

The Relationship between Democratic and Constitutional Regression under Populist Governments

An Empirical Analysis

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Abstract

Populism and liberal democracy are – at least in parts – in conflict. Researchers have discussed a possible relationship between populist parties in government and democratic regression. In countries with sweeping populist majorities - such as Hungary - populists in power have undermined democratic institutions through constitutional changes. Our paper analyzes whether this mechanism is systematically applied by populists in government in Europe and Latin America. Using V-Dem and V-Party data, we investigate whether constitutional change leads to democratic regression more often under populist governments. The results from our multi-level model show that the relationship between populism and constitutional regression is ambiguous.

Accepted for [Peter Niesen \(eds\): Zur Diagnose demokratischer Regression. Leviathan, Sonderband 40. Im Erscheinen](#)

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1. Introduction

Populism and liberal democracy are - at least in part - incompatible. The anti-pluralist elements of populist ideology and the imperative to enforce the will of the majority are at odds with the preservation of minority rights and the influence of non-majoritarian institutions in liberal democracies. This is why many authors link the increasingly common diagnosis of democratic regression to populism as a driving force.¹ However, democratic regression or progress happens not only within the framework of liberal democratic institutions, but also - among other things - at the level of participation. To understand the relationship between populism and democratic regression in more detail, we analyze whether constitutional changes made by populist parties lead to constitutional regression, that is, a decline in the quality of liberal democratic institutions or participation.

Time and again, the importance of constitutional change is discussed in the context of populism and democratic regression.² The assumption that constitutional change under populist governments leads to democratic regression more often than under mainstream governments is based on the fact that populist ideology is in a particular tension with constitutionalism. In populism, law is understood as the result of the “will of the people” and thus as political.³ This suggests that constitutional reforms happen more often under populist governments, undermining checks and balances.

Using data from the V-Dem⁴ and V-Party⁵ as well as the Comparative Constitutions Project,⁶ we examine whether this assumption holds empirically. We thus contribute to the current debate on the relationship between populism and democratic regression. For example, Schäfer and Zürn⁷ claim a negative impact of populist governance on deliberative, electoral, and liberal democracy in particular, based on data from the V-Dem project for eight selected countries. Unlike those authors, we combine short case studies and large-N analyses to test the generalizability of the results.

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The concept of democratic regression and the mechanisms behind it are controversial in the literature.⁸ We therefore examine in this article one particular aspect of democratic regression, constitutional regression. To undermine democracies, it often takes constitutional amendments that keep the veneer of

¹Schäfer, Zürn 2021; Ginsburg, Huq 2018; Diamond 2021

²2020a

³Blokker 2019a

⁴Coppedge et al. 2021

⁵Lindberg et al. 2022

⁶Elkins, Ginsburg, Melton 2021

⁷Schäfer, Zürn 2021

⁸Bermeo 2016; Karolewski 2021; Jee, Lueders, Myrick 2021; Wolkenstein 2022; Waldner, Lust 2018

democratic action intact.⁹ We understand constitutional regression to mean constitutional amendments that lead to a decline in democratic quality. With this approach, we investigate whether a link between constitutional change by populist governments and democratic regression, at the level of liberal democratic institutions or participation, holds empirically.

To approach these questions, we conduct a Large-N analysis of the impact of constitutional change on the quality of democracy under populist and non-populist governments. Our results show that no uniform conclusion can be drawn about constitutional amendments by populist governing parties. Rather, we find significant geographic differences.

In an additional chapter we discuss whether democratic regression can only occur on the basis of constitutional regression. We discuss the relevance of differences between changes in simple law and constitutional law. Using two short case studies, we compare developments in Hungary and Poland over the past twenty years. In doing so, we show that a decline in the quality of democracy in both countries, which is similar on the basis of the data, can be associated with both constitutional regression and changes in laws below the constitutional level.

2. Constitutional Regression and Populism

To discuss the relationship between populism and constitutional regression, we first introduce the concept of democratic regression. Based on this discussion, we show that law has a special significance in the process of democratic regression. We discuss different approaches to the meaning of law in democratic regression and describe our understanding of constitutional regression. In the next step, we use the definition of populism as a thin ideology¹⁰ to explain the relationship between populism and constitutionalism.

2.1 Definition of Constitutional Regression

Democratic regression refers to a decline in democratic quality. What exactly constitutes a decline in democratic quality is disputed.¹¹ Scholars agree that democratic regression happens more slowly in recent years and is mostly carried out by (at least nominally) democratically elected governments. In the past, democratic systems were often undermined by coups.¹² Today, incumbents and officeholders who want to secure their power undermine democratic rules and values, and with it the democratic system.¹³

⁹Scheppele 2018

¹⁰Mudde 2004

¹¹Gerschewski 2021

¹²Bermeo 2016

¹³Ebd.; Huq, Ginsburg 2018; Levitsky, Ziblatt 2018; Svobik 2015

Going further into the details of democratic regression, we find more discussions around the term. While some authors argue that democratic regression always takes place within a democracy and thus can never describe the collapse of a democracy,¹⁴ Other authors also understand a hybrid system between democracy and autocracy as a possible outcome.¹⁵ In our analysis, we apply the latter understanding and also include periods in which states were already considered electoral (but not closed) autocracies in order to gain the most comprehensive understanding of the influence of populism on constitutional regression.

The core of democratic regression is usually described as executive aggrandizement: the strengthening of executive power while constraining veto players and opposition.¹⁶ In the course of democratic regression, checks and balances within the political system are weakened, leaving the government subject to fewer and fewer checks and balances.

Which other mechanisms are part of democratic regression, however, varies widely by definition. Some authors speak of democratic regression only when free elections are also restricted, for example by redrawing constituencies, manipulating the media exposure of candidates, or making it more difficult for certain groups to participate in elections.¹⁷ Likewise, the restriction of opposition, freedom of the press, freedom of movement, freedom of association, and science and media are discussed as elements of democratic regression.¹⁸ Less frequently mentioned are a decline in citizen participation,¹⁹ for example due to declining voter turnout or a dismantling of direct democratic elements, as well as regressions in the inclusion of disadvantaged population groups.²⁰

The debate on democratic regression often focuses on the weakening of liberal democratic institutions and (in-)formal norms.²¹ This focus is increasingly criticized. Authors have recently started to emphasize the importance of civil society in the concept of democratic regression.²² They argue that a negative development of inclusion, or participation mechanisms, or citizens' attitudes towards democracy should be considered as an aspect of democratic regression as well. Sometimes a decrease in the quality of liberal democratic institutions might even be considered as an increase in other aspects of democratic quality. A democracy can also fail to serve its purpose and lose quality if all institutions are still intact but citizens no longer want to be involved in the political process and slip into a passive behavior. Schäfer and Zürn additionally point out that representation is not always responsive and that the interests of different social

¹⁴Tomini, Wagemann 2018

¹⁵Bermeo 2016 ; Huq, Ginsburg 2018

¹⁶Bermeo 2016 ; Ginsburg, Huq 2018; Scheppele 2018, p. 549; Satrio 2018, pp. 276-277; Karolewski 2021, p. 313; Waldner, Lust 2018, p. 95; Khaitan 2019, p. 344; Diamond 2021

¹⁷Cf. Huq, Ginsburg 2018, p. 83; Waldner, Lust 2018, p. 95.

¹⁸Cf. Huq, Ginsburg 2018, p. 83; Tomini, Wagemann 2018, p. 693; Levitsky, Ziblatt 2018; Diamond 2021

¹⁹Cf. Waldner, Lust 2018, p. 95

²⁰Cf. Tomini, Wagemann 2018, p. 693.

²¹Cf. Bermeo 2016; Levitsky, Ziblatt 2018; Diamond 2021

²²Cf. Karolewski 2021; Wolkenstein 2022; Schäfer, Zürn 2021

groups are not always equally well represented.²³ A growing lack of responsiveness and an increasing inequality in the representation of different social groups can also mean a decline in democratic quality.

When we speak of democratic regression in the sense of executive aggrandizement, what is usually meant is a dismantling of liberal democratic institutions. However, democracy consists of more dimensions than the level of liberal democratic institutions. Democratic regression can also occur, for example, in the area of democratic participation or inclusion. We account for this in our analysis by using two indices to measure democratic regression: one institutional and one civic.

The Importance of Legal Changes in Democratic Regression

Liberal democratic regression is closely linked to legal change. In many liberal democracies, the norms and institutions described are enshrined in constitutions, or at least in simple law. This gives the mechanism of (constitutional) legal change a special significance within the process of democratic regression.²⁴

Particularly when officeholders and incumbents aim to ensure that their state continues to appear democratic, law gains weight in the process of democratic regression.²⁵ In the case of an obviously unconstitutional act such as a coup, it matters little whether the law is adapted. Today, however, democratic regression often takes place under the cover of democratic government. Changes in the law can be an important part of this cover to legitimize the autocratic goals of democratically elected officeholders and incumbents.”²⁶

The undermining of liberal democratic institutions through (constitutional) legal change has been debated in recent years under terms such as constitutional retrogression²⁷, autocratic legalism²⁸, and abusive constitutionalism²⁹. The relevance of law in the course of democratic regression can be seen in the multitude of terms that have emerged in recent years to describe this process alone. Almost every article dealing with democratic regression also addresses changes in law.³⁰

The term constitutional retrogression already points to the relevance of constitutions in the context of democratic regression.³¹ At its core, the authors focus on the restriction of elections, freedom of expression and assembly, and the rule of

²³Schäfer, Zürn 2021, pp. 96-101

²⁴Cf. Huq, Ginsburg 2018; Scheppele 2018

²⁵Cf. Landau 2013

²⁶Cf. Scheppele 2018

²⁷Cf. Huq, Ginsburg 2018

²⁸Cf. Scheppele 2018

²⁹Cf. Landau 2013

³⁰Cf. Scheppele 2018; Gerschewski 2021; Karolewski 2021; Huq, Ginsburg 2018; Khaitan 2019; Bermeo 2016

³¹Cf. Huq, Ginsburg 2018

law. By rule of law, the authors mean “stability, predictability, and integrity of law and legal institutions.”³² While this definition is directed at various rights, their design, and the legal system, the authors explicitly point out that constitutional amendments are only one mechanism of constitutional retrogression.³³ Huq and Ginsburg also include in their concept legal amendments that violate the character of the constitution but do not require a constitutional amendment. Scheppele pursues a similar concept with the term autocratic legalism.³⁴ She, too, is concerned with amendments to constitutions or simple law. However, her work is primarily devoted to restrictions on the separation of powers as well as the centralization of executive power.

The concept of abusive constitutionalism is limited to constitutional amendments or renewals aimed at undermining democracy.³⁵ The goal here is said to be – along with the elements of democratic regression discussed earlier – the centralization of power in the executive branch, the restriction of veto players and elections, and the curtailment of minority and fundamental rights.

The importance of the distinction between constitutional law and ordinary law can be seen in our case study analyses of Hungary and Poland: Whereas in Hungary the constitution was amended to limit the independence of the judiciary, in Poland this was possible even without this step – and thus with a smaller parliamentary majority. We argue, however, that categorizing both types of regression together does not do justice to the situation, even if they are similar: A restructuring of liberal democratic institutions through constitutional amendments is a more permanent step. To reverse constitutional regression, many states require the larger or more long-term majorities needed to amend the constitution. We discuss this problem in more detail in the empirical section, using Hungary as a case study.

Therefore, our understanding of constitutional regression builds on the notion of abusive constitutionalism. In line with Landau, we include only constitutional amendments in our analysis. We thus understand constitutional regression as one or more constitutional amendments that lead to a decline in democratic quality (in line with the minimal definition that authors could agree on regarding democratic regression). Our understanding of democratic and thus constitutional regression thus goes beyond the institution-based definitions of Scheppele, Landau, Huq, and Ginsburg. We include both the quality of liberal democratic institutions and participatory elements of democracy, but analyze them separately. As we show in the discussion of populism in the coming section, this distinction is important both to assess the effect of populism on constitutional regression and to address the criticism of authors who see the notion of democratic regression as too institution-based.³⁶

³²Cf. Ebd., pp. 87-88

³³Cf. Ebd., p. 124.

³⁴Cf. Scheppele 2018

³⁵Cf. Landau 2018

³⁶Cf. Karolewski 2021; Wolkenstein 2022

2.2 Populism and Constitutional Regression

The debate on democratic regression repeatedly links it to the growing number of cases in which populist parties are involved in democratic governments.³⁷ As noted above, looking at the tension between populism and constitutionalism raises the question of whether constitutional amendments by populist parties lead to a deterioration in the quality of democracy. We first introduce the concept of populism in this section before discussing its relationship to constitutionalism and democratic quality in the next step.

Definition

The most commonly used definition of populism in political science describes it as a thin ideology.³⁸ Populism usually emerges tied to a “denser” host ideology, for example fascism and socialism, and yet has its own ideological core. Abts and Rummens describe this core as a question of the distribution of power.³⁹ The populist ideology is based on the majority principle, in which only the “will of the people” is to be implemented. According to the ideology, the will of the people is homogeneous and therefore clearly recognizable.⁴⁰ With the goal of implementing the “true” will of the people, populism divides society into the “evil elites” and the “good people.”⁴¹ If the alleged “will of the people” is not implemented, populists see the “evil elite” at work.

Populism and liberal democracy are thus in conflict. While populism strives for pure and unrestricted popular sovereignty as the ideal, liberal democracy includes separation of powers, minority rights and veto players. In a liberal democracy, checks and balances are built in both within and between the powers, preventing a centering of power. Liberal democracy is thus always in tension between institutionalization and popular sovereignty.⁴² This inherent incongruence is always part of liberal democracies. Populism, however, has a clear alignment between the poles: The “will of the people” must be implemented as quickly as possible and without obstacles. Institutions and norms serve the sole purpose of supporting this process, but must never hinder it.

Populism and Constitutionalism

Populism is based on the supremacy of the political.⁴³ Law can accordingly only express the outcome of political processes, but can never justify their restriction. The claim of a neutral law that stands above the political process is

³⁷Cf. Schäfer, Zürn 2021; Ginsburg, Huq 2018; Diamond 2021

³⁸Cf. Mudde 2004

³⁹Cf. Abts, Rummens 2007, p. 409

⁴⁰Cf. Ebd.; Mudde 2004

⁴¹Cf. Mudde 2004, p. 543

⁴²Cf. Canovan 1999

⁴³Cf. Mudde, Rovira Kaltwasser 2012a, p. 17; Blokker 2019b

not recognized by populism. Instead, law is seen as a purely political medium. The goal of directly implementing the alleged “will of the people” leads to a special relationship between populism and constitutionalism. The constitution is supposed to reflect the will of the majority of the people and is thus not seen as a firmly established institution that is rarely changed, but as purely political.⁴⁴

Populist parties do not strive to abolish constitutions, but to re-politicize them in the sense of the alleged “will of the people.”⁴⁵ In order for this to succeed, constitutions should be easy and quick to change according to the populist ideal, in order to always reflect the will of the majority.⁴⁶ With this understanding of the constitution, the distinction between simple law and constitutional law is also abolished within the populist ideology.⁴⁷ If constitutional law is no longer seen as a guideline in the everyday political process, but only as a form of expression of the political, it loses its elevated and particularly safeguarded position.

Populism and Constitutional Regression

This relationship between populism and constitutionalism raises the question of whether constitutional regression and populism are related. A vast amount of literature has been written about the general relationship between populism and democratic quality. Schäfer and Zürn argue that populist parties have no positive influence either in opposition or in power – as junior, senior partners or in a sole government – and as a stronger party in government even a negative effect on the quality of democracy.⁴⁸ In the wider literature, however, the relationship between democracy and populism is much more controversial.⁴⁹ For example, in a study of the populist FPÖ’s participation in government in Austria, we did not find any above-average transgressions of constitutional limits during their time in government.⁵⁰ While many authors agree that populism and liberal democracy are at least partially in conflict,⁵¹ nevertheless, some also point out that populism may well have a corrective effect on a less responsive, highly formalized democracy.⁵²

The claim that society consists of a “homogeneous people” with a unified will is also reflected in populism’s understanding of the constitution. While liberal democratic constitutions focus on fundamental and human rights, separation of

⁴⁴Cf. Blokker 2020b; Mazzoleni, Voerman 2020

⁴⁵Cf. Mazzoleni, Voerman 2020; Müller 2017a

⁴⁶Cf. Fabbri 2020

⁴⁷Cf. Blokker 2020b

⁴⁸Cf. Schäfer, Zürn 2021, pp. 171-182

⁴⁹Cf. Canovan 1999; Mény, Surel 2002; Mouffe 2005; Laclau 2005; Abts, Rummens 2007; Mudde, Rovira Kaltwasser 2012b; KÖNIG, Swalve 2022

⁵⁰KÖNIG, Swalve 2022

⁵¹Cf. Mudde, Rovira Kaltwasser 2012a ; Müller 2017a; Abts, Rummens 2007; de La Torre, de Lara 2020

⁵²Cf. de La Torre, de Lara 2020; Mudde, Rovira Kaltwasser 2012b; Canovan 1999

powers, and these days also on international integration, populist parties have shifted their focus to the constitution as a whole. The understanding of the people as a homogeneous entity thus leads to the exclusion of some people from the constitution, so that it often loses its pluralistic claim.⁵³ In Blokker’s words, “Constituent power, rather than being the power of the multitude, becomes the power of the majority.”⁵⁴

Both Blokker⁵⁵ and Bugarić⁵⁶ refer to the variance of populist parties and argue that populist constitutional amendments do not only have negative effects on the quality of democracy. Solely a preference for frequent constitutional amendments is not a threat to democracy.⁵⁷ Since populist ideology centers around popular sovereignty, opportunities for participation have a special significance for populists. In particular, the strengthening of participatory elements of constitutions is repeatedly highlighted as a positive effect of populist constitutional amendments.⁵⁸ Moreover, in Latin America, constitutional amendments stemming from populist actors have strengthened social rights⁵⁹ and the inclusion of indigenous groups in the political process.⁶⁰ The worse the previous participation mechanisms of a democratic system are, the stronger the positive influence through populist constitutional amendments can be.⁶¹

In the debate on the effect of populism on liberal democracies, authors repeatedly refer to Latin American cases in which participatory elements have been strengthened.⁶² However, Schäfer and Zürn consider only two Latin American cases in their analysis, Venezuela and Brazil.⁶³ While a left-wing populist is in power in Venezuela, a right-wing populist rules in Brazil. The latter is atypical for Latin America, which is characterized by left-wing populism.⁶⁴ According to the latest V-Dem report, Venezuela is one of the most autocratic states worldwide.⁶⁵ By not discussing an example of a left-wing populist regime with a higher quality of democracy, Schäfer and Zürn obscure the connection between democracy and populist governments in Latin America.

Overall, the case selection of the eight examples used by the authors to examine the influence of populist majority governments does not appear to be independent of their dependent variable, as only electoral autocracies and states with a sharp decline in democratic quality are considered.⁶⁶ The authors leave out

⁵³Cf. Müller 2017a

⁵⁴Blokker 2020b

⁵⁵Cf. Blokker 2019b

⁵⁶Cf. Bugarić 2019

⁵⁷Cf. Tushnet, Bugarić 2021, p. 73

⁵⁸Blokker 2019c; Mudde, Rovira Kaltwasser 2013; de La Torre, de Lara 2020, p. 1464

⁵⁹See de La Torre, de Lara 2020, p. 1464

⁶⁰Cf. Mudde, Rovira Kaltwasser 2013, p. 162

⁶¹Ruth–Lovell, Grahn 2022

⁶²Cf. Mudde, Rovira Kaltwasser 2013; Blokker 2019c

⁶³Cf. Schäfer, Zürn 2021, p. 173

⁶⁴Cf. de La Torre 2017

⁶⁵Cf. Boese et al. 2022

⁶⁶Cf. Schäfer, Zürn 2021, p. 173

states in which the effect of populism on democratic quality cannot be classified so clearly (for example, Greece or Bolivia⁶⁷). Although Schäfer and Zürn put forward the thesis that current populism is “primarily an authoritarian populism”⁶⁸, they do not examine this assumption empirically. Therefore, their study allows conclusions only for the included eight states, but not fundamentally for the relationship between populism and democracy. What drives the negative effect on democratic quality in these cases, whether it is authoritarianism or populism, remains unclear. This also applies to the question of whether the prevailing populism is actually authoritarian and what effect populism has on the quality of democracy.

Despite the indications of possible positive effects of constitutional changes under populist governments, most authors point out that these positive developments come at a price. Its positive attitude toward participation and popular sovereignty is countered by populism’s majoritarian character. The understanding of the popular will as homogeneous often leads populist governments to weaken constitutional elements that protect social pluralism and the institutionalized separation of powers: Most often, populist constitutional amendments limit opposition rights as well as political competition and strengthen the power of the executive.⁶⁹ The notion of the people in populist parties necessarily excludes parts of society, as otherwise the idea of unrestricted homogeneity is untenable.⁷⁰ The participatory elements of populist constitutional amendments are thus only suitable to allow parts of society to participate. At the same time, however, they often disenfranchise other parts by privileging the collective over individual fundamental rights.⁷¹

The relationship between populism and democracy is more complex than the black-and-white picture often painted of the populist threat to democracy, especially when taking into account different democratic dimensions – such as participation, inclusion, representation or non-majoritarian institutions. Many theories of populism clearly point out that populist actors have a different focus in their conception of democratic systems. While it would stand to reason that non-majoritarian institutions suffer under populist governments, this is not necessarily true for other democratic dimensions such as participation.⁷² Empirically, therefore, we examine the impact of constitutional change on democratic quality with a view to two of these dimensions: Participation and Liberal Democratic Institutions.

A further question, which unfortunately cannot find a place in this article, is which participation mechanisms are enabled in constitutional amendments.⁷³ In

⁶⁷Cf. Mudde, Rovira Kaltwasser 2013; Blokker 2019b

⁶⁸Cf. Schäfer, Zürn 2021, p. 167

⁶⁹Cf. de La Torre, de Lara 2020; Mudde, Rovira Kaltwasser 2013; de La Torre, Peruzzotti 2018

⁷⁰Cf. Albertazzi, Mueller 2013; Urbinati 2019; de La Torre, de Lara 2020, p. 1464

⁷¹Cf. Scheppele 2018.

⁷²See Blokker 2019c; Mudde, Rovira Kaltwasser 2013; de La Torre, de Lara 2020, p. 72

⁷³Cf de La Torre, Peruzzotti 2018

order to meet the claim of general participation, from a democratic perspective, the design of the new constitution or constitutional amendments must also be inclusive. However, if the new constitution is decided top down by a populist government, this rather indicates an authoritarian development.⁷⁴ Unfortunately, no comparable data are available on the diverse processes of constitutional reforms. We therefore limit ourselves to analyzing the effect of constitutional change by populist governments on democracy quality. In the next section, we present the data used for this purpose and our empirical strategy.

3. Data and Empirical Strategy

If constitutional amendments come about under populist governments, the question arises whether they always have a negative impact on the quality of democracy. To gain an overview of the effects of constitutional change by populist governments, we use data from the V-Dem and V-Party Projects and the Comparative Constitutions Project.

To determine the populism score of a government, we draw on the populism index from the V-Party project,⁷⁵ which ranks parties on a populism scale based on expert assessments of the rhetoric of party representatives regarding their anti-elitist attitudes and their reference to the people as a homogeneous group (v2xpa_popul). When a government consists of multiple parties, an average was taken of the populism scores of the parties involved, each weighted by their relative strength (measured by percentage of seats) within the governing coalition. This results in a populism index for governments between 0 (not populist) and 1 (populist).

The data on constitutional changes come from the Comparative Constitutions Project,⁷⁶ which documents constitutions and constitutional changes. We use the binary variable “evnt”, which records changes as well as new versions of constitutions annually (0 – no change, 1 – change).

Similar to Schäfer and Zürn,⁷⁷ we measure the quality of democracy with the index of liberal democracy (v2x_libdem) from the Varieties of Democracies (V-Dem) project⁷⁸. This index describes on a scale of 0 to 1 to what extent individual rights and minority rights are protected against encroachment by the state and the majority. The index is made up of two components: Expert assessments of the implementation of the principles of liberal democracy in the country (v2x_liberal) and expert assessments of the extent to which the ideals of electoral democracy (v2x_polyarchy) are fulfilled in the country.

⁷⁴De La Torre, de Lara 2020

⁷⁵Cf. Lindberg et al. 2022

⁷⁶Cf. Elkins, Ginsburg, Melton 2021

⁷⁷Cf. Schäfer, Zürn 2021, pp. 171-194

⁷⁸Cf. Coppedge et al. 2021

In addition, we use the variable “v2x_cspart” from the V-Dem dataset. This variable is an index that maps the extent to which civil society organizations (e.g., interest groups, unions, charities, etc.) are able to make their voices heard politically. Several scholars have criticized the focus on purely institution-based measurement tools, emphasizing instead participatory elements of democracy. The inclusion of the Civil Society Index in our analysis is intended to address this criticism and our broader understanding of constitutional regression.

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Table 1: Constitutional events between 1991 and 2020 by populist governments (weighted populism score of the government > 0.5)

To ensure comparability of the concepts of populism and democracy, we restrict our analysis to 40 European and later 19 Latin American countries over the period 1991-2020. We excluded from the analysis country-year observations that are classified by the V-Dem project as closed autocracies. In total, our data panel consists of 1740 country-year observations. Of these, constitutional changes take place in 595 observations. However, constitutional events by governments with a high populism score of more than 0.5 are relatively rare: Only 75 observations meet this criterion. By constitutional events, we mean both constitutional amendments and the introduction of a completely new constitution. Table 1 provides an overview of these cases. In Europe, with the exception of Italy and Malta, constitutional changes by populist governments seem to be a rather Eastern European phenomenon. Also notable is that it is mainly right-wing populist governments that have been able to implement constitutional changes. A different picture emerges in Latin America. Here, constitutional changes have been implemented predominantly by left-wing populist governments. Since not all governments can be clearly classified on a left-right scale, we refrain from modeling the effect of left- and right-wing populism on the quality of democracy separately.

Figure 1 shows the distributions of the populism index in Europe and Latin America. Populist governments are not exceptional in Latin America (37 % of all observations (number: 190)). In Europe, the distribution is clearly skewed to the right, with a majority of governments with few populists. The majority of European country-year observations have a relatively low populism score (less than 0.5). Out of 1154 observations, only 114 (10%) have a populism score of more than 0.5.

To analyze whether constitutional changes by populist governments have a negative effect on liberal democratic quality, we use a hierarchical linear panel data model with random intercepts for years and countries. The hierarchical model structure takes into account influencing factors that are the same for all countries but may change over time (year random intercepts) and country-specific influencing factors that remain constant over time (country random intercepts). This means that the analysis controls for institutional and economic differences between countries, for example. It also takes into account temporal trends such

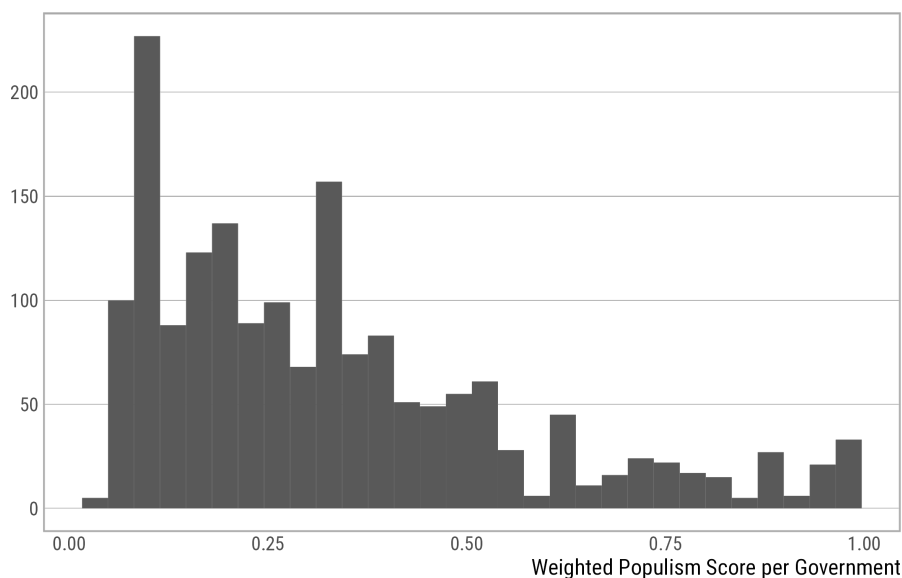


Figure 1: Distribution of the Populism Score of Governments in Europe and Latin America

as the general economic situation or the general rise of populist parties. Furthermore, we use the dependent variables one year ahead (“lead”) in each case. A constitutional change in one year will probably not have an impact on the democracy index in the same year, but only with a slight delay. There are at least two reasons for this: First, the measurement of the Democracy Index in the same year of a constitutional change could be influenced by the situation before the constitutional change. In particular, if the constitutional change takes place late in the year, it is possible that experts are evaluating the situation before the constitutional change when measuring the Democracy Index or are taking an average of the situation before and after the reform. Another reason is that constitutional changes often have a full impact only after some delay, for example, if the changes have yet to be fully implemented or if the actual consequences of a change become visible only after a delay. All models were computed using the lme4 package in the statistical software R.⁷⁹

⁷⁹Cf. Bates et al. 2015.

4. Results

4.1 Constitutional Amendments Under Populist Governments – A Threat to Democracy?

To begin with, we focus exclusively on European countries in our analysis. Table 2 shows the results of three different specifications of the panel data model for both dependent variables. The intraclass correlation coefficients of 0.864 (democracy index) and 0.795 (civil society index), respectively, indicate that the hierarchical model is appropriate. The government populism score is negatively and, in models (1) and (3), statistically significantly ($p < 0.01$) associated with both the democracy index and the civil society index. An increase in the populism score from the 5% to the 95% quantile decreases the democracy index by 0.065 and the civil society index by 0.114. Constitutional events have no statistically significant effect on either index in models (2) and (5) to begin with.

Table 1: Linear Regression Europe

	<i>Dependent variable:</i>					
	Liberal Democracy			Participation		
	(1)	(2)	(3)	(4)	(5)	(6)
Populism Score	-0.096*** (0.018)		-0.077*** (0.020)	-0.031* (0.018)		0.001 (0.019)
Constitutional Change		0.009 (0.006)	0.018* (0.010)		0.006 (0.005)	0.025*** (0.009)
Populism x Change			-0.038 (0.030)			-0.062** (0.027)
Constant	0.690*** (0.034)	0.664*** (0.032)	0.685*** (0.033)	0.805*** (0.026)	0.799*** (0.025)	0.799*** (0.025)
Number of Years	30	30	30	30	30	30
Number of Governments	39	39	39	39	39	39
sd(Year)	0.007	0.006	0.004	0.009	0	0
sd(Country)	0.207	0.201	0.204	0.16	0.153	0.154
N	1109	1108	1079	1110	1109	1080

Note: *p<0.1; ** p<0.05; *** p<0.01

In models (3) and (6), the interaction of the variables populism score and constitutional event is added in each case. The negative and statistically significant effects suggest that the effect of constitutional events on the indices depends on the populism score of the government. Interaction effects are best represented graphically for interpretation. Figure 2 illustrates the effect of constitutional events on liberal democracy or civil society as a function of populism score with 95% confidence intervals. When a government’s populism score is low, constitutional changes have a slightly positive effect. For more populist governments, the sign changes – so constitutional amendments now have a negative effect. Populist ideology suggests that constitutional amendments by populists have a negative effect on the democracy index, but possibly a positive effect on the civil society index. This is only partially confirmed in the Large-N analysis. Constitutional changes by populist governments have a negative effect on both liberal democracy and civil society.

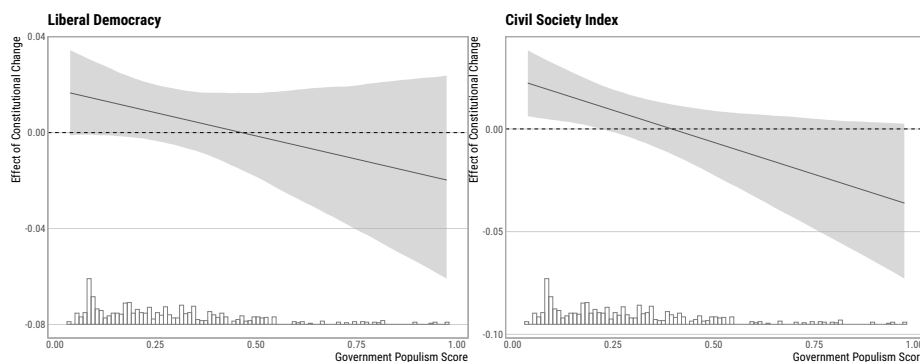


Figure 2: Effect of Constitutional Change Conditioned by Government Weighted Populism Score

4.2 Heterogeneous Effects: Populism and Constitutional Amendments in Europe and Latin America

As we have already discussed, populism conflicts with the constitutional mechanisms that safeguard the separation of powers. However, there are also significant programmatic differences between populist parties. Our primary interest in the preceding analysis was Europe, which resulted in a relatively homogeneous concept of populism because, first, the parties were predominantly right-wing populist governing parties that were also similar due to geographic proximity within a party family. To explore whether the results of the last analysis can be applied to other parts of the world, in this section we expand our dataset to include Latin American countries. In contrast to the populist governments in Europe within our period of study, the leftist manifestation of populism predominates in Latin America. In the empirical analysis, the binary variable “Latin

America” indicates geographic affiliation.

Table 3 summarizes the results of the analyses with the extended dataset. To capture whether the effect of constitutional change by populists differs in Europe and Latin America, we use a triple interaction effect of the variables “populism score,” “constitutional event,” and “Latin America,” as well as all first-order interactions in a hierarchical linear model. As before, the populism score is negatively correlated with both the democracy index and the civil society index. Likewise, constitutional events per se have neither negative nor positive effects in the extended data set. Of particular interest are the interaction effects added in models (3) and (6).

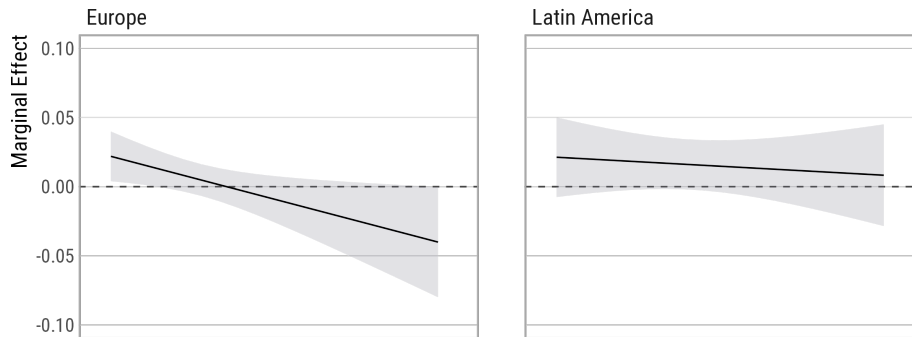
Table 2

	<i>Dependent variable:</i>					
	Liberal Democracy			Participation		
	(1)	(2)	(3)	(4)	(5)	(6)
Populism Score	-0.111*** (0.014)		-0.056** (0.023)	-0.078*** (0.013)		0.007 (0.021)
Latin America Dummy			-0.116** (0.058)			-0.027 (0.042)
Change		0.004 (0.005)	0.018 (0.011)		0.009* (0.005)	0.025** (0.010)
Change x Populism			-0.055* (0.032)			-0.069** (0.030)
Change x Latin America			-0.038* (0.020)			-0.003 (0.019)
Populism x Latin America			-0.092*** (0.031)			-0.117*** (0.028)
Change x Populism x Latin America			0.102** (0.047)			0.054 (0.043)
Constant	0.647*** (0.028)	0.613*** (0.028)	0.680*** (0.032)	0.800*** (0.020)	0.775*** (0.019)	0.797*** (0.024)
Number of Years	30	30	30	30	30	30
Number of Governments	57	57	57	57	57	57
sd(Year)	0.013	0.011	0.013	0.013	0.009	0.011
sd(Country)	0.21	0.209	0.197	0.147	0.144	0.142
N	1626	1645	1596	1627	1646	1597

Note: * p<0.1; ** p<0.05; *** p<0.01

Effect of Constitutional Change on...

Civil Society



Liberal Democracy

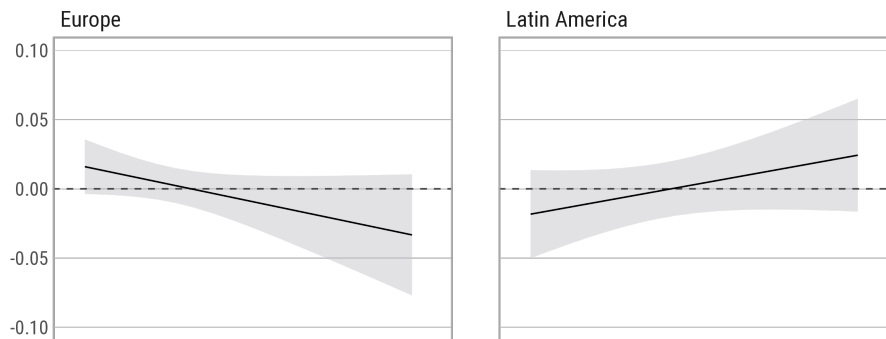


Figure 3: The Effect of Constitutional Events Conditioned by the Government Weighted Populism Score – A Comparison of Europe and Latin America

The triple interaction effect bases on the hypothesis that in Latin American countries the effect of constitutional events has a different dependence than in Europe. In other words, while Figure 3 shows that in Europe the positive effect of constitutional events decreases and eventually disappears as the populism score increases, in this specification we allow that in Latin America there is a different relationship between constitutional events and populism score. The statistically significant triple interaction effects in model (3) and (6) confirm this conjecture.

Figure 3 compares the effect of constitutional events on liberal democratic quality (top) and civil society (bottom) conditioned by the government weighted populism score in Europe and Latin America. In fact, the graphs show opposite trends in Europe and Latin America. Constitutional changes by populist governments in Latin America have a statistically significant positive effect on

liberal democracy and no significant effect on the civil society index. Because constitutional change by populist parties is relatively rare, it is important not to generalize the results of Large-N analyses too quickly, as they are often influenced by only a few cases.

The results show, however, that even case studies of populist constitutional change are difficult to generalize. The experience in Hungary is a striking example of how a populist government is massively restructuring the state away from liberal democracy through constitutional amendments. However, it would be wrong to apply the same expectations of their political goals and approaches to all populist parties. It is therefore necessary to differentiate here.

4.3 The Content of Constitutional Amendments by Populist Governments

So far, our analysis has focused on changes in the liberal democracy index or the civil society index. To gain a more detailed impression of the content of constitutional amendments by populist governments, we have taken a further step by categorizing the content of constitutional amendments. The strength of the executive is measured by an index developed by Elkins, Ginsburg, and Melton.⁸⁰ This measures whether the executive has the power to initiate legislation or constitutional amendments, issue decrees, declare a state of emergency, as well as enforce its power over other institutions through veto power, and have rights reviewed for constitutionality or dissolve parliament. The index of independent judiciary rights is based on Melton⁸¹ and measures the number of constitutional norms that strengthen an independent judiciary.⁸² The index of political rights includes the guarantee of freedom of expression, as well as freedom of assembly, science, press, strike and trade union rights. Social rights include the guarantee of a certain standard of living, health protection at work, financial support, social security, and the right to a fair trial.

If we now look at the content of populist (weighted populism score > 0.5) constitutional amendments that have led to a deterioration in democratic quality (change in the V-Dem index on liberal democracy compared with the previous year < 0), these categories reflect the complexity of the relationship between populism and democratic quality discussed earlier. In seven cases, populist governments made constitutional changes that we can capture with the indices described and that led to a weakening of liberal democracy. But these examples already give us a sense of the relationship between populism and constitutional

⁸⁰See Melton, Ginsburg 2014

⁸¹Cf Ebd.

⁸²Included are the independence of the judiciary in the constitution, whether at least two actors are involved in the nomination and appointment of judges to the Constitutional Court, whether the dismissal of judges is severely restricted and limited only to serious misconduct or constitutional violations, and whether judges' salaries are protected. Instead of including lifetime appointments, we include whether the re-election of judges is excluded.

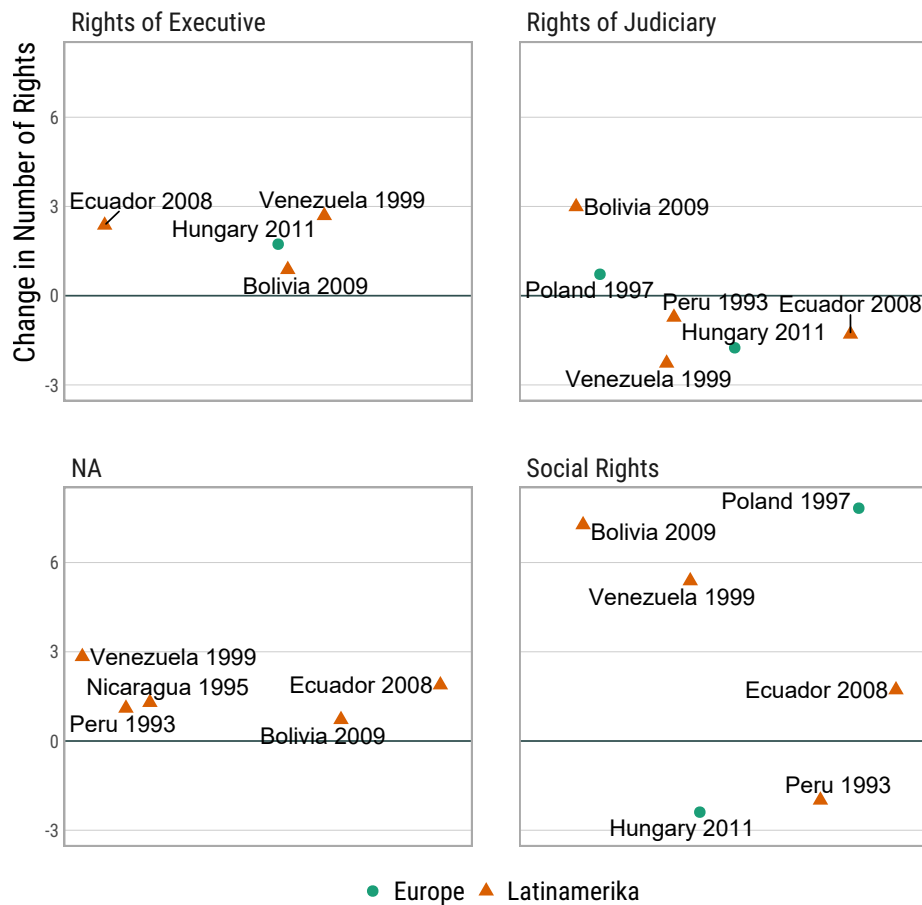


Figure 4: Content changes of constitutional amendments by populist governments (government weighted populism score > 0.5) that led to democratic regression.

regression. While the power of the executive is always strengthened (executive aggrandizement), the picture is different when judicial independence is curtailed. In some cases, it is curtailed, but in others judges are granted more rights. Often, the social component of the constitution is also improved. This Janus-faced nature of constitutional amendments by populists is repeatedly emphasized in the literature and is also evident when we analyze the constitutional content itself.⁸³

However, the cases also show the importance of reasoned case selection. Hungary, which is often used as an example, differs from other cases of populist parties in government because here not only is the executive strengthened, but social rights are also weakened. If we rely on one-sided or false examples without justification, we easily overlook the complexity of the relationship between populism and democratic quality.

4.4 Case Studies: Democratic Regression with and without Constitutional Amendments

Our Large-N investigation is limited to constitutional regression. Accordingly, the question arises whether democratic regression is always accompanied by constitutional regression. We cannot answer this question in its entirety in this article. However, initial conclusions can be drawn by comparing Poland and Hungary.

Both countries have been the focus of discussion of democratic regression under populist governments in recent years. In Poland, the national conservative Prawo i Sprawiedliwość (PiS) has ruled in various coalitions since 2015. In Hungary, the equally national-conservative Fidesz-Magyar Polgári Szövetség (Fidesz), headed by Victor Orbán, has been in government since 2010. In many respects, developments in Poland and Hungary have been similar in recent years. In both countries, the governments have set themselves the goal of establishing an “illiberal” form of democracy. The Polish PiS even sees Hungary as a model for its own restructuring of Polish democracy.”⁸⁴

The similar orientation of Fidesz and PiS can also be seen in the data. Figure 5 shows that since the changes of government in Hungary in 2010 and Poland in 2015 – each represented by a vertical dashed line – the countries are classified as much more populist than before. In Hungary, the populism index jumps from 0.31 to 0.75 in 2010, and in Poland from 0.22 to 0.98 in 2015, near the maximum of the scale. Poland already had a populist government led by the PiS in 2005 and 2006.

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⁸³Cf. Mudde, Rovira Kaltwasser 2013; Mudde, Rovira Kaltwasser 2012b; Blokker 2019b; de La Torre, de Lara 2020

⁸⁴Cf. Sadurski 2019

2015 – each represented by a vertical dashed line – the countries are classified as much more populist than before. In Hungary, the populism index jumps from 0.31 to 0.75 in 2010, and in Poland from 0.22 to 0.98 in 2015, near the maximum of the scale. Poland already had a populist government led by the PiS in 2005 and 2006.

The similar development of the Democracy Index seems to indicate a similar approach by both populist governments to the restructuring of democratic institutions. Figures 5 and 6 show the years with constitutional changes as gray vertical lines next to the course of the Democracy Index. While the decline in the Democracy Index in Hungary clearly corresponds to constitutional changes by the Fidesz government, this is not the case in Poland. One obvious reason for this difference is that PiS does not have the necessary two-thirds majority in the Polish parliament, the Sejm, to push through constitutional amendments. Orban's Fidesz in Hungary, on the other hand, won an absolute majority of votes in 2010 and, due to the electoral system, a two-thirds majority of seats in parliament, which it confirmed in subsequent elections. Equipped with the necessary majority, a new constitution was adopted in 2011, which was amended several times in the following years.

Although PiS was denied such a transformation of the Polish constitution due to the lack of a parliamentary majority, the regime there has found a different strategy to achieve similar effects. Central to Poland's shift away from liberal democracy is the occupation and reshaping of the Constitutional Tribunal, which oversees constitutional compliance in Poland. In 2015, President Duda refused to administer the oath of office to three constitutional judges who had been confirmed by parliament prior to the October 2015 parliamentary elections. The vacant posts were then replaced after the elections by judges nominated by the PiS government. In other changes to the Constitutional Tribunal, the post of president was filled, among others, by judge Julia Przylebska, who is close to PiS. The office includes far-reaching powers to appoint panels of judges and to designate the respective rapporteur. A critical counterpoint to this is that the reorganization of the Constitutional Tribunal allowed the PiS government to pass a number of laws that objectively violated the constitution but were not named as violations by the Constitutional Tribunal, which was paralyzed by strategic appointments.”⁸⁵.

It is remarkable that there is an almost identical decline in the democracy index in both countries, behind which, however, lie different strategies of the governments of the two countries. If the same effects can be achieved by simple legislative changes, the question arises why the distinction between constitutional and simple legislative changes is so important. We argue that the distinction is particularly important because of the sustainability of the legislative changes. There is a qualitative difference between a constitutional amendment (Hungary), which can only be reversed with a qualified majority, and a strategy based on simple legislation (Poland), which could also be reversed with a simple parlia-

⁸⁵Cf Ebd.

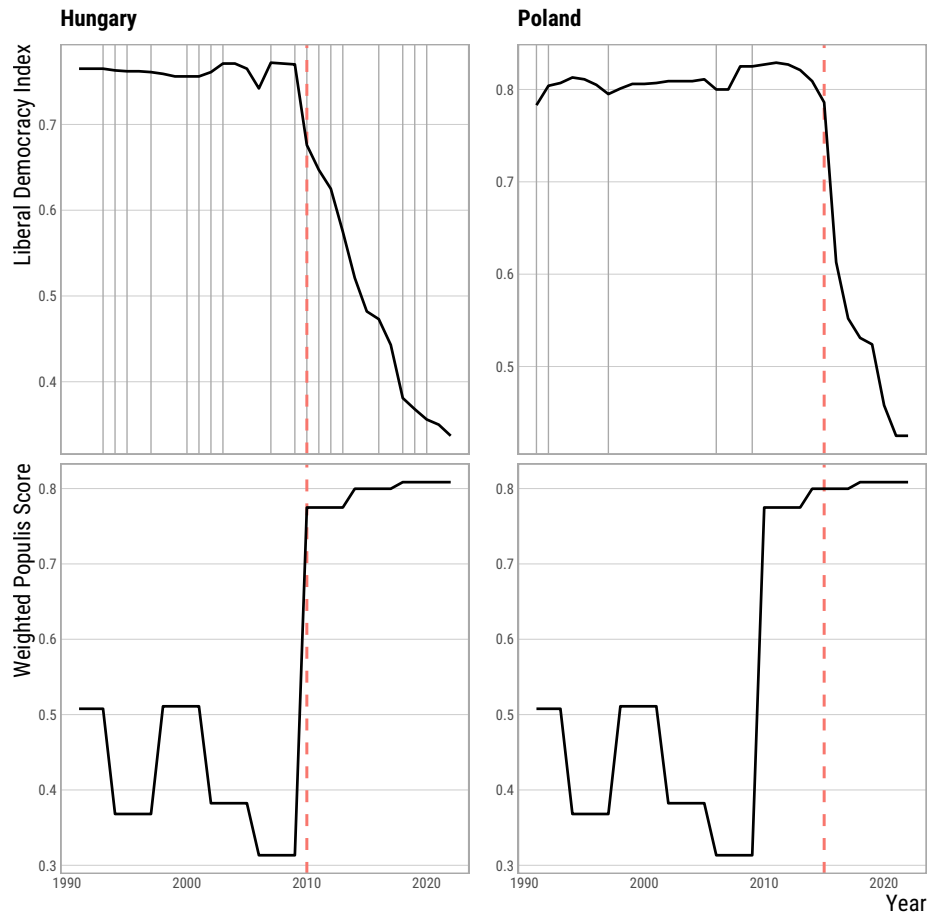


Figure 5: Government Populism Score & Liberal Democracy Index in Hungary and Poland Compared

mentary majority after a change of government. This qualitative difference is difficult to represent in the Democracy Index. Likewise, the analysis shows that constitutional changes are not a necessary condition for a significant decline in the quality of democracy. Democratic and constitutional regression thus do not always go hand in hand.

5. Conclusion

In this article, we have examined the extent to which democratic regression can be attributed to constitutional change by populist governments. We introduced the concept of constitutional regression for the strategic use of constitutional change to degrade democratic quality. In our approach, this can have an impact on both participatory and liberal democratic elements of a democracy.

Our results show that there are no clear correlations between constitutional regression and populist governments. Thus, our results contrast with the thesis that the presence of populist parties in governments always has a negative effect on the quality of democracy. While in Europe constitutional changes by populist governments have a negative effect on the quality of democracy, a positive effect can even be observed in Latin America. This contrasts with case studies of countries, for example, Hungary, ruled by Orbán, in which a fundamental restructuring of democratic institutions has taken place as a result of constitutional changes by the ruling Fidesz.

Our findings also confirm the warnings against drawing too quick conclusions about the relationship between populism and constitutional change. Various authors repeatedly point to the heterogeneity of populist parties and to the fact that populism can also have positive effects, for example on participation.⁸⁶ Our analysis also shows that conclusions about a clear relationship between populism, constitutional change and democratic regression are also not possible due to the rarity of constitutional reforms. In our Large-N study, it is clear that the Hungarian experience is not transferable to populist parties in Latin America.

Despite these limitations, we also find clear patterns. As already pointed out by Bermeo, the core of democratic regression lies in executive aggrandizement.⁸⁷ At this point, constitutional changes by populist governments that lead to democratic regression are also similar. These reforms also partially strengthen social rights; however, what the amendments very often overlap in is that power is centralized in the executive branch.

In the interpretation of our results, it must be noted that constitutional amendments are relatively rare events and are usually implemented only with a qualified majority in parliament, which populist parties often do not possess. There-

⁸⁶Cf. Blokker 2019c; de La Torre, de Lara 2020; Mudde, Rovira Kaltwasser 2013

⁸⁷Cf. Bermeo 2016

fore, when desired constitutional changes are sought, opposition parties must also be involved. The comparison between Poland and Hungary has shown that populist governments can bring about significant changes even without constitutional amendments through reforms, reshuffling of the constitutional court, and legislation below the constitutional level.

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