of inequalities that new regional divisions could create, and the balance of urban/rural population in each unit.\(^\text{15}\)

**Fiscal Decentralization**

Fiscal decentralization concerns the extent to which sub-national units can manage their own financial affairs. Such autonomy actually involves a number of dimensions. Before a local or sub-national authority can spend money implementing or enforcing policy, it needs a source of revenue. Like decentralization in general, revenue authority can be thought of as a continuum between fully decentralized and limitedly decentralized, if at all.\(^\text{16}\) Full authority on the part of sub-units to raise their own revenue would imply the ability to tax property, income, sales of goods, as well as charge user fees for public services such as roads, water, among others.

\(^\text{12}\) Böckenförde, supra n 4 at 27.
\(^\text{13}\) Saunders, supra n 6, at 4.
\(^\text{16}\) White, supra n 1 at 3; Böckenförde, supra n 4 at 21-22; Saunders supra n 6 at 3.
However, such a broad authority can distort the national economy, especially if movement of goods into sub-national units is taxed more heavily than local goods. Therefore, a balance is often struck between which aspects of taxation authority are granted to sub-national units.

This brings out the second aspect of fiscal decentralization, which is the authority to spend, or expenditure decentralization. This is an important component of fiscal decentralization: if authority to spend is largely left to the central government, this will again prevent sub-units from enforcing or implementing policy, even in the event administrative and political decentralization and revenue autonomy nominally grants them the authority to do so.

Nonetheless, the amount of evidence regarding the size of the public sector, as well as corruption and other forms of undesirable political outcomes suggest that some form of oversight authority on the national level may be optimal to restrain these outcomes. This is in addition to the decision made by constitutional drafters as to areas of authority allocated to the national government versus sub-national units, which can be a complementary alternative to expenditure and revenue oversight by an independent authority. By limiting the number of areas on which sub-national units can legislate, administrate, tax, and spend, constitutional drafters can themselves restrain some of the possible negative outcomes resultant from fiscal decentralization.

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James Tyler Dickovick puts forward a valuable set of measures for fiscal decentralization. Regarding revenue autonomy, the three crucial measures are whether sub-national units are: (i) granted the authority to tax, (ii) guaranteed transfers from the central government; and (iii) given these powers explicitly in the constitution. As pertains to expenditure autonomy, the three measures identified are whether the sub-national units are: (i) governed by spending mandates; (ii) able to set independent budgets; and (iii) monitored by national ministries as regards their expenditure. Finally, under contractual autonomy, the three central concerns are whether sub-national units: (i) are legally autonomous from central governments; (ii) can contract debt from private lenders; and (iii) can negotiate labor costs with civil service.

It should be noted that the emphasis of this paper is non-normative with regards to a given extent of decentralization. Much of the literature on decentralization focuses on lessons from decentralization policy worldwide, either selecting a case study from one or several countries, or using panel data from a large number of countries. The results of such studies are quite mixed, for a recent meta-analysis of the available literature regarding decentralization outcomes found out of 32 studies considered, 13 concluded the impact of decentralization was positive, 11 considered the impact to be negative, and 8 had mixed results. While the meta-analysis restricted itself to studies of public service provision in Asian countries, such mixed findings are characteristic of the literature regarding decentralization more generally.

However, the question of whether constituents’ preferences for decentralization are well founded based on available scholarly evidence is not relevant to this analysis. Instead, the focus

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lies upon the link between factors that are likely to increase citizen demand for decentralization, and whether these factors can be linked to an increase in constitutional decentralization provisions. Nonetheless, the advantages to decentralization that scholars list are compatible with the theory developed here; the perceived advantages of decentralization may inform the belief structure underlying citizens’ preferences for decentralization, whether or not such perceptions of decentralization benefits are appropriate to the country in question or not. The next section treats the range of options from which constitutional drafters can choose if they decide to decentralize.

**DECENTRALIZATION IN CONSTITUTIONS**

The first consideration for constitutional drafters is how to formally specify the institutional structure that will support the decentralization of authority. This can be condensed into three main questions. First, how many levels of government will there be? Many decentralization regimes follow the traditional three level structure, with a national government, an intermediate level of provinces, regions or districts, and a local level of government. A second consideration is that of how many constituent units will be defined at each sub-level. A simple example is that of the United States of America, with fifty units defined at the state level of government. A third consideration is that of what institutional framework will be created at each sub-level. More specifically, will each level of government have its own legislature, executive, and judiciary, or will governance institutions be more limited at one level than another?

Two concerns related to the definition of the structural framework for decentralization are also worth mentioning. Both deal with the definition or alteration of some aspects of decentralization at a later date. The first structural question is whether constitutional drafters should postpone certain aspects of decentralization for a later stage. This is particularly important
in cases where local and sub-national capacity is lacking. Any decentralization regime will require post-constitutional legislative and administrative adjustment to function, and several contemporary decentralization programs have required such adjustment due to a lack of capacity on the sub-national level.

South Africa provides a compelling example of this, where most commentators highlight the lack of local capacity coupled with a decentralization of a complex set of policy responsibilities\(^\text{24}\) as resultant in a failure of service delivery and governance on the local level. These were also part of the reasons why Spain chose an asymmetric means of decentralization,\(^\text{25}\) granting greater policy responsibilities to a subset of more developed regions, while delaying for years in granting those same policy responsibilities to other regions that had less economic and administrative capacity at the onset. In South Africa’s case, the failure of local service delivery has led to recentralization of some government functions, whereas Spain stands as a more successful case of decentralization implementation, in part because of the gradual nature of the process.

The second way to allow for future adjustment of decentralization is to allow modification of the structural specifications of decentralization itself. Can the list of powers or areas of administrative authority ceded to sub-national units be altered? What does it require to do so? The lower the threshold required of the national government to alter decentralization arrangements, the less power that is actually decentralized to the sub-national units. If the national government is given the authority to alter the extent of power of the lower units without their approval, then the lower units will take this power into account when making or implementing policy. This proves to be a constraint on their level of autonomy, even in policy

\(^{24}\) The Constitution of the Republic of South Africa: December 16, 1996 (as Amended to March 26, 2009), Articles 104, 125, 127, 139, 151, 152, 156, and 163.

\(^{25}\) Constitución Española, 1978, Articles 143 and 148.
areas that have been formally granted to them by the constitution. Similarly, the higher the threshold required to alter decentralization arrangements, the stronger the powers and responsibilities granted to the sub-national units by the constitution become.

The final consideration regarding the formal structure of the decentralization regime is the types of government to grant to each of the sub-national levels, and it is one of the most important. The continuum of options for constitutional drafters has its minimum at authority for policy implementation residing in field offices of the central government.\textsuperscript{26} The other extreme is that of full executive, legislative, and judicial authority being vested in the national sub-units.\textsuperscript{27}

The next core component for constitutional drafters is that of the depth of decentralization, which deals with specific competencies and policy areas that are granted to each level of government. First, what areas of broad authority will be granted to the sub-national units? This can be divided into the categories of administrative, political, and fiscal decentralization treated previously. Related to these three areas of decentralization are the formal specification of topical policy areas granted to different levels of government. This becomes necessary when the authority to legislate has been granted to sub-national units, and constitutional drafters choose which policy areas remain exclusive to the national government, and which policy areas are granted to the sub-national levels.

The third component of decentralization is that of the institutions that facilitate cooperation among different levels of government, as well as resolve conflicts in the cases where they arise. This includes choices about the structure of government on the national level, such as the extent to which constituent units are represented in central institutions. The relationship between the legislative and the executive branches of government can define the extent to which

\textsuperscript{27} Constitution of Iraq 2005, Article 115.
sub-national concerns play a role in policy outcomes. Presidential, semi-presidential, and parliamentary systems all have different implications for the extent to which minority and sub-national policy issues will be treated on the national level as compared to majoritarian concerns. Furthermore, the electoral system chosen, be it proportional representation or first-past-the-post, will also play a role in determining the strength of sub-national representation on the national level. Another institution is that of shared competencies or agencies that perform functions for two or more levels of government. A further concern relevant to these coordinating institutions is how the different levels of sub-national units are structured with respect to the policy responsibilities of one another. Finally, these institutions include a variety of accountability mechanisms that are crucial to ensuring an appropriately balanced decentralization regime.

The final structural component some constitutional drafters choose to utilize is that of legal safeguards governing the structure and implementation of the decentralization regime. These safeguards include heightened requirements for alteration of the decentralization regime, up to and including constitutional amendment itself. Implementation of decentralization as specified in a constitution is what ultimately determines the success or failure of a given regime. Thus, a range of mechanism for implementation oversight have also appeared in constitutions worldwide, providing a number of such institutions from which modern constitutional drafters can choose. Common options include independent commissions, transitional provisions, and timelines, among others. However, unless specifically tasked with decentralization oversight or implementation, such implementation oversight mechanisms cannot reasonably be characterized as decentralization provisions themselves.

DEMAND FOR DECENTRALIZATION
Given this wide range of options, constitutional drafters have a large choice set regarding the form and extent of decentralization provided by the constitution they are creating. While the principle of subsidiarity implies some forms of governance are best suited to the sub-national level, it also has a secondary implication; the more localities and regions vary from each other, either in terms of population, language, religion, ruggedness or resource endowments, the more likely these populations’ policy preferences are to differ. If this relationship holds, one would expect the benefits of subsidiarity to increase in such situations, which implies that the benefits from decentralization would also increase. In some sense, this mirrors the point made that past a certain point, the size of a country, both in terms of population and geographical area, requires a certain degree of administrative decentralization, regardless of the extent of corresponding fiscal and political decentralization.

Several of the preceding factors regarding demand for decentralization have been highlighted in the literature for decades. Pommerehne and Kirchgässner identify population, geographical area, per capita income, and income inequality as theoretically linked to increased demand for fiscal decentralization in a given polity.28 Given the great extent to which effective decentralization regimes are linked to sufficient fiscal decentralization as a component, it is reasonable to think that a rational constituent would want a more effective decentralization regime, which requires greater amounts of political, fiscal, and administrative decentralization, all else equal. Therefore, one could argue that the same factors that make the principle of subsidiarity more likely to be operative in a fiscal decentralization context are also likely to influence the demand for political and administrative decentralization. In other words, these

factors are likely to increase demand for decentralization regimes in general, as well as fiscal
decentralization more particularly.

A more recent study by Nicholas Spina links the presence of ethnoregionalist parties in a
country to increased levels of decentralization.29 This stands to reason if ethnic or regional
differences correlate with different policy preferences. If so, each unit increase in autonomy to
sub-units in a country with greater ethnoregional fractionalization would yield potentially greater
returns in terms of the benefits the subsidiarity principle implies. To posit that citizens with
divergent policy preferences anticipate gains to sub-national unit autonomy does not require a
complex political calculus on the part of citizens with such divergent policy preferences. It
merely requires that citizens perceive net policy gains from increases in the autonomy of their
particular sub-national unit. Perceived net policy gains, those in which transaction costs are
outweighed by the perceived benefit of increases in sub-national policy autonomy, should be
more likely as one increases those factors associated with increases in divergence of policy
preferences.

Ruggedness has itself been linked to variance in regional identity, and more directly,
heterogeneity of policy preferences and decentralization outcomes more generally.30 This stands
to reason, for cost of governance can be argued to increase significantly with increases in
transportation costs between localities. Put differently, two cities separated by a chain of large
mountains may take hours to travel from one to the other, even in the event they are only

29 Spina, Nicholas. “Explaining political decentralization in parliamentary democracies.” Comparative European
vol. 94, no. 1, pp. 20–36 (2012); Berkowitz, D & Clay. The evolution of a nation: how geography and law shaped
mining mita.” Econometrica, vol. 78, no. 6, pp. 1863–903, 2010; Sokoloff, KL & Engerman, SL. “History lessons:
institutions, factor endowments, and paths of development in the new world.” Journal of Economic Perspectives,
separated by a few miles as the crow flies. There is reason to believe that since the advent of 
near-costless communication over long distances, the governance costs across large distances 
have fallen. However, this ignores one aspect of this geographical feature: path dependence. If 
ruggedness played a role in the creation of distinct units of governance in the past, there is reason 
to believe these units developed distinct identities from one another as centuries passed. 
Mountainous regions have long been associated with separatist movements and strong 
subnational identities all over the world. The Basque Country, Chechnya, Kashmir, Scotland, 
and West Virginia all have been argued to have been influenced in part by the ruggedness of 
their terrain, and how this ruggedness required the development of a sense of community apart 
from the national unit as a whole.

Pommerehne and Kirchgässner are not the only ones to identify income inequality as 
resultant in different preferences regarding public service delivery. However, such inequality is 
more difficult to measure in a way that can effectively test questions regarding demand for 
decentralization, because the inequality has to exist between political sub-units in a given 
country. If every province in a country has the same level of inequality, then the theory regarding 
demand for public service delivery would suggest almost no demand for decentralization in a 
case where income inequality was equal in every area. Thus, a countrywide measure for income 
inequality is unlikely to capture this mechanism compared to a within-country regional measure 
of inequality. Pommerehne and Kirchgässner recognize this critique in their statistical analysis, 
and try to correct for it by using a regional measure of inequality, as opposed to a countrywide 
average. Interestingly, as a given country’s national inequality average increases, these authors 
found a centralized government was more likely. However, when using levels of inequality on

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the regional level within countries, the authors found a positive relationship, as hypothesized if political sub-units have significantly different wealth levels.\textsuperscript{32}

Based upon these insights, one might expect pressures for decentralization upon constitutional drafters to increase with a country’s size, population, number of ethnicities and languages, territorial ruggedness and regional variance in wealth and inequality. In the subsequent sections this question is examined, with available data on these factors, using a subset of the world’s constitutions and the decentralization provisions contained therein.

**MEASURING CONSTITUTIONAL DECENTRALIZATION**

If these demand factors are actually linked to constitutional decentralization then one would expect measures treating divergent subnational policy preferences to track the level of provisions treating decentralization in a given constitution. Thus, one would expect a greater degree of detail and extent of decentralization in a country’s constitution as these factors increase for that given country. A simple linear regression could provide additional weight to the argument that heterogeneous constituencies demand greater decentralization from constitutional drafters. Importantly, the question as specified requires a measure of the given demand factors from the time which the constitution was drafted. Unlike many cross-country studies, comparative analysis of constitutional moments has the advantage of occurring at a relatively fixed point in time, which establishes a clear date of reference upon which to fix the other variables of interest.

The subset of constitutions chosen was that of countries whose population was more than 50\% Muslim.\textsuperscript{33} This choice was based both in the need to pick a subset due to time constraints

\textsuperscript{32} Pommerehne and Kirchgässner, above n 34, at 209.
associated with calculating the underlying measures of decentralization, as well as several factors unique to nations with a significant Muslim populace. A corollary of the link between authoritarianism and predominantly Muslim societies\(^\text{34}\) is that this same preference for authoritarian control (typically in line with the principles of Islam) can result in a preference for centralization, as opposed to decentralization. Furthermore, such a selection metric does not sacrifice diversity in terms of the subset of countries selected; the predominantly Muslim countries are drawn from every continent except North America, and display a range of wealth levels, territorial and demographic sizes, and times of constitutional drafting. Therefore, based on these two factors, if the hypothesized relationship proves to be significant in countries that may be predisposed against decentralization, it is an argument for an extension of the model to the population of countries worldwide. If the relationship is borne out in an environment where there are reasons it may be less likely to occur, then it is at least as likely to hold in the global set where these factors are less present in the aggregate.

One extension, should the results prove significant, would be to test the question at the latest year of amendment, rather than just the year the constitution was drafted. The argument for such a specification is that the demand factors for decentralization are arguably operative in any given period, and so would be operative in a period where the transaction costs of amendment were clearly less than the gains from policy change for some constitutional issue. Such a year could provide a potential benchmark for analysis as to factors that would either imply an increase or decrease in constitutional decentralization. However, of the 48 countries with a majority Muslim population, only a handful\(^\text{35}\) experienced change to their decentralization regimes upon

\(^{33}\) The subset does not include Brunei, Comoros, the Maldives, Qatar, or Surinam, due to data availability constraints across the key measures of interest, ethnic and cultural fractionalization.


\(^{35}\)
amendment, and so it is unlikely that among the sample of countries treated the results of such an amendment analysis would have sufficient degrees of freedom to yield results with any meaning.

Thus, the core question for this analysis is how to measure the level of decentralization contemplated by a given constitution. While measures for most of the factors theorized to create demand for decentralization are well-established in the literature, clean measurement of decentralization is anything but. Nonetheless, there are a number of ways to approximate the extent of detail a given constitution devotes to a particular topic. Fortunately, the Comparative Constitutions Project provides the provisions a given constitution has dedicated to decentralization, and the only task remaining is to tally these provisions.

The most obvious of the ways to measure the extent of these provisions is word count. The more words a given constitution dedicates to the topic of decentralization, the more likely it is that the decentralization regime is specified in greater detail in that constitution. However, the fact that the CCP data directly highlights the articles relevant to decentralization of power also provides another simple measure: how many articles the constitution devotes to the topic. Ultimately both these measures suffer from the same weakness: if a constitution’s drafters are more prone to detail, or are comparatively long-winded in the way they articulate constitutional details, then the validity of these measures as a reflection of pressures drafters face to decentralize is weakened. Therefore, a third measure was constructed, which took the number of articles devoted to decentralization divided by the total number of articles in a given constitution. This yielded the proportion of articles that were devoted to decentralization as one way to control for the potential verbosity of one set of drafters as compared to another.

Obtaining a comparable word count across similar constitutional provisions is more labour-intensive than the casual observer might imagine. The wealth of constitutional documents
contained in the CCP data banks is truly comprehensive, but the documents themselves are scans of older documents, scans that often result in numerous errors when it comes to tracking words, not to mention separating them. Thus, in order to obtain an accurate word count, one must copy and paste the relevant provisions into a document editor, and ensure that the relevant words are faithfully replicated before beginning a word count. Furthermore, the choice of drafters to precede each article with a simple number, or with “Article #” can bias comparisons from one constitution to another. Thus, each word count of the relevant constitutional provisions does not include the numerical system chosen by drafters because it provides no additional detail to the provisions in question, and can bias comparisons of word count between constitutions.

Unfortunately, because of the labour intensiveness of this process, obtaining reliable word counts of an entire constitution would have been prohibitively time-consuming, and instead, the proportion of articles measure was used.

Using several measures of the level of detail also provides a control for the fact that some countries’ drafters chose to include extensive discussion of decentralization in the schedules following the main body of their constitution. Such schedules often provide a detailed plan for the implementation of the constitution, and so, may provide more detail that in other countries is provided in initial organic legislation meant to bring the constitution to fruition. By treating number (and proportion) of articles, and considering each schedule as one article, this was one way to account for the otherwise lengthy decentralization provisions contained in these sections that might not be cleanly comparable to core constitutional provisions seen in other countries whose constitutions did not contain detailed schedules at the end. Nonetheless, such a level of detail might itself be a response to the decentralization pressures detailed previously, and so articles and proportion of articles might both be under-inclusive on this front. In short, there are a
number of reasons to use these measures conjunctively, as opposed to any one measure individually.

The link between constitutional provisions and factors that lead to a demand for decentralization requires one of two assumptions. The first is that the drafting process that created a given constitution was sufficiently representative of constituents’ preferences to where the underlying demand factors would be reflected in the drafting process through an increased level of decentralization scope and detail defined in the Constitution. The alternative assumption is that the drafters are more likely to recognize the benefits of decentralization in environments where the preceding demand factors are present. If a country is larger geographically or demographically, or if a country has a greater degree of cultural fractionalization, then drafters who seek to maximize the effectiveness of the governance system they are creating will be more likely to specify a decentralization regime than drafters who are less subject to these concerns.

Finally, a brief discussion of the measures of ethnic and cultural fractionalization is warranted. These measures were drawn from a 2002 work by James Fearon.\(^{36}\) One of its primary contributions to the literature on ethnic and cultural diversity was the creation of a new measure of cultural fractionalization that measured how far apart different ethnicities’ languages were from one another according to a linguistics heuristic. Fearon’s argument was that some countries that have many ethnicities display much less cultural variance than others with a similar number of ethnicities. In line with this intuition, Fearon created two measures, one based on the number of self-identifying ethnicities within a given country’s borders, and one based on the languages used by these ethnic groups. As one would expect, these measures correlated strongly (0.82), but are by no means identical, as the subsequent section will also suggest. For the purposes of this

analysis, the only drawback to Fearon’s dataset is that it is static, which prevents selection of measures tailored to the specific year of constitutional drafting. However, unlike population, ethnic and cultural diversity are comparatively fixed over time, such that use of a static measure from 2003 should still roughly approximate the ethnic and cultural divisions within a given country. Although not ideal, Fearon’s measures provided the closest match to the countries surveyed, with the exception of the five mentioned previously.

The other measures of demand for constitutional decentralization are much more commonplace, namely population and territorial size, which were drawn from the World Development Indicators index prepared by the World Bank, and from the CIA World Factbook, respectively. The territorial size was also selected from current measures, with the exception of Sudan, whose information was taken from prior to the secession of South Sudan in 2011. Although there is some variation in territorial size due to border disputes and more accurate surveying techniques, the use of this data was based on the assumption that such changes to territorial size are negligible as compared to total territorial sizes, and such marginal changes are unlikely to affect constituents’ broad demands for decentralization. Population, however, was taken from the year a given country’s constitution was enacted, due to how fluid demographics are as compared to territorial size and ethnic composition.

RESULTS

37 World Bank. Data retrieved March 17, 2014, from World Development Indicators Online (WDI) database. However, those countries whose current constitution was put into force prior to 1960 (Indonesia -1945; Jordan – 1952; Lebanon – 1926; and Malaysia – 1957) required a different data source, due to the World Development Indicators only beginning in 1960. The population total for each of these countries was found in Maddison, Angus. Historical Statistics for the World Economy: 1-2003 AD, 2005, at http://www.ggdc.net/maddison/historical_statistics/horizontal-file_03-2007.xls.

The application of multiple options yields several comparable measures of constitutional decentralization across different nations’ constitutions. In sum, the three measures; (i) words devoted to decentralization, (ii) articles devoted to decentralization, and (iii) articles devoted to decentralization as a proportion of total articles in the constitution; were regressed on the three factors theorized to influence demand for decentralization in the following model:

\[ \text{Const. Decentralization} = \beta_0 + \beta_1 \times \text{Population} + \beta_2 \times \text{Territorial Size} + \beta_3 \times \text{Fractionalization} \]

As an initial test of the factors detailed in this analysis, these measures of constitutional decentralization were generated for 48 countries, the vast majority (over 90%) of countries whose population is at least 50% Muslim.

As seen in Table 1 below, the coefficient on population as a determinant in constitutional decentralization remained positive and significant at the 95% level for all three decentralization measures. As notably, territorial size was insignificant across all three measures. This would indicate that the benefits of decentralization may operate more systematically when it comes to the demographic as opposed to territorial size of a given nation. Because the scale of population was huge as compared to the range of quantities displayed across the different decentralization measures, the coefficient was displayed as zero by the statistical macro despite the significance level found in all cases. In order to verify the sign of the coefficient in each of the three regressions, these regressions were run again with several different scaled down versions\(^3\) of the population variable. In each case, the coefficient was positive, and remained significant at the 95% confidence level.

While the relevance of demographic size as compared to the irrelevance of territorial size was itself an interesting result, the outcome as pertains to cultural and ethnic fractionalization

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\(^3\) While utilizing logarithmic transformations and scaling down by several factors of ten was sufficient to establish the sign and continued significance for the purposes of this analysis, more work with the population variable is needed to establish its distribution, and hence, what type of scalar is most likely to preserve that distribution.
was even more so. Because of the high correlation between ethnic and cultural fractionalization, the preceding regression was run with each individually, as well as together. Unsurprisingly, the inclusion of two strongly correlated independent variables weakened the significance of the test in all three cases, in two of them beyond the 95% confidence level indicated by the F-statistic. More importantly, when run alone, the ethnic fractionalization measure yielded insignificant results in two of the cases, and a weakly negative sign in the third case, although that third case was itself indicated as insignificant via the F-statistic.

In comparison, the cultural fractionalization measure was positive and significant at the 95% confidence level across all three measures of constitutional decentralization. Given that the other measure was consistently insignificant, this suggests something particular to linguistic divides that operates on governance demands, as opposed to these demands stemming from ethnic divides more broadly. One clear interpretation is that significantly different languages pose administrability concerns that different ethnicities do not. In particular, official government documents, websites, signs, and other requirements become more costly with each language that they need to be created in. Decentralizing at least some aspects of central administration to each linguistic area may simply be a cost-saving measure. This explanation is more in line with the secondary assumption that benevolent drafters, even absent strong input from soon-to-be constituents, may wish to design the most effective governance system possible. If decentralization implies significant efficiencies in cases where predominant languages are sufficiently divergent, then drafters might rationally choose to decentralize, regardless of the extent to which citizens have significant input into the drafting process.

Table 1: T-Statistics for each independent variable and $R^2$ of each regression

<table>
<thead>
<tr>
<th>Measure of Decentralization</th>
<th>Population at enactment</th>
<th>Territorial Size</th>
<th>Cultural Fractionalization</th>
<th>$R^2$ (Adj $R^2$)</th>
<th>Regression F-Statistic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Word count</td>
<td>4.782*</td>
<td>1.185</td>
<td>3.025*</td>
<td>0.4047</td>
<td>9.9718*</td>
</tr>
</tbody>
</table>
However, there is reason to think that there may be more at play with linguistic divides than increased administrative costs. Recent scholarship has suggested that different language groups can result in significantly different behavior on the part of the respective populations speaking them; namely, future-oriented behavior such as savings and personal health is more likely to occur in languages that do not have as distinct a divide in present and future tenses. The implications of this for governance preferences is clear. If distinct linguistic groups behave differently across such self-rewarding actions as savings and health, it requires little to imagine that linguistic differences could also result in significantly different policy preferences on the part of the various native speakers.

An additional rationale may also be related to the comparative difficulty linguistically-dissimilar groups have in communicating with one another. Such communicative barriers can lead to the perception of these groups as being distinct from one another, even if they might otherwise share numerous policy preferences in common. If communicating these policy similarities becomes more difficult between groups as the linguistic divide between them increases, then the likelihood increases that these groups will demand their own governance regimes, distinct from that of the other group. Even taking the results of the linguistic study at face value, populations with distinct preferences regarding savings, health behavior, and

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retirement investments are likely to have different policy preferences governing at least these areas.

**FUTURE RESEARCH**

The first clear extension of this analysis is to include every constitution currently in force for which measures of population, territorial size, and ethnolinguistic fractionalization are available. The choice of Muslim-majority constitutions suggests the results may hold with similar significance worldwide. Additionally, Fearon’s measures of ethnic and cultural fractionalization are not the only measures that attempt to define linguistic divides as at least partially distinct from ethnic ones. To the extent that these additional measures treat enough countries to provide a robust comparison, then results of similar sign and significance using different measures of linguistic divisions would only bolster the argument that they play a role in determining constitutional decentralization outcomes.

Another clear extension is to include treatment of the ruggedness variable in the regression. The available data on a given country’s topographical ruggedness was first developed by Riley, De Gloria, and Elliot in 1999, and has since been updated by Nunn and Puga in 2012. Importantly, for the purposes of this analysis, a given country’s ruggedness is fairly fixed, so inclusion of this variable would not involve the measure for each year a given country’s constitution was enacted. Barring significant terraforming on the part of a given country, the topographical ruggedness is unlikely to change. Even if a country were able to change its terrain ruggedness score through massive terraforming projects, this would not change the effect the

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42 Nunn, and Puga, supra n XX.
ruggedness had in prior periods upon the development of heterogeneous policy preferences on the part of the various groups in a given nation.

Of additional interest is the link between the extent of detail decentralization is given in a constitution, and levels of actual decentralization in practice. One potential way to test this question would be to examine the extent to which Pommerehne and Kirchgässner’s measure of fiscal decentralization (share of total government expenditure for which central government expenditure accounts) correlates to the broader measures of constitutional decentralization provisions. Such a comparison evokes work by Law and Versteeg on “sham constitutions”, measuring the extent to which rights granted in a given constitution are borne out in practice.44

Finally, in simultaneously applying three measures of constitutional detail, this analysis adds to the comparative constitutional analysis literature. If these measures prove useful as a proxy for the extent a constitution treats a given subject, fresh light could be shed on other more researched constitutional topics such as rights specifications and implementation. Similarly, as word counts of constitutions become more readily accessible, it is likely that the word count devoted to a particular topic in a constitution can be compared to the total word count to give an idea of the proportional weight that constitution places upon the topic.

CONCLUSION

Although the results of this analysis provide several fruitful avenues for future research, the initial findings are themselves thought-provoking. Based upon the subset of countries surveyed, the demand factors that play a role in determining levels of constitutional decentralization include population size and cultural fractionalization of a given country. Because the latter measure is based on linguistic divisions, the implication that language plays a

greater role than ethnicity in determining demand for decentralization is an interesting one, albeit one that should be made more robust via a test utilizing the full set of the world’s constitutions. Nonetheless, such a result is in line with other recent research that emphasizes the role linguistic differences can play in determining a range of outcomes of interest.

The preceding analysis remains applicable whether or not constituents have sufficient input to a drafting process for their demands to be reflected, for if not, drafters with foresight and an understanding of the potential benefits of decentralization are still more likely to choose decentralization specificity in the cases where it most likely to yield benefits. Namely, in larger Muslim-majority countries with more ethnolinguistic diversity, constitutional drafters were more likely to choose a decentralized governance scheme, and treat it in greater detail when doing so.