

# Incremental or Transformative?

## The Effect of Civil War on Institutional Change

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### Abstract

Does civil war have an effect on institutional change? Some scholars posit that we should expect to see transformative, as opposed to incremental, changes following such a large event. Because civil war by definition occurs between two or more actors attempting to disrupt the status quo, we examine the effect of civil war on constitutional change - the institution responsible for structuring a nation state's status quo. We expect to observe transformative constitutional changes *if* the civil war terminates with a victor whose legal preferences for governance are not embodied by the remaining constitution. Moreover, we expect continuity of these changes to be dependent on whether the victor maintains law-making powers. If the victor and loser have divergent legal preferences, but the loser gains law-making powers in the post-civil war period, then we expect to observe an endogenous rupture to the remaining constitution. To examine our theoretical argument we leverage original data on state constitutions before and after the American Civil War (1776-1901). Preliminary evidence supports our theoretical argument.

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Does civil war have an effect on institutional change? Civil war is a large, cataclysmic event. By definition it occurs between two or more actors attempting to disrupt the status quo.<sup>1</sup> Some scholars posit that we should expect to see transformative institutional changes following such a major event (Baumgartner and Jones, 1993; Jones and Baumgartner, 2005; Russell, 1993; Elster, 1995; Jones and Baumgartner, 2012). Intuitively, we might expect that following a civil war constitutions are particularly susceptible to change considering they are the institution that structures and governs a polity's status quo. Russell (1993, p. 394), for instance, emphasizes that the call for a new constitution or major constitutional change usually arises during or preceding a crisis, respectively. And yet, empirically, we observe significant variation. While some cases exhibit a wholly new constitution that is dramatically different from its predecessor, others appear to be a continuation of the former institutional status quo (e.g. a new constitution with no real changes or a continuation of the remaining constitution with little to no amendments) (Miller et al., 2016; Elkins et al., 2009, pp.136). For instance, the Afghan and Sudanese civil wars were followed by new constitutions; the Salvadoran and Guatemalan civil wars, however, were not. Moreover, varying levels of reform occurred across all four cases. Why?

We argue that civil war should have a transformative effect on constitutional change (e.g. wholly new or substantially altered constitutions); however, this effect is conditional on the the victor's preferred system of governance and whether those preferences align with the remaining constitution. If the civil war terminates with a victor whose preferences are not embodied by the remaining constitution, we expect to observe transformative changes. Put differently, if the conflict terminates with a victor whose legal institutions that serve the fundamental functions of governance are not reflected by the remaining constitution, then we expect exogenously driven ruptures to the remaining constitution immediately following the termination of civil war. Moreover, we expect the duration of these changes to be dependent on whether the victor maintains law-making powers. Because these systems of governance are a formalization of the adversary's

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<sup>1</sup>We utilize the same definition of civil war as the Uppsala Conflict Data Program (2019): a contested incompatibility that concerns government and/or territory over which the use of armed force between the military forces of two parties, of which at least one is the government of a state, has resulted in at least 1000 battle deaths.

values, beliefs, and expectations of how society should be/is structured, when their preferred systems diverge, and a power shift between the adversaries occurs we are more likely to observe endogenously driven ruptures to the remaining constitution.

To isolate the causal process and understand the nature of government response to crisis, the external and internal determinants of it, we examine state constitutional changes before and after the American Civil War between 1776-1901. These data include the text of the constitution in its entirety, as well as the text in every section within a constitution for every year between the adoption of the state's first constitution and 1901. We examine the change in the total number of words and classify some terms and sections by preference topic to compare the content of each new constitution. We also analyze the extent to which sections were added, deleted, modified, and remained the same over time by using a novel approach. This approach relies on a measure to quantify the similarity between sections of two constitutional documents within each state. It allows us to empirically evaluate the effect civil war termination and post-conflict power shifts have, conditional on the alignment of victor preferences, to the level of similarity of modified sections as new constitutions were adopted or alterations were made to an existing constitution within the same state and across states. We find preliminary evidence in support of our theoretical argument.

Understanding civil war as a critical juncture that may detour institutional arrangements is an important endeavor. To date, emphasis has been placed on the design and duration of constitutions, and their consequences (Elkins et al., 2009). This is perplexing considering that design and duration should in large part be dependent on the *ex ante* process - the process that drives actors to bargain over the country's main legal document in the first place. Without an understanding of the data generating process that leads to change, or lack thereof, any examination of consequences is incomplete. As a result, this study seeks to provide the first direct test of the effect civil war has on institutional change. It highlights a dynamic process of exogenous and endogenous changes and explores a causal mechanism not previously examined: the adversaries' legal preferences for governance. It emphasizes the importance of preferences not just as a consequence of

institutions, but as a causal factor of institutional design/change.

Note that this bridges comparative and institutional amer dev lit because the former treats change as birth and death of constitution and the latter allows for other types of transformative changes like amendments - discussion of external validity

Moving forward, we focus on the institutional change literature. Then, we detail our theoretical argument and establish the derived hypotheses. We follow this with a discussion of the data and research design. Subsequently, we detail our analysis, findings, and concluding thoughts.

## **Civil Wars and Institutional Change?**

Scholars have often noted the stickiness of institutions. This means that once an institution is adopted, it is notoriously difficult to change. Previous research on institutional change has concentrated on two types of explanations. First, based on the notion that a large event can lead to significant change, Eldridge and Gould (1972) and Baumgartner and Jones (1993) develop a theory of punctuated equilibrium. The authors show that institutions do not always change incrementally. Rather, institutions are stable for a long period of time and then an event occurs that causes a significant alteration to the status quo. This dynamic process, in which moments of “openness” marked by abrupt and rapid institutional innovation are generally attributed to exogenous shocks. The dualism of path dependency and critical junctures has advanced our understanding of how institutional change occurs due to sudden exogenous shocks.

Some scholars, however, have argued for greater focus on endogenous and gradual forms of change (Greif and Laitin 2004; Mahoney and Thelen 2010; Streeck and Thelen 2005; Weyland 2008). Institutions have been thought to exhibit so much internal inertia and stickiness that, once created, institutional reproduction and stabilization was the more natural research focus (e.g. diffusion), whereas theoretical leverage for thinking about change has been relatively small (Immergut 2006). However, Knight (1992) posits that we should observe institutions as power-laden vehicles and that there is constant struggle over the proper meaning of an institution. In this

light, our attention in institutionalist explanations should be focused on deficiencies in both rule making and rule taking. Institutions “often remain ambiguous and always are subject to interpretation, debate, and contestation” (Mahoney and Thelen 2010, 11). Enactment and enforcement problems, regulatory loopholes, control gaps/changes, and cognitive limits of rule-makers/takers, including their preferences, as we will argue below, are some of the endogenous sources that endow actors pushing for change.

Gerschewski (2020) examines the sources of institutional change and argues that there are, in fact, four types of change - two of which have been underexplored in the literature. Gerschewski (2020) posits that scholars should separate the cause of change (exogenous vs. endogenous) from the time horizon by which the cause for change operates (sudden vs. gradual) to isolate an explanation of any institutional change we may observe. Doing so results in four distinct types of institutional change: (1) sudden, exogenously driven ruptures, (2) sudden, endogenously driven ruptures, (3) gradual, exogenously driven change, and (4) gradual, endogenously driven change. Moreover, the author notes that one type of change, endogenous ruptures, has been especially overshadowed by arguments on either exogenous shocks, exogenous gradualism, or endogenous gradualism. We follow Gerschewski’s (2020) groundbreaking work and argue that civil war termination and the post-conflict environment have a conditional and sequential effect on the institution responsible for structuring a nation state’s status quo: the constitution. More importantly, civil war termination and its post-conflict environment can result in a dynamic exchange between exogenous and endogenous shocks that transform the remaining constitution significantly altering the state’s status quo.

## **Exogenous Shocks and Divergent Preferences of Governance**

Constitutions are intended to formalize a state’s system of governance. First, Elster (1995) argues that to distinguish a constitution from other legal texts, or institutions, three criteria are important: consists of a set of laws collectively referred to as “the constitution”; some laws deemed

“constitutional” because they regulate matters that are in some sense more fundamental than others; and it is distinguishable from ordinary legislation because of the stringent amendment procedures. Nevertheless, the latter is particularly elusive considering that amendment procedures vary extensively across and within countries. Therefore, we focus on the first two points: we define constitutions as generally designing a state’s identity, purpose, structure, and embodies how the state wants to be perceived by others. Second, a governance system is a set of rules that create, structure, and maintain social order (Reyes, 2020). These rules are a formalization of the values, beliefs, and expectations for how society should be/is structured. They serve fundamental functions of governance such as structuring authority, property rights, justice, and societal relations (Reyes, 2020). Governance systems vary not only across states, but within states as well. In fact, many groups do not reside in a nation-state where the incumbent holds a monopoly over governance, let alone the legal institutions that serve the core functions of government. Instead, most groups live in an environment of legal pluralism where the plurality of governance systems and the preferences they embody means their overlap, potential hierarchy, and overall compatibility matter quite a bit for constitutional change. In fact, over the last century, constitutions have increasingly become the tool of choice for establishing social order in post-conflict settings: a beacon of laws among varying formal and informal legal institutions codified into one formal institution.

On the one hand, constitutions are coordination mechanisms where their function is to reduce the amount of uncertainty that every individual possesses about their expected behavior and others’ behavior (North, 1990, 17). They formalize both the type, content, distribution, and enforcement of property rights as well as the belief system of a society. On the other hand, they are more than just coordination mechanisms. They are the fundamental statement of a society’s core cultural, political, and social values (Miller et al. 2016). Therefore, constitutions embody the legal preferences for how a governing authority seeks to structure the polity. For example, not all constitutions define government, citizenship, and property rights in the same way, nor do they establish the same enforcement procedures and mechanisms. It should not be surprising, then,

that different societal groups have different legal preferences that define and structure their preferred social order via a constitution in a unique way (Boone, 2014; Firmin-Sellers, 1996; Greer, 2018; Isser, 2011; Lazarev, 2019; Murtzashvili, 2016; Ostrom, 1990). If a constitution's very purpose is to coordinate the cohabitation of a plural society (Paul, 1994), when legal preferences and beliefs diverge, constitutions can either centralize via one system at the detriment to another, or expand its breadth to include another group's legal system (Reyes, 2020). Under what conditions, then, should we expect to observe transformative constitutional changes? Put differently, if constitutions can formalize cleavages among society, or disproportionately aggregate preferences in favor of some over others, then what shocks to the system may alter their trajectory (Pierson, 2000)?

War is a major event that may not only disrupt the status quo, but can alter the regime, economy, culture, and social structures of a country. It can shift the balance of power where an excluded group can become part of the formal government and alter the political equilibria, norms, and even preference aggregation that designed constitutions in the first place. This makes not only the occurrence and outcome of war critical to constitutional change, but the adversaries' legal preferences, their compatibility, and long term goals specifically important for major constitutional change for two reasons. First, civil wars are particularly important for significant constitutional change as they push through adversaries' legal preferences for a particular system of governance. In some cases, they may expose divergent preferences that were unknown or unresolved. Civil wars can stir up existing, but previously suppressed conflicts about the legal status of individuals, their relationship to government, and the location of legal authority. Issues being fought over, such as "who is a citizen" can be connected to "what does citizenship mean" and "can non-citizens own property." These issues may center on a salient issue, but they necessarily involve broader, structural issues that can result in institutionalized wartime policies and a transformation of the legal status of all citizens. This means that "sticky" constitutions shocked by violent conflict interact with the adversaries' legal preferences.

Second, we argue that an underexplored source of constitutional change is how civil war ter-

minates. While civil war itself may be endogenous to constitutional changes, the termination of civil war is in fact an exogenous shock to the system. Put differently, it does not result from the institution itself, but instead, the external environment. Nevertheless, this shock alone is insufficient for transformative changes. According to Gerschewski (2020), what has largely been overlooked in the institutional change literature is the isolating mechanism. Gould and Eldredge emphasize that a rapid geographical dislocation (e.g., the break-up of an island) isolates a subpopulation that needs to adapt to new circumstances. An exogenously driven rupture follows the dual model of long phases of stability that are suddenly interrupted by surprising events in which unmodeled forces like a military victory intervene abruptly, making continuation of the existing rules of the game unlikely, especially with a victor who has revolutionary goals. Moreover, the exogenous shock must be strong enough that it puts an institutional order in a new environment and onto a new path.

Here, while the conflict between whose rules govern the polity has ended, this alone is insufficient for “transformative change.” However, cases that involve a one-sided victory are important if the victor’s preferred system of governance is not aligned with the remaining constitution. While the termination of civil war can be an exogenous shock to the system, placing the rules of the game on a new track requires the conflict ending with a victor who seeks to transform the previous governing order because it has not been reflected in the governing constitution. In such cases, war becomes a battle for which institutional solutions can solve the governance incompatibility between the adversaries. If the adversaries include a party whose long-term goals are revolutionary, meaning they seek to transform/supplant the current governing order, then any law-making powers those actors gain is not to maintain the status quo. Violent contestation can result in a fundamentally different constitution under certain conditions, specifically if the prior constitution is not in favor of the party with revolutionary goals and law-making powers - the victor. War can dramatically disrupt the status quo and the remaining constitution that embodies it in the post-conflict environment. A landmark study in this regard is, for example, Ikenberry (2001).

Ikenberry explains the creation of institutional orders after great power wars such as the Napoleonic Wars 1814/15, the First and Second World Wars 1918 and 1945, and the end of the Cold War 1989/1990. These chaotic major postwar junctures are perceived as extraordinary situations. Ikenberry (2001, 7) applies Katzenstein's notion of history as a "sequence of irregular big bangs." A step function illustrates this change trajectory best. When drawing the trajectory on paper, one cannot draw its progression in one fluid motion; rather, one must lift the pencil to start anew at a different point. Breaks are then turned into a legitimate and fruitful object of study. If we follow this route, then the burden of proof lies in demonstrating why we observe a leap and why an institution has been put on a new track, a step function of change that as a trajectory eliminates the institution's current path and supplants it with a new one. The step function model sees exogenous shocks as causing isolation from each other and offering a new beginning, so emphasizing discontinuity.

But actors have agency and there must be some incentive to change a constitution in order for us to observe one. So, once a civil war terminates, we are likely to have an exogenously driven rupture. We are more likely to observe the step function model of Ikenberry 2001 where the victor will take the remaining constitution and completely change its course/path (rupture) as opposed to gradually transformationing it. It is characterized by two mechanisms: civil war termination as a rapid isolating mechanism, which is then followed by local adaptation, or the victor transforming the constitutional order via the institution's new path.

With this argument, we can see that it is reasonable to expect the victor's legal preferences will supersede the loser's and alter the constitutional fabric of a society in favor of the victor. In this respect, civil war should disadvantage constitutional maintenance, but only because civil war has an effect on the balance of power among adversaries with divergent legal preferences. This implies that large events on their own may be insufficient for institutional change, which leads us to expect the following hypothesis:

***Hypothesis 1:*** *The termination of civil war is more likely to result in sudden, exogenously driven ruptures to the remaining constitution when the victor's preferred system of governance is not embodied by it.*

## Post-Civil War Power Shifts: Endogenous Shocks and Change

The new constitution following the termination of civil war is a formal codification of the victor's preferred system of governance. As such, any power shifts between the victor and loser in the post-conflict setting should have strong implications for constitutional change. This may occur via power-sharing mechanisms, election cycles, supreme court decisions, etc. Because these legal institutions are a formalization of the adversaries' values, beliefs, and expectations of how society should be/is structured, power shifts between adversaries with divergent preferences during the post-conflict period are likely to result in endogenously driven ruptures. This explanation refers not only to the legal preferences embodied in the constitution, but also to the powers relevant to designing/maintaining the constitution. Inherent institutional properties empower or even produce actors so that institutions contain within themselves the seeds for change. An endogenous explanation then means that institutional properties generate within this very institution change agents and structural dynamics that cause the institution to change.

Because compliance with the constitution is a key variable and not a fixed parameter, a cause of change can also emerge within the institution itself - a product of inherent institutional properties and working from the inside out. This insight opens up space for thinking more systematically about change that is caused from within. Whereas in the previous section of critical junctures and path dependence the exogenous shock is the cause that carries the explanatory weight, here it is the endogenous enabling and endowing of actors that use their operative leeway within an institution (Gerschewski 2020). Institutions become feasible to mold (Hall 2016) because of the very mechanisms within them. The complex interplay and interconnectedness of political and social phenomena complicates the distinction between not only internal and external (location) but also endogenous and exogenous factors (location plus generation). As Greif and Laitin (2004) argue, what counts as an exogenous and an endogenous factor can also vary over time. A factor can be exogenous to an institution in the short run, but, like here, it can be endogenized in the institutionalist explanation in the long run (Gerschewski 2020).

Endogenous ruptures might be the most surprising and least intuitive type of change. For

example, one may expect the termination of civil war to set the constitution on a stable path. But civil wars are known for their instability and power shifts in post-conflict settings. Therefore, institutional change can occur due to shocks, but these shocks do not need to come from the outside; they can also be caused endogenously. Gerschewski (2020) offers an intuitive example of endogenous ruptures as an autoimmune reaction: an unexpected and rapid reaction in which the body does not recognize a cell as being benign any longer but instead sees it as harmful and erroneously fights against it. Here, a power shift among adversaries with divergent governance preferences are likely to see the remaining constitution as not being aligned with their preferred system of governance. The former loser, becomes a powerful actor who is produced, empowered, and motivated by incentive structures within the constitution to break sharply with the previous long-held institutional inertia, including powers to create and amend laws in their respective constitution. These explanations point to the sudden empowerment of actors. It is this quick deflagration due to centrifugal forces that represents the idea of an endogenously caused rupture best. The cause for change works like a fast-acting poison that is innate to the institution of the party system itself. They no longer accept the institutional rules of the game but instead break sharply with them (see also Frieden 2006, 339–60).

If a state's constitution is changed to align itself with the victor's preferences, then it is likely to change again if a new "victor" arises. If law-making powers shift back to the opposition then we should expect ruptures to the constitution every time that shift happens. Because the time horizon may be short in terms of the cause of change, then we're likely to observe ruptures again. This is particularly important because scholars generally focus on the impact institutions have on preferences as opposed to how preferences impact institutions. We argue that preferences do have an effect not only on constitutional change at the termination of civil war, but also at each point where post-civil war power shifts occurs between adversaries with divergent preferences. This leads us to expect the following hypothesis:

***Hypothesis 2: If power shifts occur in the post-conflict period and law-making powers revert back to the loser, then we are likely to observe significant constitutional change in the form of sudden, endogenously driven ruptures.***

## Research Design

Does civil war have an effect on constitutional change? We argue that because civil war, by definition, occurs between two or more actors in an attempt to disrupt the status quo, we expect constitutions to be particularly susceptible to change since they structure the country's status quo. However, we expect this change to be conditional on whether or not the remaining constitution is aligned with the victor's preferred system of governance. Moreover, we expect the duration of these changes to be dependent on whether the victor maintains law-making powers. Because these legal institutions are a formalization of the adversaries' values, beliefs, and expectations of how society should be/is structured, power shifts between adversaries with divergent preferences during the post-conflict time period are likely to result in endogenously driven ruptures. Considering the growing consensus that constitution building is a feature of state building in post-conflict settings, it is essential that we understand how preferences influence the design, change, and consequences of constitutions.

To examine our argument, we require data on the following concepts: 1) adversaries legal preferences of governance; 2) civil war outcome — who the victor is; 3) whether the remaining constitution at the war's termination embodies the victor's preferences; 4) the compatibility of governance preferences between adversaries; and 5) power shifts in the post-conflict environment. Because there is no dataset on warring party legal preferences, we operationalize this concept by noting whether the victor governed, designed, or negotiated the remaining constitution or not. Furthermore, we leverage data on the American Civil war to gather details on this and the remaining concepts.

### Why the American Civil War

It should be noted that we leverage the American Civil War for a number of reasons. First, civil war is not random and the characteristics that make civil war more or less likely may also influence the likelihood and extent of institutional change. This can result in a systematic im-

balance between countries who experience civil war and those that do not, making the two very difficult to compare. With the U.S. case, however, we can hold many of these factors constant and focus on any observable changes within the individual state's, those who did and did not experience the civil war and their respective constitutions. Second, there may be unobserved factors that simultaneously affect both the occurrence of institutional change and civil war, such as the compatibility of the warring parties' legal preferences. In many cases, however, a country's first constitution follows a civil war preventing any analysis between pre- and post-civil war constitutions. Moreover, the effect of warring parties' governance preferences would be difficult to isolate. With these data, however, we are able to evaluate the changes between antebellum, secessionist, reconstruction, reformer, and redeemer constitutions making it feasible to isolate the effect of civil war preferences, the interactive effect between civil war and the victor's alignment of their preferences with the remaining constitution, as well as warring party alignments and their power shift in the post-conflict period. Moreover, we are able to create an indirect measure of preferences by reviewing the historical records of each constitutional convention and the main issues discussed by each adversary during their respective time periods. Finally, though our preliminary analysis is restricted to the loser, or Southern states, we will be expanding the data to include all states.

## **Dataset**

The U.S. Constitutions Dataset (Miller et al., 2016) is a new section-level dataset focused on the evolution of state constitutions and the U.S. Constitution over a 100+ year time period (1776-1901). These data include the text of every section within a constitution, and its amendments, for every year between the adoption of the state's first constitution and 1901. For this paper, we will look at 49 constitutions from 10 southern states (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina, Tennessee, Texas, Virginia), and their amendments. These selected constitutions were adopted during the pre-secession, the secession, immediately after the war, during the reconstruction or during the redeemers periods.

These data allow us to test whether the victor (Union) substantially altered their state constitutions after the civil war or if substantial changes occurred to the Confederate's constitutions only. Moreover, divergent legal preferences are clear in the American Civil War as adversaries disagreed not only on slavery, but the legal regimes slavery impacted (e.g. property rights, marriage, citizenship, and travel between states). We can also evaluate the specified causal process over time by examining whether substantial changes occurred once the balance of power shifted in the absence of civil war. Most confederate states have had four new constitutions and many amendments. Therefore, with this data and case we can test how similar the documents are during different moments in time.

## Analysis

Our main goal is to explore the effect of civil war on constitutional change and whether the victor's preference conditions that change.

The first independent variable, *Victor Alignment*, is a binary variable of "1" if the victor is not aligned with the constitution and "0" otherwise. We infer this by reviewing the historical records of each constitutional convention that occurred during the respective time periods. This allows us to focus on the main topics and create an indirect measure of the victor's preferences. Secondly, we focus on the *period* under which the constitution was adopted. The values this independent variable can take are: secession, immediately after the war, reconstruction, and redeemers era, depending on when the constitution was adopted. For example, constitutions adopted in 1861 are classified as secession constitutions. Those adopted between 1864-1866 are classified as immediately-after-war constitutions. Those adopted between 1868-1870 are Reconstruction constitutions. Documents adopted between 1871-1902 are Redeemers documents. In a few cases, two documents are adopted during the Redeemers era so these second documents are classified as second redeemers era documents.

The dependent variable, *Constitutional Change*, will be explored in multiple ways.

We seek to make comparisons between documents, so the units of observation in our analysis are dyadic and we perform this dyadic analysis at two different levels: constitution-dyads and section-dyads levels. We will present our preliminary results of the analysis performed at both levels below.

First, for each state, we compared each document to the document adopted immediately after. For example, we compare the document adopted in the pre-secession era (including all of its amendments up until that point), to the document that followed, in this case, the secession era document. We then compare that secession document to the post-war document that followed, and so on, all the way through to the Redeemer document. The final data set consists of 39 constitution dyads, as can be seen in Table 1 of the Appendix.

For this constitution-dyads data set we explored four main indicators of change at the document level:

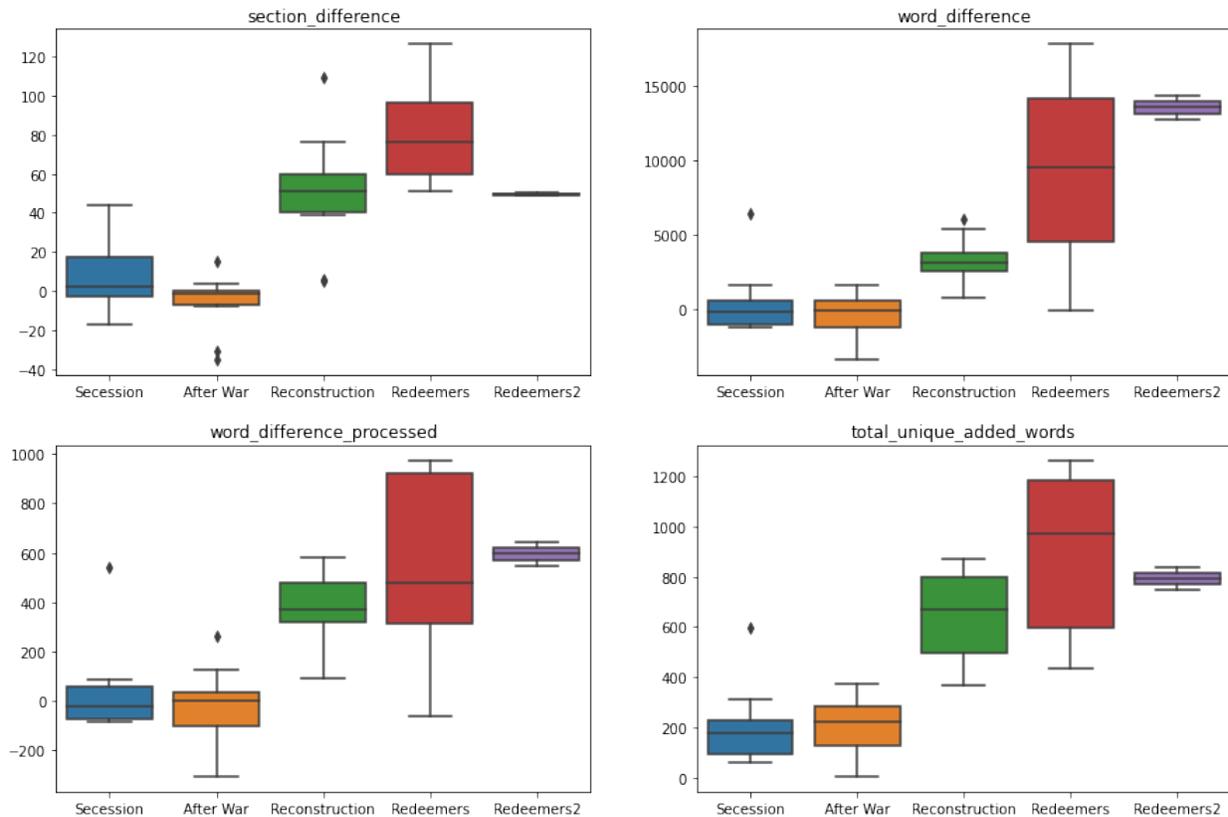
- **section\_difference:** Difference in number of sections between Constitution 2 and Constitution 1
- **word\_difference:** Difference in number of words between Constitution 2 and Constitution 1
- **word\_difference\_processed:** Difference in number of pre-processed words between Constitution 2 and Constitution 1
- **total\_unique\_added\_words:** Unique pre-processed words in Constitution 2 but not Constitution 1

The first variable measures the difference between the total number of constitutional sections among the pairs of constitutions. Secondly, after calculating the total number of words in each document, we subtracted the total number of words in constitution 1 from the total number of words in constitution 2. It is possible that a good number of these words are very commonly used words, or other characters. For this reason, we removed all punctuation and non-alphanumeric

characters, as well as removing a set of custom 'stop-words' that can be found in the Appendix. We also removed repeated words so that the end result was the set of unique pre-processed words in each constitution. Finally, we calculated how many of these unique pre-processed words were in Constitution 2 but not in Constitution 1 to explore the extent to which "themes" were being introduced in the second constitution relative to the first.

Figure 1 summarizes the distribution of these four variables by period. Constitutions in the Reconstruction era and the first Redeemer document seem to have the largest amount of change when compared with constitutions immediately before.

**Figure 1:** Document Differences between Constitution 2 and Constitution 1 by Period



The Miller et al. (2016) dataset is a the section-level, which gives us the possibility to explore how much change a given section endured and how many constitutional sections were added or

deleted from one period to the next, as well as how much was retained. This section-level analysis can give us a more in depth look about the kind of change that is happening to a constitution. This would allow us to analyze the extent to which sections were added, deleted, modified and remained the same over time by quantifying the similarity between sections of two constitutional documents, which allows an empirical evaluation of the effect of civil war on the level of similarity of modified sections as new constitutions were adopted or alterations were made to an existing constitution.

However, performing this type of section-level comparison can be very tricky because it requires sections in a document to be properly matched to sections in a second document. This can't be readily done by using identifiers like the section numbering, as numbering can be altered when new documents are adopted. This is further complicated by the fact that similar sections across two constitutions can often have different wording, which leads to more common plagiarism detecting approaches to under-perform in identifying correct matches, given that they focus on lexical rather than semantic similarity.

A method through which pairs of sections across two constitutions have been correctly identified with a 90% accuracy rate, involves using a pre-trained Global Vectors for Word Representation model (GloVe), to compute the similarity in between two sections and identify correct sections pairs (Aroca n.d.). This approach is what we used in our analysis. It uses GloVe, an unsupervised learning algorithm for obtaining vector representations of words, that creates a large matrix of word co-occurrences that stores how frequently each word occurs in the context of other words. To avoid having to train this co-occurrence matrix with millions of words, we used a Pre-trained word vector trained on publicly available data from Wikipedia and Gigaword5 (Pennington et al. 2014).

After the text of each section is pre-processed, tokenized and converted into a bag-of-words, softcosine similarities between words embeddings in each section are computed and the closest word embedding is retrieved (Rehurek et al.2010).

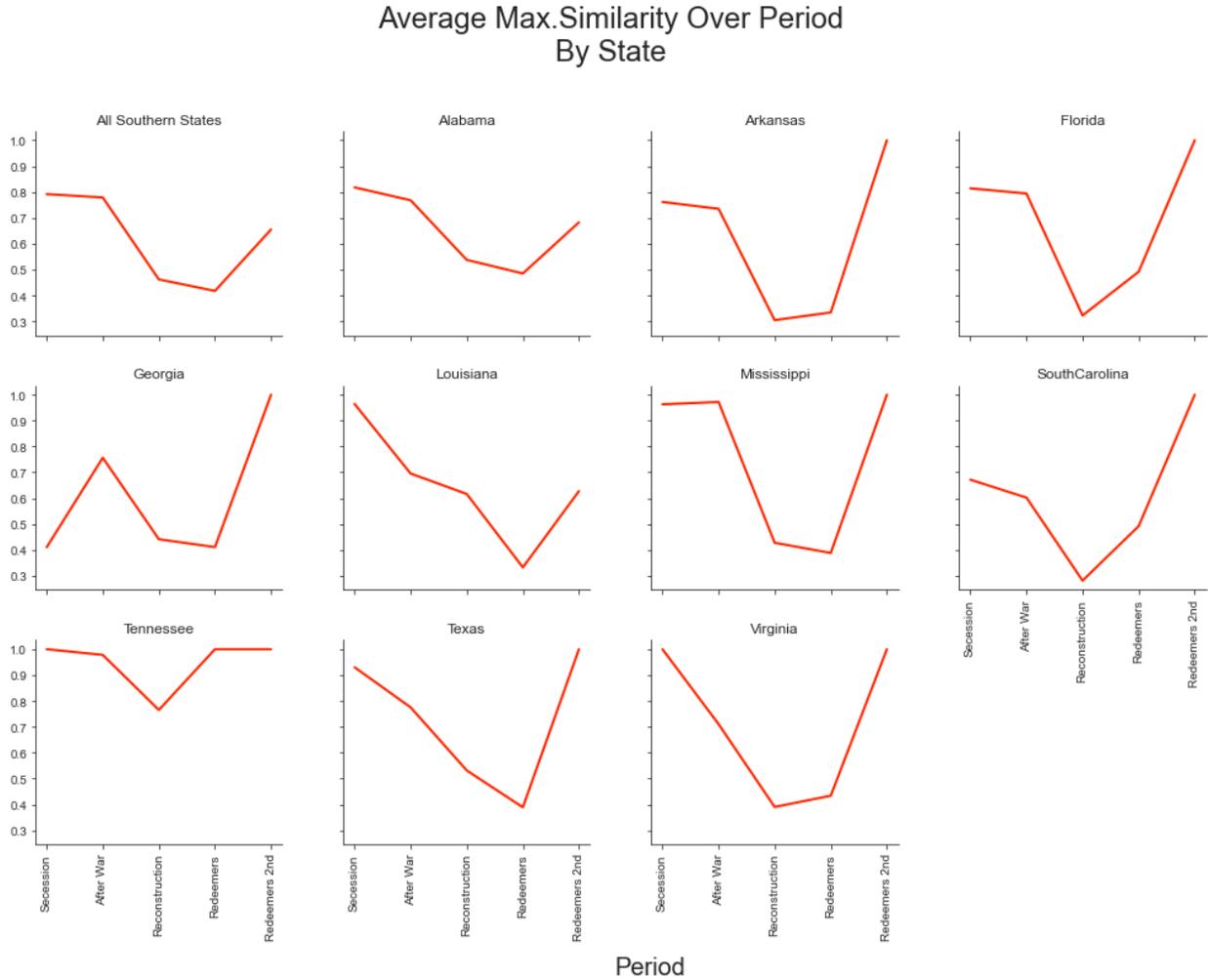
As illustrated in Figure 6 in the Appendix, each section in the first constitution is compared

to every other section in the second constitution using this pre-trained Glove Word Vector model which results in a similarity score for each pair. The maximum similarity is then calculated and the corresponding section text from the second document that yielded that maximum similarity is taken and matched to the section in the first document.

The resulting maximum similarity variable is a censored continuous variable between “0” and “1”, where “1” indicates maximum similarity, and “0” indicates null similarity, as can be seen in Figure 7 in the Appendix. A sample of the resulting data set, which in its totality consists of 8674 pairs of sections, can be seen in Table 2 of the Appendix.

We can then calculate an average across all sections in a constitution-dyad and see how that average changes over time in each of the states. As can be seen in Figure 2, the average maximum similarity declines during the Reconstruction and Redeemer eras, which illustrates that Reconstruction documents changed relative to post-war documents, and that Redeemer documents had a large amount of change, relative to Reconstruction documents.

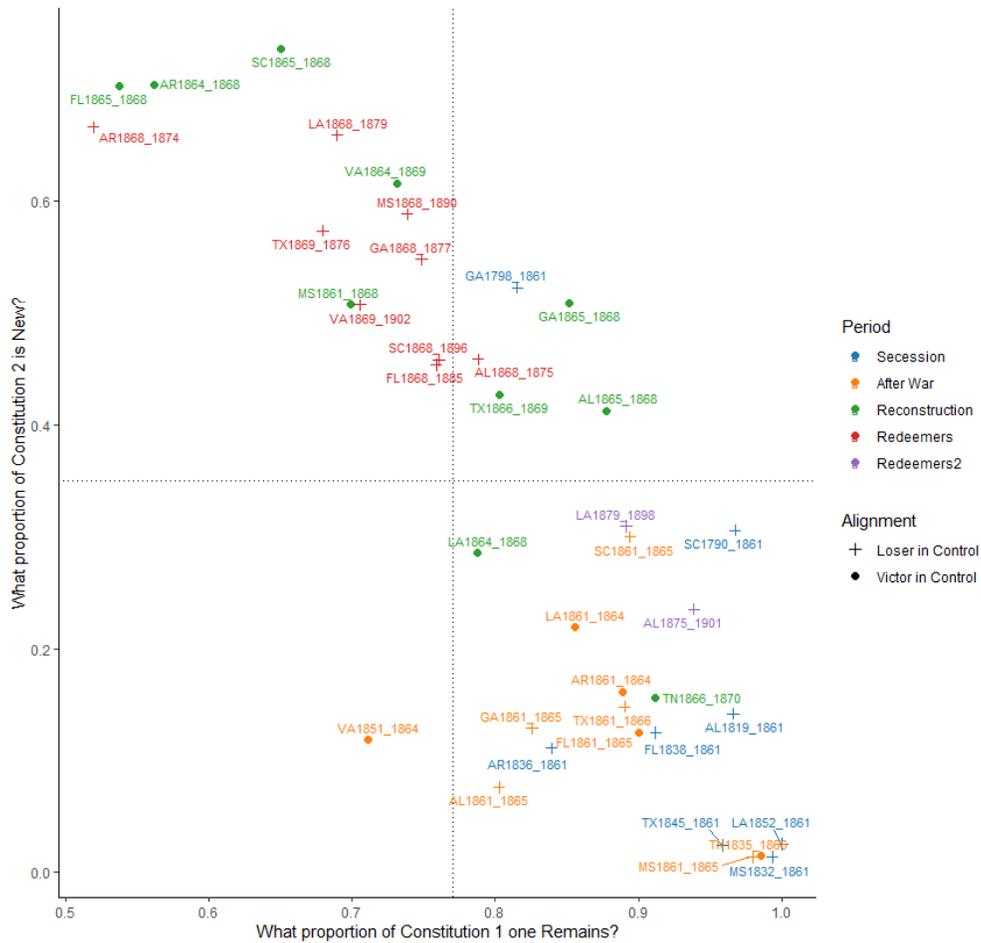
**Figure 2: Average Section-Pair Max Similarity**



Moreover, we can use this maximum similarity score to calculate how many sections have been retained or deleted and how many sections are new by setting a threshold under which sections in the first (deletions) and second (additions) documents can no longer be considered correct matches. Generally speaking, a maximum similarity score below .6 indicates that that section in the first constitution does not have a match in the second constitution. With this information we can analyze how much of the change that happens has been via addition and how much is retained from one document to the other, as illustrated in Figure 3. In this case, the x axis is calculated by dividing the number of sections above .6 over the total number of sections

in constitution 1, and the y axis is calculated by dividing the number of sections from constitution 2 that did not find a match, over the total number of sections in constitution 2.

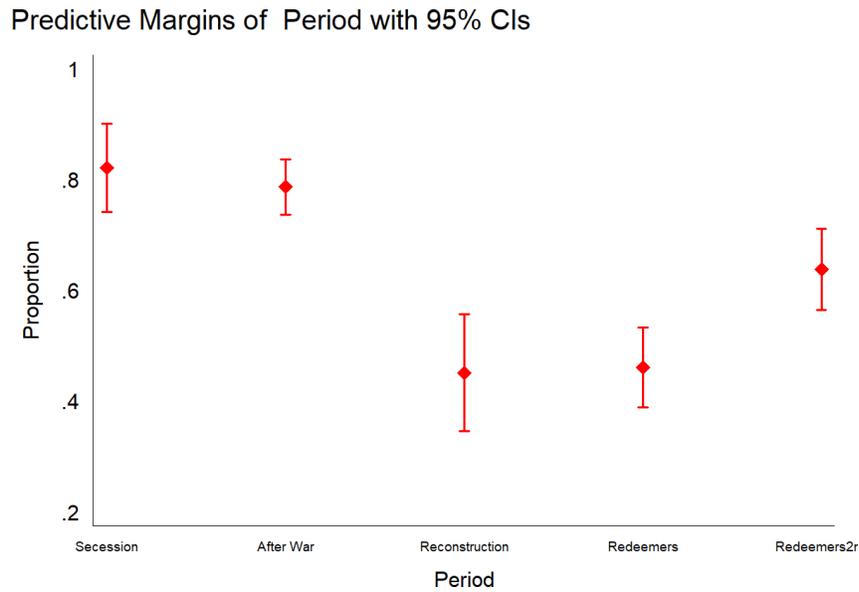
**Figure 3: Proportion of Retained and Deleted Sections across pairs of Constitutions**



Finally, we can fit a model on this section-pair data where the dependent variable is the maximum similarity between section-pairs to measure the effect of the period and the victor alignment variables on the DV. Given the distribution of the data, which varies between 0 and 1 and has a large number of zeroes and ones, we tested a zero-one inflated beta distribution model (Buis 2012), and a fractional response regression with logit link (Papke 1996), both with with two-way clustering to account for the dyadic nature of the data, because of the possibility of errors being correlated across observations, and which can be found in Table 3 of the Appendix.

Overall, the victor alignment variable is not significantly associated with the DV but this might be because our sample of only southern states does not allow for enough variation in this variable. On the contrary, and as can be seen below in Figure 4, the period under which the constitution was adopted, does seem to be significantly associated with the DV, which is in line with what the descriptive analysis above indicated.

**Figure 4:** Average Effect of Period on Predicted Proportion of Max Similarity



## Discussion

Edwards (2015) posited, “The [American] Civil War was as much about Americans’ belief in their legal order as in their disagreements over it.” As a result, the Civil War stirred up existing and previously suppressed conflicts about the legal status of individuals, their relationship to government, and the location of legal authority: Who was a citizen? What did that mean? How, and by whom, were these matters decided? Reconstruction was forced to address these questions while dealing with two urgent tasks: bringing the slave states of the Confederacy back into the Union

and contending with the status of former slaves. While both of those tasks centered on emancipation, they necessarily involved broader, structural changes that institutionalized wartime policies and ultimately transformed the legal status of all Americans.

Legal change in the United States during the Civil War gave institutional form to these national aspirations: first by Republicans at the end of civil war and during the reconstruction stages; then by Democrats as power shifted in their favor during the Redeemers' stages. Different people had long defined law in their own terms, and the dislocation of war provided opportunities for those differences to flourish. Even as the Confederate government continued to centralize, its legitimacy collapsed. In many places, people simply gave up on federal and even state government, a situation that resulted in a radical decentralization of legal authority that went far beyond what states' rights advocates ever imagined or desired. The end of the war may have led to the demise of both the Confederate government and the legal order that it tried to create. But the conflicts generated by that government and its policies defined the postwar years, as the region became part of a newly re-imagined United States. Indeed, white southerners' skepticism of federal authority was as much a product of their experience with the Confederacy as it was of their experience with the U.S. government. Confederate defeat put all Americans within the jurisdiction of one nation, the United States. The Republican Party's Reconstruction Amendments then solidified the connections between the nation and the American people that the Union had been building during the Civil War. These amendments abolished slavery and secured the people's civil and political rights through federal authority. They also allowed people to imagine the federal government as a more immediate presence in their lives: a legal ally in their efforts to give rights meaning and to use those rights to effect change in their own lives and in society at large.

This legal order was unstable and subject to change, precisely because of the American people's faith in it and their insistence on accessing it. In the wake of the Civil War and Reconstruction, their faith took new forms. Not only did many Americans embrace their new relationship to the federal government, but they also expected it to act on their vision of rights. Even those

who rejected federal policies accepted the fact of federal power and tried to channel it toward their own interests.

## Conclusion

Does civil war have an effect on institutional change? Some scholars posit that we should expect to see transformative, as opposed to incremental, changes following such a large event. Because civil war by definition occurs between two or more actors attempting to disrupt the status quo, we examine the effect civil war has on constitutional change - the institution responsible for structuring a nation state's status quo. We expect to observe transformative constitutional changes *if* the civil war terminates with a victor whose legal preferences for governance are not embodied by the remaining constitution. Moreover, we expect continuity of these changes to be dependent on whether the victor maintains law-making powers. If the victor and loser have divergent legal preferences, but the loser gains law-making powers in the post-civil war period, then we expect to observe an additional rupture to the remaining constitution.

To examine our theoretical argument we leverage original data on the United States' constitutions before and after the American Civil War (1776-1901). Evidence supports our theoretical argument making two significant contributions. First, this study identifies the consequence of civil war for constitutional change. More specifically, it addresses how and why institutional change may follow a sequential pattern of both exogenous and endogenous shocks throughout the post-conflict period. Second, it examines a mechanism that has not been previously examined and uncovers how preferences can frame institutional change as opposed to the more conventional analysis of how institutions may frame preferences.

However, civil war is not a random event. Therefore, the characteristics that make civil war more or less likely may also influence the likelihood and extent of institutional change, this can result in a systematic imbalance between states who experience civil war and those who do not, making the two very difficult to compare. Furthermore, there may be factors that simultaneously

affect both the occurrence of civil war and constitutional change or that fall on the same causal path between civil war and constitutional change. With these data, however, victory can be treated as exogenous. Additionally, with the states having multiple constitutions to examine, as well as amendments, before and after the civil war, we can isolate the mediated effect of civil war. Leveraging the US case allows us to mitigate selection and endogeneity issues and at the very least strengthens the argument's internal validity. Moreover, this study should be applicable to civil wars that ended in one-sided victories, particularly those that are secessionist and/or allow for power-shifts in the post-conflict setting.

While civil war may serve as the impetus for constitutional change, our study highlights how legal preferences can have a direct and enduring effect. When law-making power shifts again, we may observe major constitutional changes as we did in the United States. This might expose particular legacies of war that are stickier than institutions. Second, if we treat the Union troops as a third-party monitoring entity, this case highlights that the conventional wisdom on third-party monitoring may be much more limited than previously supposed. Once the third-party retreats/leaves, as Union troops did, and power shifts occur, then these enduring legal preferences can drive further changes regardless of the constitution in place. While there is a dearth of literature on the relationship between civil war and constitutional change (Miller et al., 2016; Elkins et al., 2009), we argue that exogenous and endogenous ruptures have greater explanatory weight for the constitutional changes we observe following the American Civil War. Interestingly, we can imagine that endogenous gradual change is also likely. Future research should focus not only on the sequential process of constitutional change following a civil war and whether it captures one, or more, of the four typologies Greschewski (2020) lays out, but also whether this extrapolates to other secessionist conflicts that end in one-sided victories with power-sharing.

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# Appendix

**Table 1: Constitution Pairs by Period**

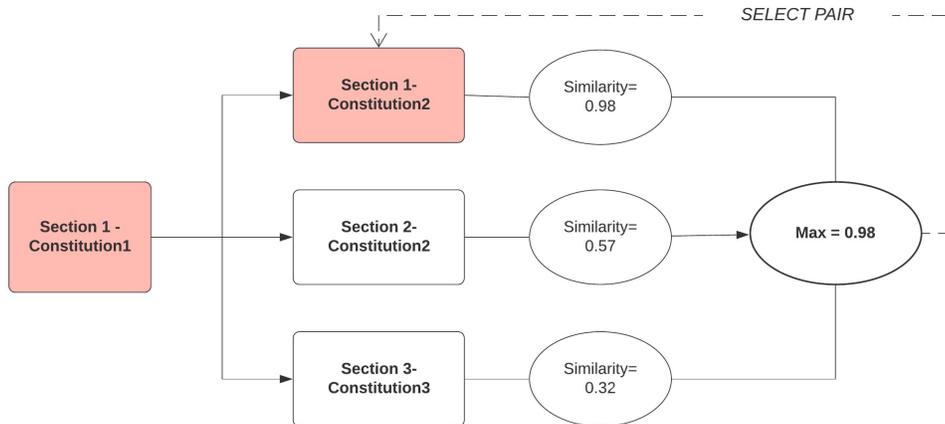
Constitution1	Constitution2	Period	Alignment
Alabama1819	Alabama1861	Secession	Loser in Control
Alabama1861	Alabama1865	After War	Loser in Control
Alabama1865	Alabama1868	Reconstruction	Victor in Control
Alabama1868	Alabama1875	Redeemers	Loser in Control
Alabama1875	Alabama1901	Redeemers2	Loser in Control
Arkansas1836	Arkansas1861	Secession	Loser in Control
Arkansas1861	Arkansas1864	After War	Victor in Control
Arkansas1864	Arkansas1868	Reconstruction	Victor in Control
Arkansas1868	Arkansas1874	Redeemers	Loser in Control
Florida1838	Florida1861	Secession	Loser in Control
Florida1861	Florida1865	After War	Victor in Control
Florida1865	Florida1868	Reconstruction	Victor in Control
Florida1868	Florida1885	Redeemers	Loser in Control
Georgia1798	Georgia1861	Secession	Loser in Control
Georgia1861	Georgia1865	After War	Loser in Control
Georgia1865	Georgia1868	Reconstruction	Victor in Control
Georgia1868	Georgia1877	Redeemers	Loser in Control
Louisiana1852	Louisiana1861	Secession	Loser in Control
Louisiana1861	Louisiana1864	After War	Victor in Control
Louisiana1864	Louisiana1868	Reconstruction	Victor in Control
Louisiana1868	Louisiana1879	Redeemers	Loser in Control
Louisiana1879	Louisiana1898	Redeemers2	Loser in Control
Mississippi1832	Mississippi1861	Secession	Loser in Control
Mississippi1861	Mississippi1865	After War	Loser in Control
Mississippi1861	Mississippi1868	Reconstruction	Victor in Control
Mississippi1868	Mississippi1890	Redeemers	Loser in Control
SouthCarolina1790	SouthCarolina1861	Secession	Loser in Control
SouthCarolina1861	SouthCarolina1865	After War	Loser in Control
SouthCarolina1865	SouthCarolina1868	Reconstruction	Victor in Control
SouthCarolina1868	SouthCarolina1896	Redeemers	Loser in Control
Tennessee1835	Tennessee1866	After War	Victor in Control
Tennessee1866	Tennessee1870	Reconstruction	Victor in Control
Texas1845	Texas1861	Secession	Loser in Control
Texas1861	Texas1866	After War	Loser in Control
Texas1866	Texas1869	Reconstruction	Victor in Control
Texas1869	Texas1876	Redeemers	Loser in Control
Virginia1851	Virginia1864	After War	Victor in Control
Virginia1864	Virginia1869	Reconstruction	Victor in Control
Virginia1869	Virginia1902	Redeemers	Loser in Control

Figure 5: Custom Stop Words

**CUSTOM STOPWORDS**

{'a', 'about', 'above', 'across', 'after', 'afterwards', 'again', 'against', 'almost', 'alone', 'along', 'already', 'also', 'although', 'always', 'am', 'among', 'amongst', 'amongst', 'an', 'and', 'another', 'any', 'anyhow', 'anyone', 'anything', 'anyway', 'anywhere', 'are', 'around', 'as', 'at', 'back', 'be', 'became', 'because', 'become', 'becomes', 'becoming', 'been', 'before', 'beforehand', 'behind', 'being', 'below', 'beside', 'besides', 'between', 'beyond', 'bill', 'both', 'bottom', 'but', 'by', 'call', 'can', 'cannot', 'cant', 'co', 'computer', 'con', 'could', 'couldnt', 'cry', 'de', 'describe', 'detail', 'did', 'didnt', 'do', 'does', 'doesn', 'doing', 'don', 'done', 'down', 'due', 'eg', 'eight', 'either', 'eleven', 'else', 'elsewhere', 'empty', 'enough', 'etc', 'even', 'ever', 'every', 'everyone', 'everything', 'everywhere', 'few', 'fifteen', 'fifty', 'fill', 'find', 'fire', 'first', 'five', 'for', 'former', 'formerly', 'forty', 'found', 'from', 'front', 'full', 'further', 'get', 'give', 'go', 'had', 'has', 'hasnt', 'have', 'hence', 'here', 'hereafter', 'hereby', 'herein', 'hereupon', 'how', 'however', 'hundred', 'ie', 'in', 'inc', 'indeed', 'into', 'is', 'it', 'its', 'itself', 'just', 'keep', 'kg', 'km', 'last', 'latter', 'latterly', 'least', 'less', 'ltd', 'made', 'make', 'many', 'me', 'meanwhile', 'might', 'mill', 'mine', 'more', 'moreover', 'most', 'mostly', 'move', 'much', 'must', 'neither', 'never', 'nevertheless', 'next', 'nine', 'no', 'nor', 'nothing', 'now', 'nowhere', 'of', 'off', 'often', 'on', 'once', 'one', 'only', 'onto', 'or', 'other', 'others', 'otherwise', 'our', 'ours', 'ourselves', 'out', 'over', 'own', 'part', 'per', 'perhaps', 'please', 'put', 'quite', 'rather', 're', 'really', 'regarding', 'same', 'say', 'see', 'seem', 'seemed', 'seeming', 'seems', 'serious', 'several', 'show', 'side', 'since', 'sincere', 'six', 'sixty', 'so', 'some', 'somehow', 'someone', 'something', 'sometime', 'sometimes', 'somewhere', 'still', 'such', 'take', 'ten', 'than', 'that', 'the', 'their', 'them', 'themselves', 'then', 'thence', 'there', 'thereafter', 'thereby', 'therefore', 'therein', 'thereupon', 'these', 'they', 'thick', 'thin', 'this', 'those', 'though', 'through', 'throughout', 'thru', 'thus', 'to', 'together', 'too', 'top', 'toward', 'towards', 'twelve', 'twenty', 'un', 'under', 'unless', 'until', 'up', 'upon', 'us', 'used', 'using', 'various', 'very', 'via', 'was', 'we', 'well', 'were', 'what', 'whatever', 'when', 'whence', 'whenever', 'where', 'whereafter', 'whereas', 'whereby', 'wherein', 'whereupon', 'wherever', 'whether', 'which', 'while', 'whither', 'who', 'whoever', 'whole', 'whom', 'whose', 'why', 'will', 'with', 'within', 'without', 'would', 'yet', 'you', 'your', 'yours', 'yourself', 'yourselves'})

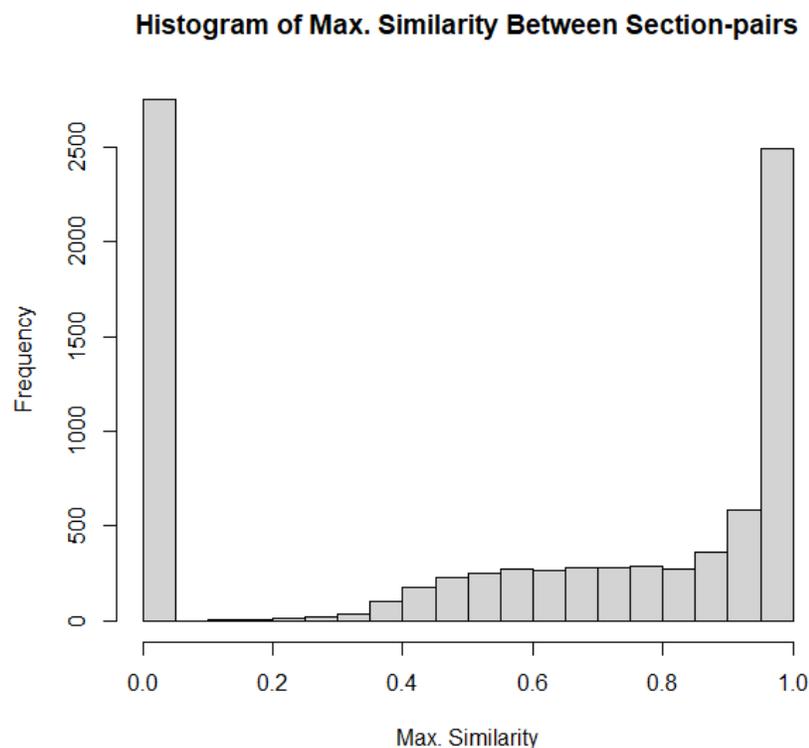
Figure 6: Illustration of Section-level Similarity Comparison Across Documents



**Table 2: Section Pairs Sample Data**

state	const1	const2	sec_id_c1	sec_id2	max_sim	text_const1	closest_match_const2	period	alignment
Alabama	AL1861	AL1865	1.10.0	1.7.0	0.970	In all criminal prosecutions, the accuse	That in all criminal prosecutions, the a	After War	Loser in Control
Alabama	AL1861	AL1865	1.11.0	1.8.0	0.977	No person shall be accused, arrested, or	That no person shall be accused; arreste	After War	Loser in Control
Alabama	AL1861	AL1865	1.12.0	1.9.0	0.684	No person shall, for any indictable offe	That no person shall, for any indictable	After War	Loser in Control
Alabama	AL1861	AL1865	1.13.0	1.10.0	0.648	No person shall, for the same offense, b	That no person shall, for the same offen	After War	Loser in Control
Alabama	AL1861	AL1865	1.14.0	1.14.0	1.000	All courts shall be open, and every pers	That all courts shall be open ; and that	After War	Loser in Control
Alabama	AL1861	AL1865	1.15.0	1.23.0	1.000	No power of suspending laws shall be exe	That no power of suspending laws shall b	After War	Loser in Control
Alabama	AL1861	AL1865	1.16.0	1.16.0	0.896	Excessive bail shall not be required, no	That excessive fines shall not be impose	After War	Loser in Control
Alabama	AL1861	AL1865	1.17.0	1.18.0	0.766	All persons shall, before conviction, be	That the privilege of the writ of habeas	After War	Loser in Control
Alabama	AL1861	AL1865	1.18.0	1.22.0	1.000	The person of a debtor, where there is n	That the person of a debtor, when there	After War	Loser in Control
Alabama	AL1861	AL1865	1.19.0	1.24.0	0.920	No ex post facto law, nor law impairing	That no ex-post-facto law impairing the	After War	Loser in Control
Alabama	AL1861	AL1865	1.2.0	1.2.0	0.950	All political power is inherent in the p	That all political power is inherent in	After War	Loser in Control
Alabama	AL1861	AL1865	1.20.0	1.20.0	0.931	No person shall be attainted of treason	That no person shall be attainted of tre	After War	Loser in Control
Alabama	AL1861	AL1865	1.21.0	1.21.0	0.981	The estates of suicides shall descend or	That the estates of suicides shall desce	After War	Loser in Control
Alabama	AL1861	AL1865	1.22.0	1.26.0	1.000	The citizens have a right, in a peaceabl	That the citizens have a right, in a pea	After War	Loser in Control
Alabama	AL1861	AL1865	1.23.0	1.27.0	0.952	Every citizen has a right to bear arms i	That every citizen has a right to bear a	After War	Loser in Control

**Figure 7: Distribution of DV: Maximum Similarity of Section-Pairs**



**Table 3:** Results of Zero-One Inflated Beta Distribution and Fractional Response Models for Maximum Similarity of Section Pairs

	(1)	(2)	(3)	(4)
	Zero-one-infl. Beta Clust.SE	Zero-one-infl. beta Clust.SE + FE	Fract. Response Clust.SE	Fract. Response Clust.SE+FE
After War	-0.476** (0.159)	-0.601*** (0.147)	-0.179 (0.453)	-0.231 (0.415)
Reconstruction	-0.905*** (0.223)	-1.215*** (0.248)	-1.656** (0.545)	-1.671*** (0.489)
Redeemers	-0.946*** (0.157)	-0.956*** (0.121)	-1.813*** (0.365)	-1.803*** (0.323)
Redeemers2	-0.392** (0.142)	-0.525*** (0.116)	-0.831* (0.366)	-1.015** (0.328)
Victor in Control	0.0528 (0.109)	0.282 (0.173)	-0.0371 (0.375)	-0.117 (0.323)
Arkansas		-0.564*** (0.0939)		-0.622*** (0.106)
Florida		-0.282 (0.201)		-0.261 (0.211)
Georgia		-0.144 (0.147)		-0.577 (0.337)
Louisiana		-0.107 (0.0986)		-0.163 (0.229)
Mississippi		-0.114 (0.113)		-0.0558 (0.244)
SouthCarolina		-0.120 (0.131)		-0.508 (0.315)
Tennessee		0.487*** (0.120)		1.415*** (0.244)
Texas		-0.0416 (0.152)		-0.0873 (0.197)
Virginia		-0.199 (0.133)		-0.324** (0.121)
Observations	8674	8674	8674	8674
AIC	11048.0	10897.6	10838.8	10651.7

Standard errors in parentheses

\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

**Figure 8:** Diagnostics Plot Zero-One-Inflated Beta Distribution Model

