California's Constitution is Not the Longest

Californians sometimes complain about the length of their state constitution and the frequency of its amendments. For example, on June 18, 2014, California Assembly member Mike Gatto (D-Los Angeles) wrote in a Los Angeles Times editorial: "[o]f the more than 200 written constitutions in the world, California's is the third-longest."[1]

That's not true. It's not merely untrue, it's wrong for several reasons.

First, there are far more than 200 written constitutions currently in force worldwide. According to the Constitute Project, there are 191 active national charters. But there are even more subnational constitutions. Besides the 50 state constitutions in the U.S., more than a dozen countries organized on constitutional federalism have subnational constitutions.[2]

The best source we found for an authoritative count is a John Dinan article, in which he identifies twelve federations with subnational constitutions.[3] If we take his list to be authoritative, there are 251 subnational constitutions: Argentina has 24, Australia has 6, Austria has 9, Brazil has 27, Germany has 16, the state of Jammu and Kashmir in India has 1, Malaysia has 13, Mexico has 31, Russia has 22, Switzerland has 26, the United States of America has 50, and Venezuela has 23. Add the constitutions of Puerto Rico, the Northern Mariana Islands, and American Samoa (3 more).

We count at least 191 national constitutions, and 251 subnational constitutions. That's 442 total constitutions, more than double Mr. Gatto's estimate.

Next, California's is not the third longest constitution in the world. We looked at the constitutions of all 50 states in the U.S. and all national constitutions currently in force. Our method was simple: convert them all to text documents and compare the word counts.[4] Within that group, California's constitution is 8th in number of words. It's actually 7th even among US state constitutions.

Rank	**Country**	**Words**
1	Alabama	369,129
2	India	146,385
3	Oklahoma	98,303
4	Texas	98,089
5	Missouri	87,319
6	Colorado	78,808
7	Louisiana	77,007
8	California	74,821
9	Ohio	68,089
10	Nigeria	66,263
11	Brazil	64,488
12	Malaysia	64,080
13	Arkansas	64,030
14	New York	58,702
15	Papua New Guinea	58,490
16	Washington	57,788
17	Mexico	57,087
18	Pakistan	56,240
19	Zimbabwe	55,883
20	Ecuador	54,555
21	United Kingdom	54,408
22	Ghana	53,985
23	Saint Kitts and Nevis	49,643
24	Uganda	49,448

25	Oregon	49,096

Big deal, you say, he was close. There's still another, more fundamental flaw here. We challenge this statement:

"A constitution should be a hallowed document that lays out fundamental governing principles and rights. It should be amended only to protect and preserve those rights and principles on which a broad consensus can agree."[5]

And this:

"[California's constitution] is too easy to amend. The Founding Fathers created arduous thresholds for amending the federal Constitution in an attempt to ensure consensus (two-thirds of Congress must vote for an amendment, then three-quarters of the states must ratify it). Amendments to California's Constitution can be put on the ballot by anyone who comes up with the money to gather enough signatures. Then, a simple one-time vote of 50% plus 1 is enough to enshrine something forever (or at least until another group puts up enough money to amend the amendment)."[6]

Statements like this, unfortunately all too common, reflect a misunderstanding of the difference between a state and a federal charter. One indeed is a hallowed document, which sketches a frame of government, grants and divides some powers, and preserves some rights. The U.S. constitution does so in a mere 7,762 words. This is so because our federal constitution creates a government of limited and delegated powers, and the guiding principle is that the government can do only what is permitted by its charter.

A state constitution like California's is longer and easier to amend because it creates a different kind of government: a general, not limited one. California's government has all powers not *denied* it by the state constitution (or the supremacy clause), so the guiding principle for the state legislature is that it can do anything not prohibited by its charter. The document that controls a general government is necessarily longer, because it is a laundry list of rules (do this, don't do that) for a state government that otherwise would be largely unrestrained. State constitutions also include rights that are not included in the national constitution, for the same reason. And because the state legislature is constantly enacting laws, the state

constitution needs to be easier to amend so the electorate can keep up.

It's true that "while the U.S. Constitution has been amended just 27 times in more than 200 years, California's has been amended approximately 521 times in less than 100 years."[7] Both of those numbers are as they should be. The document that binds the states together and applies to 321 million people should be stable, and slow to change. The California electorate has a different, closer relationship with its state charter and the government it creates, and more interaction between them is expected. There is such a thing as state constitutional change that's too rapid or too much. But it's no criticism to say that California's constitution is easier to amend than the federal charter. There are good reasons for more frequent constitutional amendment in California. More is not necessarily better or worse; more is just more.

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[1] Mike Gatto, Opinion, *It's time to declutter California's messy Constitution*, L.A. Times, June 18, 2014, available at https://www.latimes.com/opinion/op-ed/la-oe-gatto-california-constitution-20140619-story.html. We have nothing against Mr. Gatto, who is currently running for Treasurer (we wish him luck). His comments are merely used here as an example of Things People Say.

[2] Robert F. Williams, *Comparative Subnational Constitutional Law: South Africa's Provincial Constitutional Experiments*, 40 S. Tex. L.Rev. 625, 630 (1999).

[3] John Dinan, *Patterns Of Subnational Constitutionalism In Federal Countries*, 39 Rutgers L.J. 837 (2008).

[4] These counts exclude tables of contents, idices, and other end material. This quantitative methodology is also used by the Comparative Constitution Project, our source for the national constitution word counts. We sourced the U.S. state constitutions from the Oxford Constitutional Law database.

[5] Mike Gatto, Opinion, *It's time to declutter California's messy Constitution*, L.A. Times, June 18, 2014, available at

https://www.latimes.com/opinion/op-ed/la-oe-gatto-california-constitution-20140619-story.html.

[6] *Id.*

[7] *Id.*