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# **SURE BETS OR RISKY GAMBLES?**

UNDERSTANDING POPULAR  
SUPPORT FOR POST-  
CONFLICT CONSTITUTIONS

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# Sure bets or risky gambles? Understanding popular support for post-conflict constitutions

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# Abstract

What shapes mass attitudes towards constitutional reforms in post-conflict contexts?

Constitutional reform has long been a priority for states emerging from conflict, where there is a need to rectify the marginalization of certain groups, define the scopes of authority of different institutions, and delineate power-sharing arrangements. Yet, because constitutional reforms are often led by political elites, we typically lack insights into the views of the broader populace.

Drawing on prospect theory, we argue that individual attitudes towards constitutional reforms reflect calculations of risk and benefits in a context of high uncertainty. Those individuals who were most affected by violence in past conflict may be eager to secure any gains from what is being offered in a reformed constitution and therefore accept “sure bet” reforms rather than risk a prolonged negotiation to gain even more concessions. Others, especially those who see the reforms as a unique opportunity to renegotiate their future position in the political settlement, may feel there is nothing to lose by holding out to get the concessions they’ve long been denied.

We test this argument in Nepal, where a new constitution was adopted in 2015 following a commitment made in the Comprehensive Peace Accord (CPA) that officially ended a ten-year civil war. We conducted a survey of over 1,000 respondents seven months after the constitution was promulgated. To understand patterns of support, we implemented a secret ballot mock referendum, asking respondents to indicate whether they would vote to support or oppose the new constitution. We find that those citizens most exposed to civil war violence were most likely to express support for the constitution and the way in which political parties ultimately finalized the process. By contrast, a segment of marginalized ethnic minorities was more likely to oppose the constitution and wanted to hold out longer until greater consensus was achieved. Overall, the paper makes several contributions, including highlighting that the pathway to peace and democratic transition requires consideration of not only different groups’ concrete wins and losses but also how much they value assured gains against uncertain losses.

**Keywords:** post-conflict settings, fragile states, Nepal, prospect theory, constitutional reform, democratic transitions

# Introduction

Constitutional reform is a central instrument for building state legitimacy, particularly after civil wars and other societal conflicts. Accordingly, over 100 peace agreements signed between 1989 and 2020 have included provisions for constitutional reform (Ozcelik & Olcay, 2020). The substance and the process of constitutional reforms are undoubtedly important for legitimacy. Substantively, constitutions reflect a country's values, enumerate rights, allocate resources, and determine decision-making modalities. Procedurally, the drafting process and the promulgation mechanism can affect whether the final document is perceived as a genuine reflection of the broader political will. If large or vocal segments of the population perceive either of these dimensions to be illegitimate, then the constitutional reform process may be continuously unsettled, hindering its potential as an instrument for peacebuilding and democratization.

Building popular support and legitimacy in post-war contexts is further complicated by the fact that post-conflict constitutional reform processes serve dual purposes. Promises to reform political systems and institutions are often essential to securing peace agreements, and new constitutions can thus mark the end of a traumatizing era. However, postwar constitutional reforms are also the beginning of a new political settlement and an opportunity to bring about greater political inclusion. We argue that the tension between the constitution as the end to conflict and the constitution as the beginning of a new and more inclusive political era is key to understanding patterns of legitimacy and support for constitutional reforms among ordinary citizens in postwar contexts.

Specifically, we draw on prospect theory (Kahneman & Tversky, 1979) and highlight how individual attitudes reflect calculations of risk and benefits of reforms in a context of high uncertainty. Given their experiences, some individuals, eager to secure any gains from what is being offered, may be willing to accept reforms negotiated by elites rather than risk a prolonged negotiation. Others, especially those who see the reforms as a unique opportunity to renegotiate their marginalized position in the political settlement, may feel there is nothing more to lose by holding out to get the concessions they've long been denied.

We test this argument in Nepal, where a new constitution was adopted in 2015 following a commitment made in the Comprehensive Peace Accord (CPA) that officially ended a ten-year civil war between the government and rebels from the Maoist wing of the Nepal Communist Party (CPN-M). We conducted a survey of over 1,000 respondents seven months after the constitution was promulgated. To understand patterns of support, we implemented a secret ballot mock referendum, asking respondents to indicate whether they would have voted to support the new constitution. We focus on the views of three key groups: citizens exposed to civil war violence, dominant ethnic minorities that secured representation and concessions in constitutional negotiations, and ethnic minorities with lower representation and fewer concessions.

We find that those exposed to civil war are more likely to focus on the gains of the new era relative to the past. By contrast, ethnic minorities with lower political representation in the constitutional negotiations and who received fewer concessions were more likely to oppose it. Dominant ethnic minorities with greater representation and who gained some—but not all—of their desired concessions occupy a middle position.

This article makes at least three contributions. First, in applying prospect theory to post-conflict constitutional reform, we highlight that the pathway to peace and democratic transition requires consideration of not only different groups' concrete wins and losses but also how much they value assured gains against uncertain losses or, conversely, ambiguous gains against certain losses. Second, while many studies focus on post-war Nepal and the details of elite actions in the country's constitutional reform processes (Edrisinha, 2017; Hutt, 2020; Khanal, 2018), we provide a unique firsthand perspective of citizen views of the process. Finally, we contribute to the understanding of the longer-term social and institutional legacies of conflict.

This study first reviews scholarship on constitutional reform processes in post-conflict settings, elucidating some of the tensions between different design and process choices. It then builds an argument around why prospect theory offers insights into citizens' disparate preferences around these reforms. After discussing the Nepali case, we test the theoretical propositions of our argument using original survey data from Nepal. The conclusion offers implications for constitutional reform efforts more broadly.

# Constitution-making in post-conflict settings

Constitutions are meant to provide a lasting structure for politics, defining individual rights, scopes of authority of different institutions, veto points, electoral rules, and the symbolic nature of the country and its goals (Ginsburg, Elkins, and Blount 2009). Constitutional reform has long been a priority for states emerging from conflict where there is a need to redesign each of these factors to foster peace. Specifically, providing minority groups with assurances that they will not be completely excluded from power and veto points that prevent majorities from using political power tyrannically may be essential for democratic stability (Lijphart 1969).

However, there are at least two long-term challenges for the very power-sharing arrangements that may be necessary for short-term peace. First, identity-based institutional arrangements can undermine the development of issue-based politics and a shared civic identity as well as solidify ethnic divisions over time (Finlay 2010; Horowitz 1985). “Hard guarantees,” such as quotas for executive and legislative seats according to group identities, provide an opportunity for parties representing diverse interest groups to enter government. However, they can also enable the emergence of extreme candidates (Roeder and Rothchild 2005) and, by resulting in more veto players, lead to protracted decisionmaking processes (Tsebelis 2002).

Second, power-sharing arrangements are often only extended to dominant minority groups, leaving out non-dominant minorities altogether (Agarin 2020). Other types of identity, like gender and indigeneness, are often ignored in negotiations because armed groups may not self-identify along these cleavages (Sriram 2013). Promises of new subnational units organized around identity groups can provide vital avenues for political representation but also obscure that there are often minority groups within those units (Simeon 2015). Agarin and McCulloch (2020) refer to these dynamics around power-sharing agreements as the “exclusion-amid-inclusion” dilemma: even when power-sharing promises to bring about a more inclusive society, many groups remain left out of power-sharing altogether.

While the ultimate design decisions reflected in constitutional reforms are critical for postwar politics, constitutional reforms are both an outcome and a process. Before determining how to organize politics, a process for reaching a new constitution must be established, including deciding on the extent to which to involve the public and how, whether there is a specific timeline for deliberations, how deliberations will proceed, and how the final document will be ratified. Process and outcomes can be interlinked. A growing body of cross-national comparative research sheds light on the tradeoffs involved in setting up a constitutional process and potential implications for constitutional design (Fruhstorfer and Hudson 2022;

Widner 2008) and democratization (Goran Hyden and Denis Venter 2001; Maboudi 2020; Samuels 2006).

There are a variety of institutional models that can be used for constitutional reform, such as constitutional commissions and constitutional drafting committees where members are appointed by the executive as well as constituent assemblies (CAs).<sup>1</sup> In its idealized form, the CA should reflect a country's diversity. Representatives of special groups can be nominated or elected, or there can be a general election that typically results in political parties leading the process (Ghai 2012). Constitution building bodies can be classified as "inclusive", with widespread participation from a broad range of political parties and/or interest groups or "exclusive", i.e. dominated by just a few parties or individuals (Banks 2008; Saati 2017).

Yet, scholars are often divided between whether, in a post-conflict setting, constitutional reforms should be participatory or delegative. On the one hand, greater inclusion may foster more legitimacy and support. Several studies suggest that participatory constitution-making is more conducive to long-term democratization (Carey 2009; Eisenstadt, LeVan, and Maboudi 2015; Wallis 2014). As Banks (2008) notes, elite concerns may not represent those of the broader populace and therefore can ignore underlying grievances that could continue to destabilize the post-constitutional political settlement. Moreover, popular participation in constitution-making can be relevant for upholding constitutionalism. If citizens are aware of what their constitution contains, then they are more likely to assert oversight when their government has overstepped its powers or violated rights (Ginsburg, Elkins, and Blount 2009). Elkins et al. (2009) observed that public engagement in constitutional adoption—through either a referendum or a constituent assembly—was positively correlated with the lifespan of the constitution. Maboudi (2020) also found in Tunisia that individuals who participate in the constitutional process express higher perceived legitimacy of the constitution. To be effective, such engagement requires including traditionally marginalized or hard to reach groups (Ghai 2012).

On the other hand, citizens may struggle to effectively engage in constitutional processes. Citizens may lack the technical expertise to evaluate complex constitutional proposals and tradeoffs (Lenowitz 2022). Absent widespread civic education on constitutional provisions and how to effectively engage, public participation may not be productive or have the intended effect of improving legitimacy. More problematically, greater participation could result in a broader range of demands that may not be internally consistent with each other and may be mismatched with institutional capacities for implementation during the post-constitution adoption period (Elster 1995; Horowitz 2002). Worryingly, Moehler (2008) finds that Ugandans who participated in processes associated with the country's 1995 constitution actually became more skeptical about government.

Specific constraints in the post-conflict setting may make widespread public participation particularly challenging. The time required for participatory and deliberative approaches can be problematic in post-conflict settings when so many priorities need to be addressed (Riker

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<sup>1</sup> In some countries, a mixture of bodies have been used (Saati 2017).



1995). In addition, elites may not be able to strike important bargains critical to a post-conflict negotiation if deliberations are subjective to public engagement and oversight (Gloppen 1997). Elster (1995) also argues that too much public debate and input can cause elites to grandstand and override each other so as not to be viewed as “sell outs” by their constituents. Excessive polarization and grandstanding can stymie efforts at compromise and constitutional approval, especially as a greater number of views need to be reconciled to achieve agreement (Gluck and Brandt 2015).

# How citizens evaluate constitution-making

What shapes citizens' views about the different types of constitutional provisions and processes discussed above? We argue that such views hinge on individuals' interpretation of what the constitution symbolizes and, in turn, contributes to a calculation of risks and benefits about the future compared to the present and how one's status will change, if at all. In a post-conflict setting, the constitution simultaneously represents an endpoint of a traumatic political era and the starting point for a new political settlement, i.e. a new distribution of power between contending groups and social classes (Di John and Putzel 2009).

One's interpretation of the constitution's meaning affects individuals' risk-benefit calculations about accepting a new constitution. Those risk-benefit calculations, in turn, are contingent on individuals' experiences in the extant political settlement.

Our argument is grounded in prospect theory (Kahneman and Tversky 1979), which focuses on decisionmaking under risk and uncertainty. A key insight is that individuals' decisions depend on how they perceive an option relative to a reference point rather than its absolute value. Individuals' interpretations of the option as a gain or a loss relative to a reference point influences how much risk they are willing to take. The main insight from prospect theory is that individuals are more likely to take risks if they believe that they are in a "domain of loss" than if they are in a "domain of gains."

The way in which options are framed plays a crucial first step in prospect theory (McDermott 1998). Framing refers to the way in which problems and options are presented, which affects how choices are made by individuals. Such choices depend on the value attached to each option vis-à-vis a reference point. Typically, the reference point is the status quo or an aspirational point (Mercer 2005). If individuals are in a domain of gains when things are going well, they tend to be risk averse and prefer "sure bets" even if they could have taken an alternative decision to gain even more utility. If they are in a domain of losses, when things are going badly and they are far from their aspiration, individuals are typically risk seeking. In other words, they prefer to risk "a lottery"—betting everything to achieve their goal—even if they could have made decisions that resulted in a loss of a smaller magnitude.

Prospect theory has been widely applied in security studies in international relations (see review by Vieider and Vis 2019), but with few exceptions (Weyland 1996), it is scarcely used in comparative politics and, to our knowledge, never applied to understanding post-conflict constitutional reforms. The application of the theory to such contexts is enlightening for at least three reasons. First, examining mass attitudes seems to be a more relevant application of a theory based on individual behavior than case studies of nation-states. Indeed, one critique of prospect theory is that it is difficult to determine reference points for nation-states (Mercer

2005), but this is more discernible for individuals based on their stated preferences, grievances, and protest behaviors.

Second, constitutional reforms in post-conflict settings approximate precisely the type of circumstances that the theory was meant to address. Specifically, such circumstances usually invoke high levels of uncertainty because it is difficult to determine *ex-ante* the outcomes that substantive electoral, institutional, and legal changes underlying a new political settlement will have on individual welfare, and relative gains and losses are inevitable depending on one's previous position in the political settlement. Actors bargaining in the aftermath of civil war face challenging questions and tradeoffs over the extent to which to commit to political power-sharing with rival groups. What may be necessary to achieve short-term peace and stability could undermine long term democratization, and attempts to include wider segments of the population could pave the way for democracy or backfire. Therefore, there are always risks to settling for reforms that only provide a portion of what different groups wanted versus negotiating larger concessions that may nonetheless result in further losses.

Third, constitutional reforms are highly susceptible to framing by different actors, including politicians, former combatants, civil society, donors, and protest leaders. Indeed, Snyder and Ballentine (1996) emphasize that societies in the midst of incipient democratization and transition are particularly susceptible to idea entrepreneurship, with elites competing amongst each other by trying to mobilize mass support around different framings of national goals. Competing narratives are very likely to be present in fragile environments, shaping the relevant reference points which citizens may have in mind when evaluating support for a new constitution.

This article focuses on two competing framings of post-conflict constitutions common across a wide variety of contexts. First, one prominent framing for post-conflict constitutions will be as "peace agreements" (Nathan 2020). In terms of substance, this framing emphasizes the connection between elements of the new constitution and their connection to terms of the peace agreement. In terms of process, this framing often emphasizes representation among previously warring factions among elites negotiating and drafting final constitutional terms. Crucially for prospect theory, the constitution as peace agreement framing emphasizes the *gains* brought by the new constitution relative to the suffering during the conflict. Consequently, individuals would be less likely to gamble on larger concessions that may risk reverting back to violence.

A second prominent framing for post-conflict constitutions is as a window of opportunity to shift the status quo political settlement and transition to democracy (Bell 2017). Substantively, this framing highlights political inclusion and furthering rights and representation of groups excluded in the prewar era. Rather than emphasizing the constitution's role in fostering peace, this framing is rooted in the constitution's role in bringing about democracy and rights for the country's future. Consistent with this idea, narratives about process point to popular participation and group representation in constitutional negotiations, often enumerating grievances about insufficient popular participation. Counterintuitively, given that this framing is

about hopes for a more inclusive political era, this framing often puts individuals in a domain of *loss* because this narrative relies on comparisons between the constitution that was negotiated in practice with what might have been negotiated with more time or with greater political participation.

We focus on three key groups of citizens in post-conflict states who, we argue, will be differentially affected by these competing narratives. First, civil wars have substantial subnational variation, with some areas directly affected by extensive violence and instability while other areas of the country may see limited or no direct conflict at all. We argue that the constitution as peace agreement framing will be more salient for those living in communities more exposed to civil war conflict.

*H1: Individuals who view a constitutional reform as an end point to violence are more likely to support ratifying a post-conflict constitution and shorter negotiation periods.*

Second, we argue that the new political era framing will be more salient for historically marginalized ethnic minorities. However, there may be differences between different ethnic minority groups. On the one hand, the “window of opportunity” framing may be particularly salient for those long denied group-level representation. Longer negotiation periods could give previously marginalized groups more time to gain status in the new settlement and negotiate institutions more in their favor; a constitution on offer, even if it represents a substantially more inclusive settlement than the prewar era, essentially closes the door to the possibility of further gains. We would expect that they would hold out for more provisions to meet their aspirations—even at the risk of derailing the whole process—rather than settling for what is on offer. On the other hand, politically organized, dominant ethnic minority groups who have secured representation and possibly key concessions during constitutional negotiations may be cross-pressured between viewing what has been negotiated as a loss of further negotiation opportunity versus as a gain relative to the starting point of negotiations.

*H2: Individuals who view a constitutional reform as the beginning of a new political settlement are less likely to support ratifying a post-conflict constitution without receiving salient concessions and therefore willing to risk longer negotiation periods.*

Alternatively, instead of risk-benefit calculations undergirded by the logic of prospect theory, mass attitudes toward constitutional reform may instead derive from citizens’ trust in their politicians. This is especially important in contexts where constitution-making relies on CAs. In such cases, citizens delegate their representatives to negotiate the substance and process of power sharing. In low-information settings with high levels of illiteracy, citizens rely heavily on elite interpretations of a constitution’s content and procedural legitimacy (Wing 2015). If they trust such elites, then they are likely to adopt the same interpretations and express attitudes to the constitutional provisions and process accordingly. Moehler (2008) similarly argues that in low-income countries, citizens turn to political elites for clues. If elites are positive and

supportive, then their constituents are as well; by contrast, if they are dismissive or disgruntled by the process, then this can bias citizen perceptions (Moehler 2006). Indeed, in the case of Uganda, she finds that individual-level support for the constitution was linked to support for the ruling party leading the process: the National Resistance Movement. This leads to the following alternative hypothesis:

*H<sub>A</sub>: Those with higher trust in the main parties participating in a CA are more likely to support the ultimate constitution and the process by which it was finalized.*

We explore these hypotheses using the case of Nepal where a constitutional reform process was viewed as integral to the peace process ending the ten-year “People’s War” and simultaneously as a beginning of a more democratic and inclusive political settlement.

# Nepal's postwar transition and constitutional reform

Nepal has historically been a highly centralized state with political power emanating outward from the Kathmandu Valley over an ethnically, linguistically, and religiously diverse society. Both economic and political power long have been linked with high-caste Hindu status from the hills region (often called Khas-Arya). Rebelling against the semifeudal structure and significant political and economic inequality, the Maoist rebels initiated a series of raids and attacks on police stations, universities, and public infrastructure in rural areas in 1996. Ultimately, the “People’s War” spanned ten years and claimed more than 13,000 lives (Do and Iyer 2010).

One of the Maoists’ 40-point demands from the beginning of the conflict was a new constitution to be drafted by elected representatives (Tamang 2011). As the conflict persisted, they also adopted a policy on the right to self-determination and proposed the establishment of nine autonomous provinces to weaken the centralized political system and grant minority communities more self-representation. The Madhesi, residing in Nepal’s resource-rich southern belt and having cultural and linguistic similarities to northern India, welcomed these pronouncements, as they were historically regarded as less “Nepali” (Tamang 2011). Citizenship laws requiring literacy in Nepali language prevented many Madhesi from obtaining citizenship certificates, which resulted in their exclusion from various aspects of society, including land ownership, government jobs, and government benefits (Hachhethu, Yadav, and Gurung 2010). Other minority groups that had faced similar economic and political discrimination also supported the concept of greater self-determination. Prominently, this included Dalit–Hindu groups from lower castes—and Janajati—an umbrella grouping for many small ethnic groups and tribes across Nepal who are generally outside the Hindu caste system.

Despite these promises, when the Maoists and the government signed a Comprehensive Peace Agreement (CPA), formally ending the People’s War, neither the CPA nor the interim constitution that followed contained any reference to federalism (Lecours 2014). Madhesi activists burned copies of the interim constitution, blockaded access to Kathmandu, and advocated for a federal structure that would recognize Madhesi interests (Adhikari and Gellner 2016). Their framing of the constitutional project became “One Madhesh, One Province,” referring to their desire to have one constituent unit for the entire Terai region in the south of the country (Breen 2018). In response to Madhesi activism, the prime minister announced that Nepal would be restructured as a federal system, with the design left to the Constituent Assembly (CA) that would soon be elected. Despite historically emphasizing class-based struggle, the Maoists ultimately supported ethnic federalism due to its popular appeal (Lecours 2014).

During the 2008 CA elections, the Maoists’ party—CPN-M—won more seats than any other party, but the requirement to gain two-thirds approval to pass the constitution meant they needed

coalitional support. While CPN-M and various Madhesi parties supported identity-based federalism, the other two major parties, the Nepali Congress (NC) and Unified Marxist-Leninists (UML) favored *bahu-pahican-sanghiyata*, a “multiple identity-based federalism.” By this, they meant a decentralization of power to local government units that would not be delineated based on ethnic groupings. Meanwhile, the Caucus of Janajati parliamentarians in the CA began to agitate for Janajati-dominated areas to be declared autonomous states in the new constitution (ACLEDE 2023). In 2012, the Tharu, a prominent Janajati subgroup, imposed a 32-day strike to press for their community’s demands (HRW 2015). Similarly, the Limbu and Khumbu Janajati groups of in the east demanded autonomous provinces and threatened a “bloody agitation” if their demands were unmet (Breen 2018).

During the five years of the first CA, a variety of participatory mechanisms were used to incorporate public opinion. At the national level, the CA had several thematic committees and cross-party caucuses. At the local level, party members, NGOs, and activists held federalism dialogues to make recommendations about federal design. There were also democratic workshop dialogues in the districts during which minority groups could voice their opinions. CA members held around 2,000 meetings, distributed questionnaires for feedback and received more than 500,000 responses (Breen 2018). Nevertheless, when the term of the first CA expired, members had failed to adopt a constitution.

In the 2013 CA elections, CPN-M’s seats dropped to 80 seats from their previous 229, while NC and UML emerged as the two largest parties in the new CA. Ethnic minorities lost ground as well, with the dominant Khas-Arya group increasing their share of seats to 41 percent (Hutt 2020). The major parties also disallowed the formation of cross-party caucuses, like the Janajati Caucus that had effectively united Janajati interests in the first CA. The NC and UML, confident in their ability to get close to the two-thirds majority needed to pass a new constitution without needing the support of either the Maoists or the Madhesi parties, advocated for a three-tier federal model that combined identity and level of economic development to demarcate provinces. Opponents argued that this proposal would give more power to national and local governments compared to the provincial levels, negating the value of federalism (Edrisinha 2017). This proposal aimed to avoid provinces dominated by a single ethnic group.

The NC-UML coalition promised to pass a new constitution by June 2015 without relying on support from Madhesi parties or from CPN-M. Maoist leadership, fearing that they would become politically irrelevant if not at the constitutional bargaining table, was prepared to start compromising their demands (Hutt 2020). Then, a massive earthquake struck in April 2015, killing more than 9,000 people. Two months later, the NC, UML, CPN-M and the main Madhesi party signed a sixteen-point agreement to fast-track the constitution, allowing for only two weeks to solicit public feedback on the draft that existed. This agreement walked back discussions from the first CA on the design of provinces, which had ended with a

recommendation to form ten states and a non-territorial state for Dalit groups, first committing to eight provinces, then six, and leaving boundaries to be decided later.

As a result of the ambiguity on the provincial boundaries and numbers, there was widespread discontent since many interpreted it as an attempt by Khas-Arya groups to backslide on federalism (ICG 2016). The Janajati were particularly dismayed by the postponement of boundary discussions. In particular, the Tharu people, who represent one of the largest groups of Janajati, began protesting for their own province. Rukmini Chaudhary, a Tharu leader, lamented the draft constitution under debate by noting that:

*“We will not accept this deal under any circumstance. Accepting the six-state federal model is suicidal for the indigenous. It is also a provocation that will invite ethnic conflict bigger than the Maoists’ People’s War...We demanded two states in the Terai: Madesh and Tharuhath”* (cited in Suwal 2015).

The protests turned deadly, with police deployed to the region and activists replacing government signs with those that read “Tharu state” (Sharma and Najjar 2015). A similar tactic was adopted by the Limbus who not only erected signboards welcoming visitors to the territory of Limbuwan but also burned the constitution at public intersections to show their discontent (Chemjong 2017). Ultimately, a seventh province was incorporated into the constitution in the Far West, but this new province was not delineated in a way that reflected the Tharu’s marginalization.

Meanwhile, protests among the Madhesi in the eastern Terai also escalated over the perceived lack of representation in the constitution. Although the constitution did include provisions for a province that was coterminous with the Madhesi in the eastern Terai—known as Province 2 in the constitution and subsequently named Madhesh Province—the CA largely pursued a federalism based on capability rather than identity groups. Due to Madhesi protests, the main Madhesi party that agreed to the fast-track agreement pulled out.

The remaining three major parties passed the new constitution in September 2015 despite continued discontent. The final draft included noteworthy advances, including right to information, rights to property, equal rights for all citizens, and prohibitions of violence and discrimination against women and girls. It also became only the tenth in the world to enshrine protections for LGBT people and declared Nepal was a secular state rather than explicitly a Hindu one.<sup>2</sup> The constitution allowed provinces to select one or more languages spoken by a majority of people residing there, in addition to Nepali. Additionally, a quota was adopted requiring women to receive 33 percent of proportional representation (PR) parliamentary seats. CPN-M leader Pushpa Kamal Dahal (“Prachanda”)—also the leader of the Maoist insurgency and

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<sup>2</sup> While the final constitution formally remained secular, the final version explained that secularism included protecting old, established religions, understood to mean Hinduism and Buddhism—protections that may not be extended to religions perceived as coming from elsewhere in South Asia (Gellner and Letizia 2020).



the signatory for the peace agreement—defended his party’s decision to support the constitution, citing these gains and drawing a link from the achievements of the “People’s War” to the more inclusive principles of the new constitution (Hutt 2020).

However, the new constitution failed to address the full demands of Madhesi and Janajati groups on federalism, while also diluting minority rights in some key areas compared to previous promises. For instance, the definition of citizenship remained discriminatory toward women and Madhesi women in particular. Cross-border intermarriages among Madhesi in Nepal and Indians are common, yet the constitution only allows for naturalized citizenship of the foreign spouses of Nepali women after 15 years’ residency. Their children could only receive naturalized citizenship, making them ineligible for high public office (Grossman-Thompson and Dennis 2017). The number of seats in parliament elected via PR was reduced from 58 to 40 percent. While the PR provision still required quotas for different groups, including Tharus and Madhesi, it added quotas for groups that have been historically privileged in the political system, including the elite hill castes (Vollan 2017).

Procedurally, the assessment is also mixed. On the one hand, the first CA was highly deliberative and participatory and attempted to link local concerns to elite negotiations. But this broad process failed to result in a constitution. Constitutional negotiations were much more exclusive in the second CA. Dhungel (2017) enumerates all the factors that led to a clear procedural legitimacy gap: more than 15 political parties refused to sign the constitutional charter because they claimed their voice was not heard, the Assembly’s rules of procedure were not followed due to the need to fast-track, the leading political parties imposed their preferences in violation of the CA norms, and there was insufficient time for public comment on the draft constitution.

Thus, while the new constitution was framed by some as a culmination of the peace process after a deadly civil war, the same document became a lightning rod for other minority groups, including Madhesi and Janajati, who wanted much more out of this critical juncture. Maoist party leaders were in a domain of gains. Not only had the CPA led to the cessation of conflict, but their main demands for a new constitution, overseen by a CA, and the abolition of the monarchy had been met by the traditionally dominant parties. Although they could have continued to lobby for identity-based federalism and further hold out from allying with the NC and UML, they ultimately allied with those dominant parties. As predicted by prospect theory, the Maoists decided to accept “sure bets” instead of continuing to push to get even more concessions.

The Madhesi were in an interim position; their demand for federalism—which was absent from the 2007 interim constitution—was agreed to, and Madhesi parties played a strong role in the CA process up until the final promulgation. Part of the Terai also received its own province, even though it did not meet the original Madhesi demands for one province that encompassed the whole Terai. Yet, their demands for citizenship rights for women and more seats in parliament had not been met. The Janajati, especially but not exclusively the Tharu, were the most firmly in

the domain of losses. With less political leverage in the CA and less impact through their protests, they most acutely viewed the emergent power-sharing agreement as an example of “exclusion-amid-inclusion.”

Yet, to what extent do these elite decisions reflect the views of the masses? As a result of this elite-driven process and truncated public consultation in the second CA, it is difficult to know how most Nepali citizens viewed the final document. Some scholars claim that the media and elites from all sides polarized certain issues, particularly the idea of ethnic federalism, that did not reflect the views of the constituencies they represented. For instance, between 2010 and 2015, public support for ethnic versus territorially based federalism declined from 25 to 12 percent (Breen 2018). Moreover, protests dominated the media and external perceptions of the process; yet, while protests can indicate a dislike for reforms, it is always difficult to determine how broadly representative those grievances are outside of cities. More problematically, an absence of protest can indicate both satisfaction as well as apathy.

# Data

## Sample and data collection

To rectify this empirical gap, we conducted an in-person mass attitude survey of a wide cross-section of the rural Nepali population, with a sample size of 1,054 adults. Fieldwork for the survey occurred from April to May 2016, around 7 months after the ratification of Nepal's new constitution. To select the sample, we randomly sampled 75 local government units (hereafter: villages) and two wards within each. We used a random walk procedure within each ward to select approximately seven households per ward.<sup>3</sup> The sample is spread out across rural Nepal in order to capture important heterogeneity in culture, institutions, civil war experiences, and accessibility. We correct for any sampling imbalances using entropy balancing to reweight the survey data to match demographic information from the rural population (Hainmueller 2012; Hainmueller and Xu 2013). The supplementary appendix (SA) provides further sampling details.

Nepal's history of imposing control from Kathmandu makes understanding mass attitudes within areas outside of the capital particularly important. The civil war was in part a revolt from Nepal's rural areas against centralized control, and the constitutional process was among the first times that peripheral areas renegotiated center-peripheral relations. Understanding how citizens in these areas view the negotiated political settlement is key to understanding contemporary Nepali politics. Moreover, as protests were mainly around urban areas, the perspectives of rural residents have been understudied. Investigating the attitudes of those in rural localities can help show whether urban protests reflected grievances that were widely held.

## Dependent variable: Mock referendum

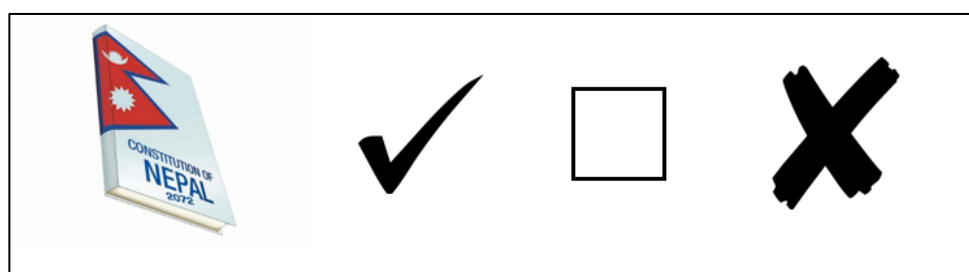
To understand citizens' overall endorsement of the new constitution, we designed a mock referendum exercise. Referenda are an increasingly popular tool for concluding a constitution-making process, though no referendum was implemented in Nepal. Using this exercise as a measurement tool does not imply that we would have recommended a referendum in the Nepali context, but, given our interest in how reference points may condition how citizens evaluate what is on offer, a mock voting exercise is a useful way to understand whether citizens would ultimately accept or reject the constitution if given a choice.

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<sup>3</sup> We interviewed household heads, defined as the person who is mainly responsible for the maintenance and well-being of the household; as a result, most of our sample is male (around 73 percent). As heads of household play an influential role in village politics, their views are essential for understanding Nepali politics. Sampling household heads minimized non-response bias compared to sampling from the general population. While temporary relocations for work are common among household members (40 percent of households in our sample receive remittances from migrant workers), responsibilities of household decisionmakers mean they are more likely to stay home.

To implement the mock referendum, respondents were given a ballot and asked to circle what they would do if given the opportunity to vote on the constitution: a checkmark to pass the constitution, an X-mark to reject it, or leave the box empty to abstain (Figure 1). The respondent was asked to place the mock ballot in an envelope and seal it out of view of the enumerator. Respondents were informed that ballots would only be unsealed by the research team. Only 10 percent of respondents abstained from voting, suggesting that the vast majority of respondents did feel comfortable with the exercise. Overall, 68 percent of respondents indicated that they would vote in favor of passing the constitution, while 22 percent indicated that they would vote against it.

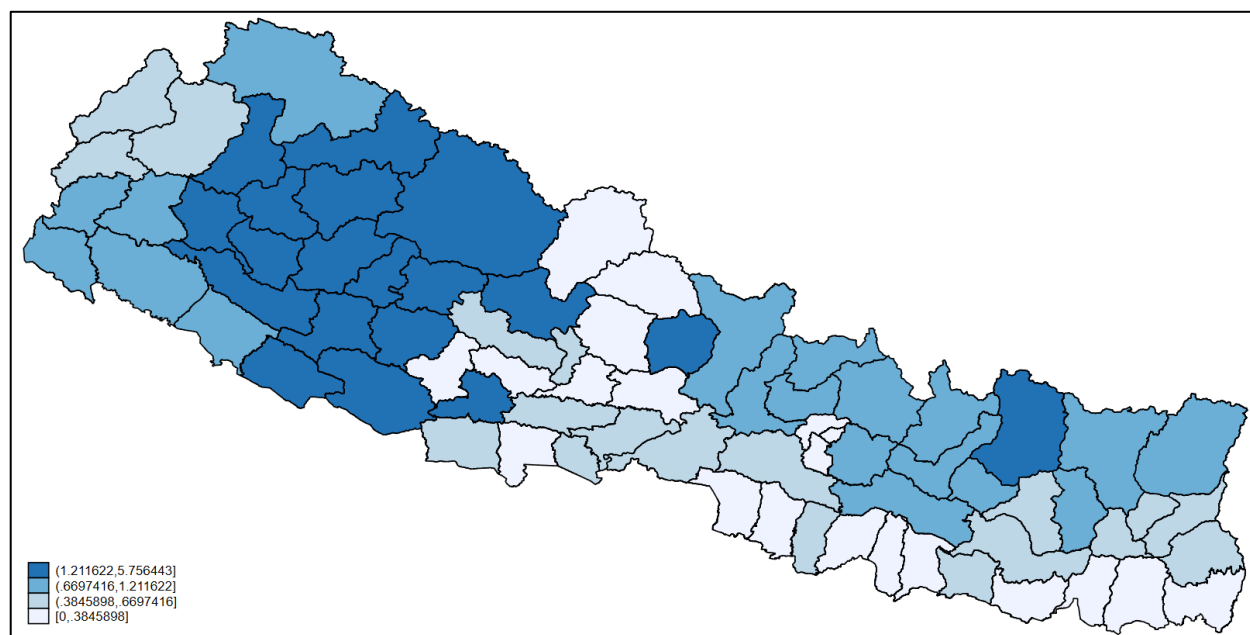
**Figure 1.** Voting exercise



**Key independent variables: Ethnicity, caste, and civil war exposure**

The first key independent variables are *ethnicity* and *caste*. As noted in the case study above, ethnic, linguistic, and religious identities are extremely salient in Nepal. In our survey, we asked individuals the ethnic or caste group with which they most identified, using the fine-grained categorizations from the Nepali census. We then mapped these groups onto the five major ethnic groupings in Nepal: Khas-Arya, Dalits, Janajati, Madhesi, and religious minorities based on analysis of caste and ethnic stratification in Nepal by Bennett, Dahal, and Govindasamy (2008). In all models, Khas-Arya are the excluded ethnic group and thus the reference group. However, the boundaries of these major groupings are contested, especially for those living in the Terai. Many media outlets refer to the entire Terai population as “Madhesi,” even though Janajati groups living in the Terai often reject this label. In the SA, we test alternative ways of categorizing these major ethnic and caste groupings, though there are few differences from the results presented in the main text. We also examine gender as a distinct dimension of identity, although given that we sampled heads of household, the number of women in the sample is limited (27 percent).

Second, we look at *civil war exposure*. We measure this using district-level data on the number of conflict-related deaths per 1,000 people from Do and Iyer (2010). Figure 2 illustrates the significant geographic variation in the extent of civil war exposure across Nepal. Although many of the highest conflict fatalities were concentrated in Nepal’s mid-western region, the conflict also reached Nepal’s far western, central, and eastern regions to varying extents.

**Figure 2.** Map of civil war deaths per 1,000 population by district, by quantile (1996-2006)

Source: Conflict data from Do and Iyer (2010).

### Controls and alternative explanations

We control for a variety of factors which may also influence patterns of support for the constitution. First, a concern in any referendum is that citizens lack sufficient information to competently evaluate their options (Hobolt 2007; Lenowitz 2022). Indeed, 24 percent of the sample indicated that they were not aware of the new constitution, which underscores the notable gaps in public engagement by the second CA. We think it is important to understand the views of low-information citizens, as they will have to live under the new political rules and as contentious political movements against the new constitutional order that may affect them are taking hold in many areas across rural Nepal. Thus, we control for *political information* in all models and also show results excluding low-information respondents. Level of information may also shape patterns of support, though not necessarily in constant ways. Those who are more politically engaged may be more critical of the reform but also more likely to be aware of how momentous the constitution was for the peace process. We look at whether the respondent has attended a political meeting or rally in the past 12 months, whether they report reading, listening to, or watching the news on a daily basis, and whether or not they say that they are aware of the constitutional process. Second, we also include *socio-economic controls*, including whether the respondent has completed a secondary education, an asset index measuring household wealth, a dummy indicating whether or not the household receives remittances, and respondent age. Summary statistics are reported in the SA.

To capture our alternative hypothesis on *trust*, we include a dummy variable for whether respondents express some or a lot of trust in at least one of the three political parties that

ultimately pushed through the constitution, including NC, UML, and CPN-M. Empirically, we find fairly high correlations between trust in these political parties among sampled respondents, especially between NC and UML ( $r=0.60$ ). The alternative hypothesis is about trusting the parties holding the pen on negotiations, rather than about partisanship. In the SA, we test different ways of measuring trust—including by looking individually at trust in each party—and find consistent results.

# Effects of disadvantaged ethnic minorities and civil war legacies on support for a new constitution

## Anatomy of support for the new constitution

We examine whether those more exposed to civil war violence are more likely to state that they would vote in favor of it and whether historically marginalized ethnic minorities are more likely to state that they would vote against the new constitution (H1 and H2, respectively). Table 1 presents the results. Each column comes from a separate linear probability model (LPM) of the mock referendum results on ethnicity, caste, and civil war exposure, with standard errors clustered by village.<sup>4</sup>

Overall, the results are consistent with the argument that different segments of the population are evaluating the same constitution from different reference points. People living in areas with higher violence intensity are more likely to say that they would support the new constitution, as predicted in H1 (Table 1, row 1). A one standard deviation increase in conflict exposure is associated with an 8.1 percentage point increase in the probability that an individual would vote in favor. In SA Table 4, we show separate models where the dependent variable is whether an individual would vote against the constitution or would abstain from voting, as well as a model using a 3-category choice model across voting decisions. Those more exposed to civil war violence are also less likely to vote against the constitution and less likely to say that they would abstain from voting.

Consistent with H2, Janajati respondents are significantly less likely to say that they would vote in favor of the new constitution if given the chance. All else equal, Janajati in our sample were 10 percentage points less likely to say that they would vote in favor of the constitution. Dalits were also less likely to say that they would vote in favor of the new constitution, although this is never significant.

The Madhesi in our sample occupy a middle position. They were not any less likely to say that they would vote in favor of the constitution. Unlike Janajati, who remain minorities in every new province, Madhesi have majority status in the new Madhes province, which offers Madhesi living in the Madhes province an unprecedented opportunity for autonomy and self-determination. This may explain why many ordinary Madhesi preferred to lock in these gains rather than reject the new constitution for a status quo where they had no such opportunities. Although it is difficult given small sample sizes to have sufficient power to test for differences

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<sup>4</sup> In SA Table 3, we replicate the table using logit models.

among Madhesi, we find in our sample that the mean rate of voting in favor of the mock referendum among Madhesi *not* living within the boundaries for the new Madhes province is 8 percentage points lower than Madhesi living in the new Madhes province, suggesting that Madhesi did feel torn between the gain of this concession and the loss of further opportunities for representation.

Trust does not seem to explain citizen support for the constitution. In all models, the trust variable is not significant with views on the constitution. Moreover, the sign is consistently negative, suggesting that those more trusting in one of the three CA parties are actually less supportive of the constitution. This indicates that citizens were not simply following their parties' positions on the constitution but actually had separate views shaped by their own experiences and interpretations of the document's significance.



**Table 1.** Linear probability models of the determinants of supporting the new constitution in mock referendum

	Dependent Variable: Voting in favor of constitution in mock referendum					
	(1) Full sample	(2) Aware only	(3) Dropping abstentions	(4) Full sample	(5) Aware only	(6) Dropping abstentions
Conflict-deaths per 1,000 (log), dist.	0.081** (0.029)	0.085** (0.029)	0.065* (0.026)	0.076* (0.030)	0.094** (0.031)	0.076** (0.027)
Janajati	-0.104* (0.051)	-0.115+ (0.058)	-0.125** (0.044)	-0.098+ (0.050)	-0.106+ (0.059)	-0.119** (0.043)
Madhesi	0.064 (0.064)	0.090 (0.073)	0.032 (0.047)	0.016 (0.071)	0.056 (0.083)	0.022 (0.048)
Dalit	-0.161 (0.097)	-0.068 (0.089)	-0.082 (0.058)	-0.148+ (0.083)	-0.074 (0.085)	-0.109+ (0.060)
Religious minorities	-0.011 (0.169)	0.109 (0.110)	-0.110 (0.165)	-0.167 (0.151)	-0.054 (0.107)	-0.241+ (0.142)
Trust in major parties	-0.041 (0.038)	-0.038 (0.043)	-0.010 (0.038)	-0.028 (0.036)	-0.032 (0.039)	-0.0004 (0.037)
Female	0.051 (0.050)	0.058 (0.057)	0.068+ (0.039)	0.034 (0.047)	0.032 (0.052)	-0.049 (0.037)
Attended a political meeting	0.060 (0.046)	0.068 (0.055)	0.017 (0.049)	0.037 (0.048)	0.049 (0.056)	0.005 (0.048)
News daily	-0.022 (0.050)	-0.029 (0.054)	-0.009 (0.056)	0.008 (0.050)	-0.019 (0.055)	0.014 (0.054)
Aware of constitution	-0.050 (0.047)		-0.077 (0.049)	-0.065 (0.046)		-0.081 (0.049)
Secondary education	-0.022 (0.049)	-0.041 (0.054)	-0.037 (0.044)	0.019 (0.042)	0.001 (0.048)	-0.001 (0.035)
Remittance	-0.029 (0.041)	-0.002 (0.044)	-0.062 (0.044)	-0.048 (0.041)	-0.024 (0.044)	-0.068 (0.043)
Asset index	0.022+ (0.012)	0.026* (0.012)	0.033+ (0.012)	0.009 (0.013)	0.015 (0.013)	0.017 (0.012)
PRE-WAR CONTROLS	NO	NO	NO	YES	YES	YES
REGIONAL FIXED EFFECTS	NO	NO	NO	YES	YES	YES
N	1,043	843	938	1,029	833	926

Note: Standard errors clustered by village in parentheses. +, \*, and \*\* indicate that the coefficients are significant at the 10, 5, and 1 percent level, respectively. All models additionally control for age. Khas-Arya are the excluded ethnic group in all models.

## Validity and robustness

The mock referendum is a hypothetical voting exercise without a real-world corollary since citizens did not actually vote on the constitution. We probe the validity of the measure in two ways. One concern could be that, despite our efforts to assure respondents of the privacy of their responses, some may not have felt comfortable expressing their true views on the constitution. Column 3 replicates the main model, dropping the subset of individuals who indicated that they would not vote at all in a mock referendum. This is important to do if indicating abstention from the voting exercise could be a refusal to respond to the question rather than a lack of interest in voting. Dropping abstentions does not affect the main results. We also re-estimate the models using a 3-category response variable which more formally models the likelihood of abstaining from voting in SA Table 4. These models show similar main results but are more difficult to interpret compared to LPMs, so we give preference to the simpler models in the main text.

A second concern with the mock referendum is that some respondents could feel pressured to falsify their views due to security concerns. In 12 percent of the villages in our sample, enumerators observed ongoing protests and blockades, while they observed army presence in 13 percent of the villages (with 4 percent overlap). We might expect individuals in areas directly experiencing army presence to feel more pressured to express support for the constitution; instead, average support for the constitution was 6 percentage points lower in villages with contemporaneous army presence. Further, as we would expect if respondents are expressing their genuine views, respondents in villages with blockade and protest presence say that they would vote in favor of the constitution at a rate of 24 percentage points lower (73 percent versus 47 percent). Each of these pieces of evidence lends confidence to the validity of the mock referendum exercise in capturing support.

We also conduct several robustness checks. Although all models control for individuals' overall awareness of the constitutional process, one concern is that individuals with low political knowledge may have lacked the information to make competent vote choices based on preferences. Column 2 replicates the main model including only those individuals who say that they know about the process to negotiate a new constitution. All results are similar.

Wartime violence is not randomly assigned, and local prewar trends and conditions which affected violence intensity may also shape citizens' views on the postwar political settlement. Columns 4-6 replicate Columns 1-3 adding in controls for prewar economic and geographic conditions found to predict conflict intensity at the district level in Nepal by Do and Iyer (2010) as well as region-fixed effects to improve confidence that the effect of violence exposure is not driven by differences in prewar local conditions. Region-fixed effects enhance confidence that differences in exposure to violence are driving results rather than spatial correlations of conflict, poverty, and geographic conditions. In all models, greater conflict exposure strongly predicts support for the new constitution.

Lastly, we examine the effects of conflict intensity at the village- rather than the district-level using data from the Nepali NGO INSEC. We prefer the district-level variable to test our theory. Extended insecurity faced by individuals in geographic areas of high conflict would make the constitution's role in ending the civil war salient, irrespective of whether or not their village was directly targeted. Second, data on conflict-related deaths are more accurate at the district level, as there are many deaths that cannot be attributed to a specific village. Given these caveats, within a given region, village-to-village differences in targeting of state violence were often indiscriminate (Gilligan, Pasquale, and Samii 2014), potentially improving the ability to test the effects of violence. We report these results in SA Table 5: A one standard deviation increase in the intensity of village-level conflict exposure is associated with a 4.1 percentage point increase in the probability that an individual would vote in favor of the new constitution ( $p$ -value: 0.006).

# Implications for views on constitutional process

If the argument here is correct—that civil war exposure and ethnic minority status are affecting attitudes toward the new constitution because they shape whether citizens view the constitution as a “gain” or a “loss” relative to different reference points—then we should also expect civil war exposure and ethnic minority status to affect how citizens viewed the end of the constitutional negotiation process. After seven years of negotiation and two Constituent Assemblies, the Nepali constitution was finalized in dramatically short order, with less than 100 days between the final agreement between the three major political parties on the main points of the constitution and promulgation. Yet, the idea of reaching national consensus on the constitution’s main provisions was a key goal of the Nepali constitutional process from the beginning (Snellinger 2015). Both the Comprehensive Peace Accord and the Interim Constitution explicitly stated that reaching consensus across all major parties would be the main objective in decisionmaking.<sup>5</sup>

Although the idea of reaching consensus on all constitutional provisions in a divided society where some alternatives lack partial solutions—for example, the question of whether or not to be a secular state or to adopt identity-based federalism—is flawed, the ideal of consensus before promulgation was deeply held by many citizens. On the other hand, many in Nepal were fatigued with the snails’ pace negotiation process and were eager to move on. One of the insights from prospect theory is that those who see themselves in the domain of gains should be more likely to take the sure thing, even if they do not agree with it. To get at this dynamic, we asked respondents to identify which of the statements below resonated most:

*A) It is better to have the new constitution, even if I don’t agree with some of it;*

*(B) It is better to not have a constitution until consensus can be reached on all issues; or*

*(C) For someone like me, it doesn’t matter whether there is a new constitution or not.”*

Around 43 percent of respondents identified with the statement that it is better to have a new constitution, even if they don’t agree with some of it. Meanwhile, 31 percent responded that it would have been better to wait for consensus to be reached, and 26 percent responded that it

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<sup>5</sup> See, for example, Section 70 of the 2007 Interim Constitution, which outlines the procedures for negotiating constitutional provisions. There is a preference for unanimous decisions on all articles of the constitution, and if unanimity cannot be reached, then a direction to develop consensus on the subject matter. Only if consensus fails can articles be put forward for a vote requiring 2/3 agreement.

did not matter much to someone like them whether there is a new constitution or not. Thus, a sizeable minority of the population wanted additional time to resolve contentious issues and reach further consensus. Table 2 shows a multinomial choice model where the dependent variable indicates whether the respondent most closely identified with option (A), (B), or (C). Columns (1) and (2) come from the same model but report respectively the relative risk ratios of selecting option (B) vs. option (A) and of choosing option (C) vs. option (A). Relative risk ratios < 1 reflect a negative relationship.

**Table 2.** Views on ending the constitutional negotiation process

	Dependent Variable: Agrees with statement A, B, or C (3-category choice model)	
	(1) Relative risk ratios of choosing Option B vs. A	(2) Relative risk ratios of choosing option C vs. A
Conflict-deaths per 1,000 (log), dist.	0.672 <sup>+</sup> (0.148)	0.095 (0.120)
Janajati	1.676 <sup>+</sup> (0.499)	1.112 (0.3412)
Madhesi	6.940 <sup>**</sup> (4.236)	3.716 <sup>**</sup> (1.643)
Dalit	1.808 (1.402)	3.076 <sup>**</sup> (1.308)
Religious minorities	2.791 (1.908)	1.969 (1.062)
Trust in major parties	0.480 <sup>*</sup> (0.138)	0.363 <sup>**</sup> (0.089)
Female	0.957 (0.247)	2.442 <sup>**</sup> (0.657)
Attended a political meeting	0.937 (0.314)	0.831 (0.260)
News daily	0.248 <sup>**</sup> (0.065)	0.822 (0.210)
Aware of constitution	0.747 (0.232)	0.111 <sup>**</sup> (0.038)
Secondary education	1.896 <sup>*</sup> (0.533)	1.054 (0.332)
Remittance	1.349 <sup>+</sup> (0.233)	1.726 <sup>*</sup> (0.447)
Asset index	1.178 <sup>**</sup> (0.076)	0.981 (0.081)
N	1,043	

Note: Standard errors clustered by village in parentheses. <sup>+</sup>, <sup>\*</sup>, and <sup>\*\*</sup> indicate that the coefficients are significant at the 10, 5, and 1 percent level, respectively. All models additionally control for age. Khas-Arya are the excluded ethnic group in all models.

Consistent with H1 that those exposed to civil war would be most invested in ending political uncertainty, higher civil war exposure is linked with reduced likelihood of stating that it is better to wait for consensus and higher likelihood of stating that it is better to have a constitution now. Results also show that attitudes toward ending the constitutional process varied across Nepal's ethnic and caste groups. Madhesi were almost seven times more likely to state that it would have been better to wait for consensus rather than to have a constitution now, and Janajati

individuals were 1.7 times as likely. This is consistent with the anger expressed by political leaders of these groups about the process and with the protests detailed earlier. However, it is important to note that Madhesi are 3.7 times more likely to state that it does not matter much to someone like them whether or not there is a new constitution, even controlling for awareness of the constitutional process. These results also hold if we exclude those who were not aware of the constitutional process from the analysis (results in SA Table 6). This could reflect indifference about when to end negotiations given that the major concession Madhesi had lobbied for had been secured.

Similarly, women and members of lower castes were each more than twice as likely to say that a new constitution does not matter to someone like them compared to saying that it is better to have a new constitution now. Members of more marginalized groups in Nepali society were thus both more likely to want more time to negotiate issues and more likely to feel so marginalized from the process that having a new constitution would not affect their lives much. This echoes Breen's (2018) finding that given the legacy of Nepal's hierarchical society, there is a latent sense of fatalism among some groups who believe that their view is of little consequence and that elites will decide for them.

Unlike in the mock referendum results, we do find that trust matters in explaining citizens' views about ending the negotiations process. Respondents with more trust in the major parties that both authored and promulgated the constitution were less likely to say that they wanted more time for consensus and also less likely to say that the constitution did not matter relative to saying that it was better to have a constitution now. This nuanced finding suggests that trust in political elites can enhance buy-in to the process, even if it does not enhance support for the final outcome.

# Conclusions

Nepal's post-conflict constitutional process has important implications for other divided societies. Such reforms can end a traumatic period and establish a new political settlement. Yet, citizen buy-in is crucial for long-run success. Citizens' beliefs in the legitimacy and appropriateness of the ways in which authority is wielded are linked with democratic survival over the long term (Carey 2009; Claassen 2020; Eisenstadt, LeVan, and Maboudi 2015). Indeed, since 2015, there has been lingering discontent with the content and process of Nepal's new constitution. For instance, in September 2021, marginalized groups marched through Kathmandu, burning the constitution, and demanding several amendments to make it more inclusionary (Pradhan 2021). Such actions underscore that those who perceive a constitution as illegitimate will be less likely to support the post-constitutional settlement, with potential implications for democratic consolidation. As noted by one political observer, "The legitimacy of the Constitution will always be in doubt" (Jha 2019: 4). Yet, the extent to which these contentious and visible acts of dissension and elite outrage reflect broader public discontent has, until now, not been empirically analyzed.

Based on a sample of rural Nepalis conducted soon after the passage of the 2015 constitution, this paper found that prospect theory and the different reference points communities have during the constitutional process can affect their positions on the final document. Janajati opposed the constitution and supported reaching consensus before it was passed. They were most clearly in the domain of losses during the entire process. Madhesi also favored waiting to pass the constitution until there was consensus. However, and in contrast to the popular portrayal, they were not significantly more likely to vote against the constitution in a mock referendum. At the same time, a non-trivial share of Madhesi, Dalits, and other minority groups felt that it did not matter much whether there was a new constitution or not. This both reflects how ineffective the government was at mobilizing widespread public input into the process but also that much of the popular mobilization against the constitution was not uniformly spread among these groups despite the portrayal in the media and by political parties representing these groups; indeed, by focusing on rural households, we have gained a more nuanced perspective on mass attitudes. By contrast, those who had been more affected by the civil war were more likely to view the constitution and the process of passing it more favorably.

These dynamics have lingering impacts. A survey of more than 7,000 Nepalis in 2020 revealed that across all the provinces, less than 1 percent of Nepalis were concerned about a possibility of armed conflict between the state and rebel groups. In the new Sudurpaschim province, which aligns with the far-western region where civil war deaths were concentrated (Figure 2), more than a quarter of respondents—higher than any other province—noted that they have optimism for the future because the "decade-long conflict has ended and there is peace." At the same time, political parties and the federal parliament remain the most distrusted entities (Dhiraj,

Pyakurel, and Pandey 2020). In other words, the constitution served its purpose as a peace instrument but the process undermined faith in national institutions.

More generally, the paper illustrates that individual attitudes toward constitutional reforms may reflect more a calculation of risks versus benefits for accepting assured, modest gains over uncertain but more extensive rewards. Such calculations of risks and benefits may be vis-à-vis an aspirational reference point rather based on the direct utility of the constitutional provisions. This can help explain why citizens may reject a constitutional referendum based on just a few provisions, such as in Colombia's 2016 referendum, or accept it despite substantial concerns on several specifications, such as in the 2015 referendum on the Central African Republic's new constitution. In fragile, post-conflict states where the failure to pass a constitution can seismically derail a peace process, determining *ex-ante* these reference points among different groups, and whether they perceive they are in the domain of gains versus losses at the outset of such reform efforts, can be a useful basis for initial negotiations and for determining how long to hold out for more revisions. Indeed, while our findings are directly relevant to post-conflict states, they also have broader applicability, underscoring that citizen support for constitutions whose provisions they do not fully agree with—or the rejection of constitutions based on just one or two unappealing provisions—requires a granular understanding of how these citizens perceive risks and benefits.



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# Supplementary appendix

## Sure bets or risky gambles? Understanding popular support for post-conflict constitutions

### Appendix A: Sampling details

To select the survey sample, we first randomly selected 75 local government units (LGUs), stratifying by the boundaries of Nepal's seven provinces and by agroecological zones (mountains, hills, terai) to ensure that we had sufficient geographic and cultural variation. Within each sampled LGU, we randomly selected two wards and sampled seven households using a random walk procedure to be interviewed for a total sample of 1,055 rural households. Full details about the selection of LGUs are available in Kyle and Resnick (2018).

To correct for sampling imbalances, we use entropy balancing to reweight the survey data to match demographic information from the population (Hainmueller 2012; Hainmueller & Zu 2013). Table A.1 reports raw and weighted demographic information from the sample as well as population information from the 2011 Nepal Census. Compared to national averages of rural areas, the sample is slightly skewed toward Nepal's Khas Arya and Janajati ethnic groups. It also contains fewer women-headed households than would be expected compared to the 2011 Census. Entropy balancing enables us to get closer to population demographics.

**Table A.1.** Background summary statistics

	Sample data		Population
	Raw	Balanced	Census 2011
<b>Geography</b>			
Terai	46.1	50.7	46.6
Hills	49.0	45.2	46.7
Mountains	4.9	4.1	6.7
<b>Ethnicity / caste / gender</b>			
Khas Arya	35.2	30.7	31.2
Janajati	41.2	39.0	35.1
Madhesi	12.7	16.6	18.9
Dalit	8.4	9.0	8.5
Religious minorities	2.5	4.8	4.4
Female (heads of household)	19.0	26.7	25.2

*Note: Population statistics are for rural households. Raw survey numbers still use survey weights.*

## Appendix B: Additional tables

**Table B.1.** Control variable construction and measurement

Variable	Measurement
<b>Political information</b>	
Attended a political meeting	Respondent reports attending a political meeting at least once during the past 12 months
News daily	Respondent reports receiving news from either radio, television, newspaper, or internet "every day"
Aware of constitution	Survey question: <i>Since 2007, there have been plans to pass a new constitution in Nepal to replace the interim constitution. To your knowledge, what is the current status of the new constitution?</i> Answer options: (1) <i>Constituent Assembly passed the new constitution;</i> (2) <i>The new constitution has not been passed yet;</i> (3) <i>I haven't heard about a new constitution;</i> (4) <i>Don't know.</i> Coding: We coded respondents as "aware" of the new constitution if they chose either options 1 or 2.
Secondary education	Respondent reported receiving a School Leaving Certificate (SLC)
<b>Socio-economic controls</b>	
Remittance	Respondent reports that the household received remittance transfer during the past 12 months
Asset index	An index combining indicators of ownership of consumer durables and dwelling characteristics. In order to retain information that some dwelling characteristics are better than others, we use dichotomous indicators for ownership of durable goods, including whether the household owns a vehicle, a television, a motorcycle or motorbike, a bicycle, a refrigerator or freezer, a mobile phone, a computer, or an LPG cylinder and ordinal measures for main flooring material (0= soil, 1 = wood / tile concrete), main roofing materials (0 = straw or thatch; 1 = earth or mud; 2 = iron / concrete / cement / tiles / slate), and main wall materials (0 = bamboo / leaves / no walls; 1 = mud-bonded bricks or stones; 2 = wood / cement bonded bricks or stones). We then perform principal component analysis; the first component of the PCA is used for the overall asset index.



**Table B.2.** Summary statistics

	Mean	SD	Min	Max
<b><i>Conflict</i></b>				
Conflict-deaths per 1,000 (log), dist.	0.70	0.78	0.13	5.76
Conflict-deaths per 1,000 (log), vill.	0.63	1.94	0	12.4
<b><i>Ethnicity / caste / gender</i></b>				
Khas Arya	0.31	0.46	0	1
Janajati	0.39	0.49	0	1
Madhesi	0.17	0.37	0	1
Dalit	0.90	0.29	0	1
Religious minorities	0.05	0.21	0	1
Female (heads of household)	0.27	0.44	0	1
<b><i>Trust</i></b>				
Trust in major CA parties	0.63	0.48	0	1
<b><i>Political information</i></b>				
Attended a political meeting	0.38	0.49	0	1
News daily	0.64	0.48	0	1
Aware of constitution	0.76	0.43	0	1
Secondary education	0.33	0.47	0	1
<b><i>Socio-economic controls</i></b>				
Remittance	0.40	0.49	0	1
Asset index	5.45	2.02	0	12

**Table B.3.** Logit models of the determinants of supporting the new constitution in mock referendum (replicating Table 1 in paper)

	Dependent Variable: Voting in favor of constitution in mock referendum					
	(1) Full sample	(2) Aware only	(3) Dropping abstentions	(4) Full sample	(5) Aware only	(6) Dropping abstentions
Conflict-deaths per 1,000 (log), dist.	0.444** (0.180)	0.468* (0.189)	0.430* (0.194)	0.439* (0.205)	0.566* (0.224)	0.535* (0.242)
Janajati	-0.481+ (0.241)	-0.520+ (0.270)	-0.703** (0.255)	-0.472+ (0.252)	-0.511+ (0.291)	-0.685* (0.270)
Madhesi	0.349 (0.348)	0.454 (0.397)	0.222 (0.333)	0.079 (0.372)	0.287 (0.442)	0.101 (0.321)
Dalit	-0.743+ (0.410)	-0.324 (0.397)	-0.531 (0.339)	-0.730* (0.367)	-0.381 (0.391)	-0.754* (0.357)
Religious minorities	-0.056 (0.780)	0.551 (0.626)	-0.640 (0.771)	-0.878 (0.725)	-0.294 (0.620)	-1.461* (0.666)
Trust in major parties	-0.186 (0.183)	-0.169 (0.200)	-0.023 (0.218)	-0.142 (0.182)	-0.163 (0.195)	0.012 (0.223)
Female	0.253 (0.247)	0.280 (0.284)	0.404+ (0.240)	0.175 (0.244)	0.152 (0.266)	0.295 (0.241)
Attended a political meeting	0.284 (0.226)	0.322 (0.264)	0.085 (0.280)	0.213 (0.238)	0.272 (0.274)	0.050 (0.286)
News daily	-0.100 (0.242)	-0.138 (0.261)	0.044 (0.315)	0.071 (0.251)	-0.066 (0.274)	0.108 (0.323)
Aware of constitution	-0.246 (0.230)		-0.457 (0.306)	-0.340 (0.238)		-0.524+ (0.318)
Secondary education	-0.115 (0.228)	-0.200 (0.250)	-0.229 (0.243)	0.075 (0.213)	-0.017 (0.241)	-0.038 (0.210)
Remittance	-0.137 (0.197)	-0.015 (0.211)	-0.342 (0.245)	-0.258 (0.209)	-0.140 (0.224)	-0.428+ (0.254)
Asset index	0.109+ (0.058)	0.126* (0.058)	0.197** (0.071)	0.053 (0.063)	0.080 (0.063)	0.117+ (0.070)
PRE-WAR CONTROLS	NO	NO	NO	YES	YES	YES
REGIONAL FIXED EFFECTS	NO	NO	NO	YES	YES	YES
N	1,043	843	938	1,029	833	926

**Table B.4.** Voting against the constitution, abstaining from voting, and 3-part dependent variable

	LPM (1) DV: Vote against	LPM (2) DV: Abstain	Ordered logit (3) DV: 3-category (-1 = vote against; 0 = abstain, 1 = vote in favor)
Conflict-deaths per 1,000 (log), dist.	-0.055* (0.023)	-0.026+ (0.014)	-0.441* (0.181)
Janajati	0.115* (0.040)	-0.012+ (0.030)	-0.528** (0.237)
Madhesi	-0.023 (0.042)	-0.041 (0.042)	0.324 (0.336)
Dalit	0.045 (0.047)	0.116 (0.094)	-0.583+ (0.314)
Religious minorities	0.135 (0.163)	-0.124** (0.024)	-0.245 (0.868)
Trust in major parties	-0.0002 (0.038)	0.041 (0.027)	-0.136 (0.193)
Female	-0.058 (0.035)	0.008 (0.034)	0.276 (0.235)
Attended a political meeting	-0.007 (0.046)	-0.053* (0.264)	0.236 (0.240)
News daily	-0.020 (0.051)	0.042 (0.026)	-0.028 (0.252)
Aware of constitution	0.081+ (0.047)	-0.031 (0.038)	-0.337 (0.237)
Secondary education	0.038 (0.041)	-0.016 (0.030)	-0.147 (0.225)
Remittance	0.063 (0.042)	-0.034 (0.028)	-0.200 (0.207)
Asset index	-0.033+ (0.012)	0.011+ (0.006)	0.141* (0.062)
N	1,043	1,043	1,043

**Table B.5.** Using village-level conflict measure

	Dependent Variable: Voting in favor of constitution in mock referendum			
	(1) Full sample	(2) Full sample	(3) Aware only	(4) Dropping abstentions
Conflict-deaths per 1,000 (log), vill.	0.025* (0.006)	0.023* (0.008)	0.026* (0.009)	0.017* (0.008)
Janajati	-0.110* (0.050)	-0.090+ (0.049)	-0.096 (0.059)	-0.113* (0.042)
Madhesi	0.040 (0.061)	0.013 (0.070)	0.051 (0.082)	0.018 (0.049)
Dalit	-0.164 (0.105)	-0.137 (0.082)	-0.058 (0.083)	-0.098+ (0.059)
Religious minorities	-0.052 (0.168)	-0.166 (0.155)	-0.046 (0.122)	-0.239 (0.145)
Trust in major parties	-0.038 (0.039)	-0.022 (0.036)	-0.023 (0.039)	0.004 (0.037)
Female	0.045 (0.051)	0.036 (0.047)	0.035 (0.053)	0.050 (0.037)
Attended a political meeting	0.052 (0.046)	0.031 (0.048)	0.042 (0.056)	0.0002 (0.049)
News daily	-0.029 (0.051)	0.012 (0.050)	-0.015 (0.055)	0.016 (0.054)
Aware of constitution	-0.043 (0.048)	-0.055 (0.046)		-0.072 (0.049)
Secondary education	-0.035 (0.051)	0.013 (0.041)	-0.008 (0.047)	-0.007 (0.035)
Remittance	-0.034 (0.042)	-0.048 (0.041)	-0.024 (0.044)	-0.068 (0.043)
Asset index	0.016 (0.012)	0.008 (0.013)	0.014 (0.013)	0.016 (0.013)
PRE-WAR CONTROLS	NO	YES	YES	YES
REGIONAL FIXED EFFECTS	NO	YES	YES	YES
N	1,043	1,043	1,043	1,043

**Table B.6.** Views on ending the constitutional negotiation process, aware only

	Dependent Variable: Agrees with statement A, B, or C (3-category choice model)	
	(1) Relative risk ratios of choosing Option B vs. A	(2) Relative risk ratios of choosing option C vs. A
Conflict-deaths per 1,000 (log), dist.	0.626* (0.144)	0.095 (0.133)
Janajati	1.645 <sup>+</sup> (0.463)	1.300 (0.328)
Madhesi	5.836** (3.471)	3.380* (2.005)
Dalit	2.101 (1.454)	2.933 <sup>+</sup> (1.617)
Religious minorities	2.039 (1.454)	1.179 (0.660)
Trust in major parties	0.634 (0.182)	0.293** (0.071)
Female	1.175 (0.358)	2.586** (0.623)
Attended a political meeting	0.996 (0.338)	0.802 (0.250)
News daily	0.251** (0.066)	0.791 (0.208)
Secondary education	1.812* (0.514)	0.871 (0.274)
Remittance	1.219 (0.244)	1.935* (0.639)
Asset index	1.147* (0.075)	1.000 (0.012)
N	1,043	

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