

Europe is home to some of the world's most incomprehensible national constitutions.

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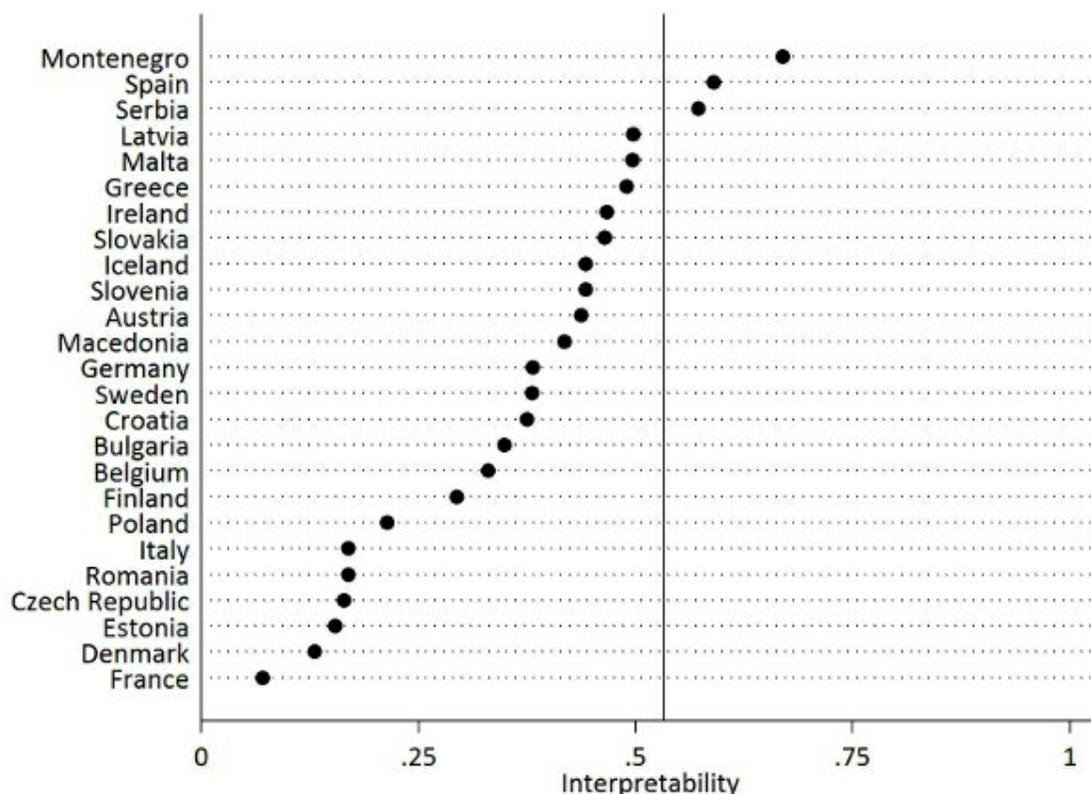
Why are some countries' constitutions easy to understand, while others are extremely difficult to interpret?

James Melton outlines results from a cross-national study of the interpretability of constitutions. He notes that European constitutions are more difficult to interpret, on average, than constitutions from any other region of the world. While the negative consequences of low interpretability can be mitigated by other factors, making constitutions easier to understand should be a priority for future constitutional drafters.



According to research recently published in the *British Journal of Political Science* by **Zachary Elkins**, **Tom Ginsburg**, **Kalev Leetaru**, and myself (available [here](#) – ungated until the 18th of June), Europe is home to some of the world's most incomprehensible constitutions. The article offers the first empirical assessment of constitutional interpretability, which is defined as the ability of a constitution to produce inter-subjective agreement about its meaning. The measure of constitutional interpretability developed in the article uses data from the **Comparative Constitutions Project (CCP)**. For each constitutional text, two (or more) coders have answered a series of questions on the structure and content of that text using the CCP's survey instrument. Disagreement between coders' responses indicates a problem of interpretation. Constitutional interpretability is assumed to be correlated with the number of interpretation problems that arise in the CCP's data. Constitutions with low interpretability are expected to have more problems of interpretation than constitutions with high interpretability.

Figure 1: Predicted Interpretability of 25 European Constitutions



Notes – Interpretability is calculated using equation 4 in [Melton, Elkins, Ginsburg, and Leetaru \(2013\)](#). The measure

is adjusted to remove the variance associated with the interpretation procedure (i.e. the coding procedure and coders employed by the CCP) and rescaled to range from zero to one, where zero represents the lowest observed level of interpretability and one the highest observed level of interpretability. The constitutions represented in the figure are those in force in each country circa 2006.

Based on this measure, the average European constitution has a lower level of interpretability than the average constitution from any other region. Figure 1 illustrates the predicted interpretability of a sample of 25 European constitutions. Each dot reflects the level of interpretability of the constitution in force in that country circa 2006. The vertical reference line illustrates the mean level of interpretability across all 397 constitutions for which an interpretability score can be calculated. Of the 25 constitutions represented in figure 1, only three – Montenegro's constitution of 2006, Serbia's constitution of 2006 and Spain's constitution of 1978 (as amended in 1992) – have a higher level of interpretability than the sample mean.

Why are Europe's constitutions so difficult to understand?

Problems of interpretation arise from three sources: the context in which the constitution is written, the text of the constitution itself, and the procedure used to interpret the text. Although most of the variance in interpretability is attributable to the procedures used to interpret the text (i.e. the coding procedure and coders employed by the CCP), this does not explain the low interpretability scores received by European constitutions. Even after removing the variance associated with the interpretation procedure, Europe's constitutions are still among the least interpretable.

Another potential reason for Europe's low levels of constitutional interpretability is the context in which those constitutions were written. European constitutions tend to be older than constitutions written elsewhere because European countries are older. The average constitution in most regions was promulgated in the late 1960s or early 1970s, but in Europe, the average constitution was written in the 1920s. In fact, about half of the constitutions in our sample written prior to the 1960s are from Europe, and a number of those early constitutions are still in force today. Since language, culture and legal norms change over time, modern readers might have trouble understanding texts written nearly a century ago. The study does find an association between the age of the constitution and interpretability, but the effect is quite small and unlikely to explain the consistently low levels of interpretability found in Europe. In fact, there is little evidence that any of the contextual factors assessed in the article have much of an effect on interpretability.

The third, and final, source of variance in interpretability is the text of the constitution itself. Several textual factors are associated with low levels of interpretability. Perhaps the most important of these is constitutional specificity. Constitutions that cover a lot of topics tend to have lower levels of interpretability, while constitutions that cover topics in greater detail tend to have higher levels of interpretability. In addition, constitutions that have a higher percentage of one time words tend to be easier to interpret. These textual attributes are probably the best explanation of Europe's low levels of interpretability because European constitutions tend to be shorter, more detailed and have fewer one time words than constitutions written in other regions of the world.

The effect of the aforementioned textual attributes suggests that a constitution's age might have an indirect effect on interpretability. Constitutions written recently tend to be longer and much more detailed than their counterparts written a century ago. The former more closely resemble legal statutes than classic examples of constitutions written in the United States or in 19th century Europe. They tend to have lots of short provisions that clearly and fully articulate the institutional structure and, as a result, are easier to interpret.

What are the implications of low interpretability?

There is significant debate about the virtue of interpretability. Arguments supporting vague or unclear laws are not uncommon. However, advocates of plain language note several benefits associated with interpretability. For instance, a necessary condition for compliance with the law is that subjects understand its meaning. Without clear laws, one is unsure how to behave and, thus, the relationship between the enforcers and the subjects can become

arbitrary. Interpretability is also related to theories of constitutional self-enforcement. Self-enforcement requires that subjects of the constitution are willing to take coordinated action to punish those who violate its tenets. Such coordination is only possible if there is agreement on what constitutes a violation and how violations are to be punished, which is facilitated by an easily interpretable constitution.

Ultimately, interpretability facilitates adherence to the rule of law. Uninterpretable constitutions do not make such adherence impossible, but neither do they support its development. There might be few consequences of having an unclear constitution in Western Europe, where lack of interpretability is counterbalanced by durable constitutions and elites that are committed to the rule of law. Lack of interpretability is likely more problematic in Eastern Europe, where the foundation for the rule of law is still in its infancy. I am not suggesting that constitutions in Eastern Europe (or anywhere) should be rewritten to make them more interpretable, but I do think that interpretability is something for which future constitutional drafters, and possibly the Venice Commission, should strive.

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Note: This article gives the views of the author, and not the position of EUOPP – European Politics and Policy, nor of the London School of Economics.

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