reasonable period of time in the second society. The special intellectual skills and attitudes of the political élite group in the second, "receiving" society are obviously crucial, of course. What is clear, in retrospect, is that some of the immediate, post-decolonization "exceptions" of constitutional institutions in newly independent Third World countries from the "parent" European imperial powers—in the late 1940s, the 1950s, and the 1960s—were not particularly useful or scientific exercises in the sociology of law. Entered upon too hurriedly, perhaps, and undoubtedly in good faith, they sought to implant the institutions of essentially stable, politically bland, post-industrial societies in new countries that too often had not yet conquered the basic problems of mass education and that were still to go through even the earliest stages of economic growth. There is something especially ironic in the attempt to export "classical" federal constitutionalism—which requires, above all, enormous skills of pragmatism and political compromise for its continuously successful operation, as recent Canadian experience shows—to the new, post-independence, multiracial societies of Asia, Africa, and the Caribbean. Strong executive decision-making was clearly needed to overcome the massive social and economic problems of the post-decolonization era, and the reconciliation with the strains and tensions of multi-culturalism required some more imaginative ventures in plural-constitutional models.... It is not surprising perhaps that Indian government, under Nehru and Madame Gandhi, although maintaining a British styled prime minister as the official head of government, evolved increasingly, at the level of constitutional law-enforcement, into a "strong executive," presidential-type regime; or that Nigeria, having ended the disastrous Biafran Civil War with a military solution, should wind up the long period of post-war reconstruction by the adoption, in 1979, of an American presidential model, federal state. The attempt is there, in any case, to reconcile in constitutional form the twin, often directly competing imperatives of a strong central executive and the deference to regionally based, ethnic-cultural particularism. It is a change from the authoritarian "man-on-horseback" model of direct military rule; and the military leaders in Nigeria, in handing back civilian government on this basis, seem to have chosen a far more promising constitutional model for their present needs than the immediate post-decolonization, classical federal model (British Empire, police export variety).

[Weimann also argues that the immediate post-colonial constitutions of new Asian and African countries placed too much weight on civil and political rights, and permitted too much constitutional litigation impeding executive and administrative decisionmaking, suggesting that "expensive and sophisticated special-interest groups-based, constitutional litigation ... is a trademark of contemporary American ... [and other] 'older' commonwealth countries," but less suited for "the post-decolonization development of certain new countries," which might better achieve "necessary constitutional balance" by "a more effectively working, plural political party system."]

The Political Limits to Constitutionalism

The problem of post-decolonization constitution-making, in the Third World countries, clearly stemmed from the character of the "succession" political élite to whom the parent European imperial state had handed over political sovereignty, and its representativeness, or lack of it, in impossibly large terms, in the new succession state. Where the succession élite was drawn from, only one geographical region of the new country, or from one dominant communal or tribal group, no amount of technical legal sophistication in constitutional drafting, and no federal charter, however carefully balanced in institutional terms, could expect to succeed in veiling the naked facts of power and to keep a basically non-representative constitutional system together in the face of all the centrifugal pressures.

The political limits to constitutionalism are thus a product of the two distinct elements, usually in mutual and reciprocal interaction: the constitutional system, as such—its degree of openness to new political ideas or ideologies, and also its intrinsic qualities of creative adjustment or change, without too much expenditure of energy or social cost, to rapidly changing societal expectations and demands—and the political élite—its ability to be seen as legitimate or representative, and also its inherent intellectual flexibility and ability to apprehend and respond to new problems in timely fashion. No constitutional charter could have ... saved Louis XVI or Marie Antoinette. On the other hand, no government, however intelligent and forward-looking and innovatively established, can be expected to operate successfully with an archaic or rigid charter that imposes serious practical obstacles to much needed community decisions for change. Poland may well have been saved, politically, in the late eighteenth century because of the pressures of external events, but the institution of the liberum veto certainly speeded it along the road to disaster.*

A principal task and responsibility of a constitutional governmental élite, therefore, becomes one of anticipating and correcting in advance the attrition or decay of the constitutional system. Constitutional systems must always include an in-built quality of change; and constitutionalism itself becomes not merely the substantive values written into the constitutional charter, but the actual processes of constitutional change themselves. That is why constitutional style—the respect for the constitutional rules of the game, and their respect in the spirit as well as in the letter—becomes so important in the ultimate evaluation of a constitutional system.


Franklin and Baun consider several important questions: the role of what they call public culture in maintaining or establishing

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constitutions and constitutionalism; the relationship between constitutionalism and cultural diversity; and whether the particular institutions of liberal democracy are required to provide for constitutional government.

Consider, as you read these excerpts, drawn from introductory and concluding essays that refer to other chapters in the book, which constitutes "political culture."

... [W]e can speak of the political culture or that portion of the zeitgeist—the moral, intellectual, and cultural climate in a state—that deals with public policy. The concept of political culture (as well as zeitgeist) also suggests a temporal component. The tenor of the times is a function not only of the past but also of the present. Therefore, it may be difficult to define exactly what it is to be a citizen of the United States in the twentieth century, but it is inherently obvious that there is something special about the culture in the United States that is unique to that land and to that time.

A political culture is capable of promoting constitutional or nonconstitutional public policy. Constitutionalism is the governmental component of a democratic culture. Every society, by definition, must make decisions concerning the distribution of scarce resources, and those decisions must be enforced. This being the case, the constitutional regime of a state requires not only the enumeration of rights of public behavior but the establishment of an institutional structure for the implementation of that law. Thus, the concept of constitutionalism rests on two pillars, a theory of justice and process.

By its very nature, a society can only be a society as long as there is some kind of consensus—a collection of shared values. The key to this definition is the word shared. For a society to remain cohesive, for a government to be capable and willing to protect the rights of all its citizens, there must be certain shared values. The most basic tenet of any constitutional society is the shared belief that virtue of being citizens of a state, all persons are equal in the eyes of the law. Thus, we can identify the constitutional regime as being one in which the rule of law prevails. The law is never arbitrarily applied in the constitutional state, and the only coercion exercised by government is guided by procedural guarantees and restraints.

It should be evident by now that we define constitutionalism in functional rather than structural terms. The forms of constitutionalism are not so important to us as is the fact that the constitutional state is governed by the rule of law. According to our definition, the prevailing theory of justice in any given state or procedural forms will vary enormously. Thus, we are loath even to equate a constitutional regime with a "democratic" state.

We are determined to redefine the debate concerning the path to democratization by allowing for regime building that is "constitutional" but not at the same time necessarily "democratic" in the Western, structural meaning of the term. For example, is it possible to speak of a constitutional regime in a Muslim state that is governed by Islamic law (sharia)? We think so. To deny this possibility is to lend an irreducible Western bias to our analysis. After all, a people's willingness to surrender to the authority of the state (in the person of a king, or in the

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form of a particular philosophy or theology) is variable and culturally determined. We entertain the possibility (admittedly without much enthusiasm) that political modernization can take a path different from that of liberal democracy. Since elections do not a democracy make, we may need to search for other standards, not only for measuring political modernization but also for talking about democracy. It may well be that the establishment of the constitutional state is a preliminary step to the establishment of a full democracy. Alternatively, some completely different end point may be possible.

If underlying the establishment of the constitutional state is a shared or consensual theory of justice and reliance on procedural solutions for the settlement of disputes, we need to examine the underpinnings of consensus in society. How consensus develops within a society is the key to our discussion of the formation of the constitutional state. It is in trying to explain the source of consensus that we turn to the concept of political culture.

Political Culture

The study of culture as a factor shaping political outcomes has waxed and waned over the years. There was an upsurge of interest in cultural explanations of political phenomena in the 1960s following the publication of Gabriel Almond and Sidney Verba's Civic Culture. However, difficulties of measurement, the trend toward scientific behaviorism, and problems of cultural stereotyping eclipsed the interest in cultural explanations, which were replaced by a new institutional focus. This institutional focus had the great advantage for social scientists of being more conducive to empirical study. Structural determinants such as socioeconomic variables are more fairly measured but may well miss the point. The difficulty and controversial nature of the study of cultural traits should not prevent us from factoring in this crucial determinant of the maturation of a state.

We do not deny the possibility that the success of the state in institution building may be an indicator of political modernization. However, we suspect that this explanation is dangerously incomplete. A strong state, in the absence of consensus, has the potential of exercising great violence against its people. We believe that the popular control of government is a necessary component of the constitutional state and that the control is either organic and consensual or external. The control of a state by an outside power is a topic we will address more completely elsewhere. The organic control of institutions, however, is in its essence a cultural phenomenon.

In his essay "The Nature of Social Action," Max Weber gives us some idea of his thinking on the nature of political culture:

Is interpreting action, the sociologist must take account of the fundamentally important fact that the collective concepts which we employ in our thinking, whether in legal or other specialist contexts or in everyday life, represent something: what they represent is something which in part actually exists and has a normative force in the minds of real men (not only judges and officials, but also the general public) whose actions take account of it. Because of this, they are of great, often
absolutely vital importance in giving a causal explanation of
the way in which the actions of real human beings proceed.
For Weber these "collective concepts" are a vital determinant of the
behavior of individuals in a given state. This collectivity or shared
vision is the glue that binds a political culture. Without this collectivity,
we argue, the constitutional state is impossible. How these "collective
concepts" develop, therefore, is a key to our study of political
modernization.

Concepts central to a collective political culture are tolerance and
trust. Consensus can never be absolute. There are certain to be
disagreements based on class, ideology, religion, or ethnicity.... A
societal consensus must embrace an "agreement to disagree" based on
the assumptions that other citizens have a right to different views and
that the political process is a legitimate forum for resolving disputes
resulting therefrom. For any procedural structure to endure, it is
important that when decisions are made through the appropriate
process, citizens, even losers in the political game, abide by the
outcome. Beyond this central value—that of tolerance—there can be
any number of variations on a theme.

We note, therefore, that theocracies, especially those that do not
preach tolerance, are unlikely to develop into a constitutional state.
Only under a very special set of conditions, basically the presence of a
completely homogeneous population, will a theocracy be able to produce
the kind of consensus integral to the constitutional state. Otherwise,
only a secular state with a fairly strict prohibition and value placed on
the separation of church and state will be able to develop into a
constitutional regime and, ultimately, some form of participatory
rule.

Of one thing we are certain: a self-sustaining democracy cannot be
imposed simply by overlaying an institutional structure similar to that
which exists in a mature political system. A court system, parliament,
elections, and a written constitution do not, themselves, constitute or
necessarily lead to a democracy. In fact, inappropriate institutional
arrangements can impede as well as advance political development.
Institutional structures must be tailored to meet the needs and reflect
the political culture of a particular state. Institutional schemes
transplanted in their entirety from abroad will either bend or break.
That is why the specifics of institution building are a concern secondary
to the building of a constitutional regime.

In addition, certain types of structural arrangements can divide as
well as unite. The formal recognition through law of cultural divisions
in society, while a short-run "fix," can become a devastating long-run
problem in the sense that such arrangements put off constitution
building by deepening divisions.... As early as the 1920s, Rosa
Luxemburg presaged the collapse of the Soviet Union under the
pressure of nationality-based activism. This resurrected nationalism,
long submerged, was apparently energized and sustained throughout
the seventy-year history of the Soviet Union through the geographical
principle endorsed by V.I. Lenin that ethnic groups would have a
measure of self-determination.

The desire for self-determination is the Gordian knot of
constitution building. On the one hand, demands for national self-
determination require immediate attention and have been explicitly
endorsed by the international community. On the other, the formal
recognition of national self-determination sows the seeds of the
destruction of the state and the collapse of democracy somewhere down
the line. Can the aspirations of nationality be served through a process
that involves less than the formal and permanent recognition of
divisions in society? For this question we do not have an answer. To its
clarification we dedicate this effort. What of our collective expertise can
we bring to bear for the solution of this seemingly intractable problem?

The trappings of democracy have little meaning without the
foundation of a constitutional base. Much of the optimism following
the collapse of the Soviet Union concerning the potential for the expression
of democracy was misplaced. Many Western clients during the cold war
were not ripe for democracy and, in the absence of massive Western
assistance, will slip back to the status of pre-constitutional,
authoritarian regimes. Certainly the former clients of the Soviet Union
will not automatically become democratic states. The absence of
communism does not in itself guarantee a liberal democratic
government. In fact, we believe that a large percentage of the world's
states are still without a political culture appropriate to the
establishment of a constitutional regime. Thus the first step in the
establishment of a democracy should be the development of a
constitutional state. This, we expect, will be the most difficult objective
to achieve....

The Institutional Structure of Constitutionalism

A basic question concerns the institutional makeup or structure of
constitutionalism. In other words, what types of political institutions
provide the best possible framework or shell for constitutional
government? On the surface, at least, the answer to this question
appears obvious: the institutions of liberal democracy, including
parliamentary or representative government, institutionalized checks
on government power, and constitutional guarantees of individual
rights and liberties. Nevertheless, the authors were open to the
possibility that forms of constitutionalism other than a liberal
democratic one could exist.

The results of this study seem to indicate, however, that there is
indeed a close association between liberal democracy and
constitutionalism. In most of the countries surveyed, the success of
constitutionalism was intimately connected with the construction and
functioning of liberal democratic institutions. By the same token, the
failure of these institutions—most typically through military coups
(Turkey, Egypt, Nigeria) or declarations of emergency by seated
governments (India)—was synonymous with the failure of
constitutionalism.

The one significant exception to this pattern is Mexico. While it has
enjoyed relatively stable constitutional government over the past seven
decades, Mexico is not classifiable as a liberal democracy. Instead it is a
one-party state, with the Party of Revolutionary Institutions (PRI)
exerting near complete political hegemony. Mexico also has an
authoritarian, executive-dominated political system, with few
institutionalized checks on government power. Finally, while basic individual and political rights are formally enumerated in the 1917 Constitution, they are often not observed by the state.

Nevertheless, a certain form of constitutionalism can be said to exist in Mexico. Most important, there are established "rules of the game" that have functioned fairly effectively over the years and have provided Mexico with a considerable degree of political stability. The secret, according to Howard J. Wiarda, is the fundamental legitimacy of the system, which is largely based on indigenous cultural values and institutions and widely regarded by Mexicans as "our democracy." At the same time, Wiarda argues that while Mexicans believe strongly in the ideals of constitutionalism and the rule of law, the Mexican version of constitutionalism is a "very malleable and open-ended concept." In this sense, the Mexican model of constitutionalism is culturally appropriate. Whether what passes for constitutionalism in Mexico can be properly regarded as such, however, remains open to question.

A second assertion that some form of constitutionalism other than a liberal democratic one might be possible comes from the chapter on Egypt. In their discussion of Egyptian political culture, Nathan J. Brown and Roni Amit assert that Islamic ideology is not necessarily opposed to the concept of constitutionalism per se, at least as far as it concerns defining the operation of the government in a written document and the idea of law. In fact, they argue that constitutions themselves are no longer an exclusively Western concept and note that writing a constitution was among the first tasks undertaken by the revolutionary Islamic government of Iran. Nevertheless, Brown and Amit also recognize that the Islamic version of constitutionalism remains in the form of yet vaguely formulated, and they remark that Islamic "religious authorities have had much less to say about the process of governing than about the rights and duties of the ruler." Since constitutional government is all about process, however, this omission is crucial.

Ultimately, it would seem that a theocratic form of constitutionalism, whether Islamic or otherwise, is not very plausible. Any political order that derives its authority from essentially nonpolitical sources—God, in the case of divine interpretation than it is limited by earthly constraints on the use of government or state power. The same would also appear to be the case for political orders, such as Marxism and communism, that derive their authority from supposedly inevitable historical processes.

Cultural Learning . . .

[Institutions] are an important part of the equation of constitutionalism. Nevertheless, institutions alone are not sufficient to produce stable and effective constitutional government. What is also necessary, it would appear, is a firm commitment to constitutionalism that is rooted in the national political culture. Once again, the Weimar experience serves as an instructive example, in this case of the likely fate of "republics without republicans," or of constitutional regimes without a cultural consensus on constitutionalism.

The political-cultural basis of constitutionalism is clearly obvious in the "evolutionary" democracies. In the United States, according to Daniel P. Franklin, constitutionalism has thrived despite the existence of serious flaws or contradictions in the basic constitutional order. Thus, while the U.S. Constitution has been a suitable and remarkably adaptable framework for government, constitutionalism in the United States appears to stem primarily from the unique values and beliefs of a consummative American political culture.

What is distinctive about the "evolutionary" democracies is that the cultural and political cohesion of constitutionalism is reflected in actual institutional performance and government practice. Although not covered in this study, . . . cultural and popular commitment to constitutionalism has been an important factor sustaining democratic development, even in the frequent instances in which institutions and leaders have failed. In her discussion of Turkey, for instance, Marcia J. Puston argues that widespread public support for the values of constitutionalism has kept the democratic project alive over the years and seen it through periodic impositions of military rule. In a similar fashion, Sankaran Krishna argues that the national culture of politics has become the main "bedrock of democracy" in India, even as that country's democratic institutions have decayed in recent years.

Cultural Learning . . .

A number of factors appear capable of influencing cultural change. Interestingly enough, the least effective of these seems to be direct efforts by governments to remake political values. This conclusion, as indicated, for instance, by the failed attempts of the Nigerian Third Republic (1986–89) to shape a national political culture supportive of the country's new institutions, although admittedly this was an effort of short duration. Perhaps more successful in this regard were the intensive efforts of the postwar [German] Federal Republic to eradicate vestiges of nazism and reform the traditionally authoritarian German political culture. As will be seen below, however, other factors, such as economic growth and effective system performance, may have been more important in promoting the transformation of German political culture. Another useful lesson to ponder is the monumental failure of the Soviet regime to create a new communist human, which remains an enduring symbol of the general futility of such efforts at forced cultural change.

An important agent of political-cultural transformation is socioeconomic change resulting from economic development and modernization. These were particularly powerful factors supporting political democratization in Mexico and Turkey. In each of these semi-industrialized countries, economic modernization and socioeconomic change have fostered the growth of new demands for democracy, individual freedom, and human rights. A potential problem, in fact, is that political-cultural change stemming from economic modernization can outstrip the capacity of established institutions to adjust. This seems to be the case in Mexico, for example, where, as Wiarda notes, the democratic desires of a more pluralistic society have outpaced the process of institutional reform, increasing pressures and tension within that country's paternalist and statist political system.

It would be a mistake, however, to link the spread of democratic values too closely to processes of economic development and
modernization. Indeed, in some of the countries studied, it seems that traditional cultural values are essentially democratic and the real threat to democracy may come, instead, from the forces of progress. In Nigeria, for instance, Suberu argues that the main barrier to democratic constitutionalism has not been the traditional political culture but the statist values of modernizing elites and regimes. Far from promoting democratization, the process of modernization threatens to undermine the democratic aspects of the traditional popular culture in Nigeria. As Krishna notes in his chapter, a similar argument has been made about India. He cites Asis Nandy's assertion that the indigenous political culture of India is inherently democratic, in the sense that it is essentially tolerant and pluralistic. As Nandy believes that modernizing institutions and values threaten to subvert this traditional political culture and thereby poses the greatest threat to Indian democracy.

The experiences of several countries also suggest that the very existence of democratic institutions can play a role in promoting cultural change. In India, for instance, Krishna concludes that there is a "disruptive" or mutually reinforcing relationship between democratic institutions and political culture. What has taken place in India over time is, he argues, a process of societal learning that is somewhat like a game, with society becoming better at learning from its mistakes. A similar process appears to have taken place in Turkey, where Paton argues that the existence of a democratic institutional infrastructure has facilitated the spread of democratic values.

The prospects for cultural learning are greatly enhanced, of course, when democratic institutions are successful in providing political stability and economic prosperity. Perhaps the best example of this is West Germany, where a process of societal learning appears to have taken place over a period of twenty years following the establishment of the Federal Republic in 1949. As a consequence, by the 1970s a new consensus had taken hold that the formerly authoritarian German political culture had become firmly democratic. A crucial factor in this learning process was that the experience with democratic institutions in the West German provinces had been almost wholly positive and proved that they were not an impostor. This was the direct opposite of the negative experience with democracy in the Weimar years, when parliamentary institutions became associated in many minds with economic hardship and political chaos.

In sum, it appears that political culture can be democratized and that constitutionalist values can be promoted.

Constitutionalism and Cultural Diversity...

While acknowledging the "successful constitutionalism" in the "multicultural societies" of the United States and Canada, the authors hypothesize that the success may result from the countries being populated through immigration over a period of time yielding a commitment to the idea of multiculturalism.

The growth of ethnonationalism poses a serious problem for democracy and constitutional government in many European countries, especially in light of the exclusionary sentiment of nationality. As a direct contradiction of the universalistic norms of liberal constitutionalism, it also undermines the values of mutual tolerance and trust that are so vital as a basis for constitutionalism. Even in multicultural democracies such as the United States, of course, a constant tension between the opposing forces of nationalism and liberal universalism is evident. In many European countries, however, as well as in other traditional nation-states, membership in the political community has always been more closely linked to ethnicity or nationality. The epitome of this connection is Germany, with its strikingly ethnonationalist citizenship laws. The link between nationalism and citizenship has produced disastrous results in Europe in the past. Today, while no one predicts a return to fascism and nazism, it is nevertheless clear that a resurgence of ethnonationalism poses a major dilemma for European democracy.

The future of democratic constitutionalism in many European countries, in fact, may well be tied to their capacity to accept that they are, or are increasingly becoming, multicultural societies and their ability to redefine nationhood in institutional rather than ethnic terms.

Ethnic or cultural conflict has also been a problem for many Third World countries. In many cases, problems have stemmed from the fact that the political borders drawn by the departing colonial powers did not coincide with the traditional territorial distribution of national and ethnic groups. As a consequence, included within the boundaries of many postcolonial countries were tribal or ethnic groups that had previously either been enemies or had little history of affiliation with one another. In other cases, the boundaries of new states divided particular ethnic groups among two or more countries. In light of this, the potential for ethnic conflict and upheaval in many postcolonial states has been considerable. In fact, it has been a major barrier to the construction of stable and effective governments in many of the Third World.

Surprisingly, therefore, the experiences of two postcolonial countries examined in this study seem to suggest that cultural heterogeneity or pluralism might be a factor actually supporting the establishment of constitutional government. This is the opposite, of course, of what has been traditionally asserted: that small, ethnically or culturally homogeneous societies are the most suitable for democracy, at least in its more pure Athenian or Rousseauian sense.

The success of constitutionalism in ethnically or culturally diverse societies, however, appears to be closely linked to questions of institutional design. Here again, the experiences of India and Nigeria are instructive. In India in particular, according to Krishna, federalist structures combine with ethnic pluralism to produce effective checks on government power.

One reason why ethnic diversity and pluralism are supportive of democratic constitutionalism in Nigeria and India might be that in these countries no one group is dominant. Instead, a rough balance of power exists among different groups, or else there is so much fragmentation that no group can achieve dominance.
QUESTIONS AND COMMENTS

1. Does a constitution require a " demos," that is, a people who share some common interests or culture prior to the creation of the constitution? The issue has been discussed in connection with the possible evolution of the European Union from a treaty-based organization to one that is more constitution-like in structure. See, e.g., J.H.H. Weiler, Does Europe Need a Constitution? Demos, Telos and the German Maastricht Decision, 1 European L.J. 219 (1995). It arises as well in connection with the creation of "coming together" federal states in the aftermath of severe ethnic conflict, and with questions about the desirability of provisions for secession in the constitutions of federal nations. For discussion of "coming together" federalism and secession, see Chapter XI below. In the absence of some pre-constitutional shared interests or culture, how can the rules for creating a constitution be established (other than, perhaps, by external force)?

2. Franklin and Baum state that "constitutionalism" is the "governmental component of a democratic culture." Does this suggest that "constitutionalism" may exist even if the only checks on government are those of regular elections? Should the term "constitutionalism" refer only to modes of political organization associated with liberal democracies (with "liberal democracy" understood generously to include a wide range of political systems that rely on reasonably free and fair elections to select national leadership and that secure to their citizens and residents a reasonable level of traditional civil rights and civil liberties)? If so, what is the best way to characterize systems that have reasonably free and fair elections that regularly produce majorities for a single party (sometimes referred to as "dominant party states"), which then govern in a way that does not secure the level of civil rights and civil liberties associated with liberal democracies? Are there such systems? Candidates might include Singapore and Malaysia, and some might suggest South Africa in the 1990s as well. If there are such systems, are they less stable than liberal democracies? Can we understand such systems to be forms of "illiberal" or authoritarian constitutionalism? For discussion, see, e.g., Li Ann Thio, Constitutionalism in Illiberal Politics, in Oxford Handbook of Comparative Constitutional Law, supra at 136 ("[I]lliberal politics do not lack limiting constitutional norms [but] may not primarily rely on individual rights but [resort] to methods such as federalism or separated powers to constrain public power. The state is expressly non-neutral, privileging a substantive vision of the good, informed by ethnicity, religion, or communal morality.").

3. On constitutionalism in Muslim-majority states, see Noah Feldman, Islamic Constitutionalism in Context: A Typology and a Warning, 7 U. St. Thomas L. J. 436, 449–50 (2010): "Political science textbooks from roughly 1890 to roughly 1930 often presented it as an inevitable fact of philosophy and institutional design that only northeastern European, i.e., Protestant, countries could generate democratic institutions, and that Catholic countries could not. [. . .] The natural reaction to a claim like that should be that it is literally absurd. But it is an important reminder to us that something can be deeply believed for centuries and then turn out to simply have been false. The claim of incompatibility of Islam and democracy, in my view, was of a comparable type to the claim of incompatibility of Catholicism and democracy. [. . .] just as false." See also Kristian A. Still, Islamic Law and the Making and Remaking of the Iraqi Legal System, 36 G.W. Int'l L. Rev. 695, 698 (2004) (suggesting that among Muslim-majority states "Iran and Turkey represent the two opposite ends of the spectrum of possible state structures," noting that while Islamic clerics can invalidate legislation as inconsistent with Islamic law, Turkey is more "separationist" about religion in some ways than the United States). For analysis of how the different international forms of Islam (Shi'i and Sunni) affect constitutional orders, and of "two mutually exclusive logics—citizens as strictly equal, and citizens as part of unevenly rights-endowed communities" in the Middle East, see Chibli Mallat, Islam and the Constitutional Order, in HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW, supra at 1297–1303.

4. Both the "liberum veto" of the 1791 Polish constitution and the unanimity rule for voting in the Continental Congress under the U.S. Articles of Confederation have been condemned as making effective governance impossible. Consider whether some idea of workability is related to constitutionalism: Can a constitutional system long survive in a democracy if government and society are not organized in such a way as to meet at least minimum social expectations? Can limitations on government be expected to constrain if basic social needs—e.g., for maintaining some degree of order, modes of transport, availability of food, shelter, clothing, education—are unmet by government under that constitutional system?

B. CONSTITUTIONS WITHOUT CONSTITUTIONALISM

Constitutions are often linked with ideas of constitutionalism—the rule of law applied to both people and government officers, judicial independence, and existence of basic human rights. Sunstein's article, moreover, assumes that a "constitution" is a kind of basic law more deeply entrenched—that is, more difficult to change—than other forms of law. Many countries which have adopted written constitutions, however, do not have much in the way of "constitutionalism" in the senses described above. Why are constitutions adopted if not to promote constitutionalism? The readings below suggest some reasons.

Consider the argument by Okoth-Ogendo that constitutions serve "constitutional" functions both internally, by establishing the structure for the exercise of government power, and externally, by establishing a convincing sovereign presence to other nations. Does his argument in favor of "autochthonous" constitutions suggest that some African constitutions were "shames" because they relied on forms of governance associated with external colonial powers and did not draw from indigenous traditions?


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