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The achievement of constitutionalism in Asia

Moving beyond 'constitutions without constitutionalism'

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The phrase 'constitutions without constitutionalism' has been used by various authors to describe the state of constitutional law in Africa, the Middle East and Latin America at various points in time.[1] For significant periods, the constitutional circumstances of many Asian countries may also be aptly summarised by 'constitutions without constitutionalism'. Just as in the daily life of individuals, it is relatively easy to say something or make a promise, but more difficult to translate what is said or promised into action and reality, so in the political and legal life of nations, it is relatively easy to make a constitution, but more difficult to put it into practice, to implement it and be governed by it – which is what 'constitutionalism' is about. There is therefore nothing surprising about the phenomenon or 'syndrome' of 'constitutions without constitutionalism', particularly in developing countries to which Western ideas, theories and institutions of constitutionalism have been transplanted in the course of the last two centuries.

As it is by no means obvious or likely that a nation's constitution will be successfully put into practice after it has been enacted, it is indeed right and appropriate to talk of constitutionalism as an 'achievement'. After identifying what he calls the five 'functional characteristics' of constitutionalism, Grimm

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[1] See generally H.W.O. Okoth-Ogendo, 'Constitutions without constitutionalism: reflections on an African political paradox', in Douglas Greenberg et al. (eds.), *Constitutionalism and Democracy: Transitions in the Contemporary World* (New York: Oxford University Press, 1993), p. 65; Atilio A. Borón, 'Latin America: constitutionalism and the political traditions of liberalism and socialism', in ibid., p. 339; Nathan J. Brown, *Constitutions in a Nonconstitutional World* (New York: State University of New York Press, 2002); Asem Khalil, 'From constitutions to constitutionalism in Arab states: beyond paradox to opportunity' (2010) 1(3) *Transnational Legal Theory* 421.

suggests that if 'all these elements are present, we speak of the *achievement* of constitutionalism'.[2] He elaborates:

> Constitutionalism ... deserves to be called an achievement, because it rules out any absolute or arbitrary power of men over men. By submitting all government action to rules, it makes the use of public power predictable ... It provides a consensual basis for persons and groups with different ideas and interests to resolve their disputes in a civilized manner. And it enables a peaceful transition of power to be made. Under favourable conditions it can even contribute to the integration of a society ... [C]onstitutionalism ... is not an ideal type in the Weberian sense that allows only an approximation, but can never be completely reached. It is a historical reality that was in principle already fully developed by the first constitutions in North America and France and fulfilled its promise in a number of countries that had adopted constitutions in this sense.[3]

Although Grimm notes that constitutionalism is more than a mere ideal type, and stresses that 'Constitutions that show all the characteristics of achievement did exist in history and do exist today',[4] I believe it is fair to say that even in the early twenty-first century, constitutionalism is still a work in progress in many parts of the world, particularly in Asia, Africa and Latin America. Many Third World countries have still not grown out of the syndrome of 'constitutions without constitutionalism'; the 'achievement' of constitutionalism is yet to come. Just as Fuller speaks of the project of legality or rule of law as being governed by a 'morality of aspiration',[5] which means that whether the ideal of the rule of law is realised in a particular country or legal system is a matter of degree, and the practitioner of the morality of aspiration should try her best to achieve excellence in, or a higher degree of fulfilment of, this ideal, so this 'morality of aspiration' is also applicable to the practice of constitutionalism. The achievement of constitutionalism in a particular nation-state (or in the international order, insofar as the idea of global or transnational constitutionalism is valid[6]) is also a matter of degree.

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[2] Dieter Grimm, 'Types of constitutions', in Michel Rosenfeld and András Sajó (eds.), *Oxford Handbook of Comparative Constitutional Law* (Oxford: Oxford University Press, 2012), p. 98 at 104 (emphasis in original).

[3] Dieter Grimm, 'The achievement of constitutionalism and its prospects in a changed world', in Petra Dobner and Martin Loughlin (eds.), *The Twilight of Constitutionalism* (Oxford: Oxford University Press, 2010), p. 3 at 10.

[4] Grimm, 'Types of constitutions', p. 105.

[5] Lon L. Fuller, *The Morality of Law*, rev. edn (New Haven: Yale University Press, 1969), p. 5. The morality of aspiration is concerned with the striving to achieve a particular good that can be realised in different degrees. The higher the degree to which the good is achieved, the more successful and excellent is the moral project concerned.

[6] See, e.g., Nicholas Tsagourias (ed.), *Transnational Constitutionalism: International and European Perspectives* (Cambridge: Cambridge University Press, 2007); Jeffrey L. Dunoff

The present book project attempts to inquire into the state of constitutionalism in Asia in the early twenty-first century, or the extent or degree to which constitutionalism has been 'achieved' in this part of the world at the present time. Although constitutionalism as a theory and practice of government and law first originated in Western Europe and North America, there is by now considerable evidence of its positive reception in and successful 'transplant' to a significant number of Asian countries. As I wrote previously, 'A macrohistorical perspective, covering developments in Asia since the late nineteenth century, suggests that constitutionalism has broadened and deepened its reach, significantly, over the course of time.'[7] The experience of different Asian countries in this regard provides useful and fascinating case studies of what Grimm calls the 'achievement of constitutionalism'.

For example, postwar Japan and India have been cases of the stable and relatively successful practice of constitutionalism in Asia for more than half a century. South Korea and Taiwan, two of the 'Four Little Dragons' of East Asia, are cases of successful democratic transition since the 1980s from authoritarian developmental states into liberal constitutional democracies, where democratic consolidation was still in progress in the early twenty-first century. The Philippines, Thailand, Cambodia and Indonesia, which have also undergone democratic transitions at various points in time since the 1980s, are developing countries in the process of building constitutional democracy of a higher quality. Constitutional courts now exist in Taiwan, South Korea, Thailand, Cambodia and Indonesia (as well as Mongolia, which is not covered by this volume), and have achieved varying degrees of success.[8] The cases of Singapore and Malaysia have posed the question whether there exist peculiarly 'Asian' values that shape conceptions of human rights and constitutionalism in Asia.[9] Nepal provides an example of a most recent and still ongoing enterprise of constitution-making in Asia. Myanmar provides an example of a most recent and still ongoing exercise in transition from military government to constitutional rule. In the People's Republic of China, Vietnam and North Korea, one-party states still exist that seem to contradict the trends of constitutionalisation, judicialisation and democratisation in their neighbours, though movements

and Joel P. Trachtman (eds.), *Ruling the World? Constitutionalism, International Law, and Global Governance* (New York: Cambridge University Press, 2009); Ming-Sung Kuo, 'The end of constitutionalism as we know it? Boundaries and the state of global constitutional (dis)ordering' (2010) 1(3) *Transnational Legal Theory* 329.

[7] Albert H.Y. Chen, 'Pathways of Western liberal constitutional development in Asia: a comparative study of five major nations' (2010) 8 *International Journal of Constitutional Law* 849 at 884.

[8] See, e.g., Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge: Cambridge University Press, 2003); Björn Dressel (ed.), *The Judicialization of Politics in Asia* (London: Routledge, 2012).

[9] See, e.g., Albert H.Y. Chen, 'Conclusion: comparative reflections on human rights in Asia', in Randall Peerenboom et al. (eds.), *Human Rights in Asia* (London: Routledge, 2006), p. 487.

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towards the rule of law and improved legal protection of rights have taken place in China and Vietnam.[10] In China's Special Administrative Region of Hong Kong (as well as in Macau, which is not covered by this volume), the constitutional experiment of 'one country, two systems' has unfolded. These, then, are the Asian countries and jurisdictions discussed in this book.

This introductory chapter consists of two main parts. Section I attempts to develop a conceptual framework for the purpose of studying, analysing and evaluating constitutional, political and legal developments in countries on their path towards the 'achievement of constitutionalism'. Section II discusses the experience of Asian countries and jurisdictions from a historical and comparative perspective, utilising the conceptual apparatus developed in section I.

I. A CONCEPTUAL FRAMEWORK FOR THE STUDY OF THE ACHIEVEMENT OF CONSTITUTIONALISM

The modern idea of a written 'constitution' for a nation-state came to fruition in the late eighteenth century in the course of the American and French Revolutions, the English constitutional instruments promulgated during the revolutionary upheavals of the seventeenth century being precursors of the modern constitutions.[11] The very meaning of the word 'constitution' was transformed. As Sartori points out, although this word has been used to translate the term *politeía* in Aristotle's works, '*politeía* only conveys the idea of the way in which a polity is patterned',[12] while the modern meaning of the word 'constitution' refers to 'a frame of political society, *organized through and by the law*, for the purpose of restraining arbitrary power'.[13] In the premodern era the word 'constitution', or its equivalent in other European languages, was 'a descriptive, not a prescriptive, term',[14] referring to 'the situation of a country as determined by a number of factors such as its geography, its climate, its population, its laws etc.', or 'the state of a country as determined by its basic legal structure'.[15] The 'ancient idea of the constitution expressed the health and strength of the nation'.[16]

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[10] John Gillespie and Albert H.Y. Chen (eds.), *Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes* (London: Routledge, 2010).

[11] An example of such documents is the Instrument of Government (1654) promulgated under Cromwell's rule. See Grimm, 'Types of constitutions', p. 101. As Grimm also points out (at p. 101), 'After the Glorious Revolution in 1688, "constitution" in the singular gained ground and meant the basic rules concerning the government.' The constitutional documents of the British colonies in North America (including the colonial charters granted by the Crown and the Fundamental Orders of Connecticut (1639)) are also examples of the earliest constitutions: see Karl Loewenstein, *Political Power and the Governmental Process* (Chicago: The University of Chicago Press, 1957), p. 132.

[12] Giovanni Sartori, 'Constitutionalism: a preliminary discussion' (1962) 56(4) *American Political Science Review* 853 at 860 (italics in original).

[13] Ibid. (emphasis in original).   [14] Grimm, 'Types of constitutions', p. 100.   [15] Ibid.

[16] Martin Loughlin, 'What is constitutionalism?', in Dobner and Loughlin, *Twilight of Constitutionalism*, p. 47 at 48.

What is new and distinctive about the modern idea of a constitution is that it is conceived as a fundamental written law which simultaneously establishes the governmental system of a state and regulates the exercise of political power within the system. In other words, the constitution constitutes the state and its government. The government derives its legitimacy and authority from the constitution. But who makes the constitution? The answer provided by eighteenth-century thinkers,[17] influenced by the social-contract philosophy of the seventeenth century and the Age of Enlightenment, is that it is 'the people' – the people of the nation-state – who are the makers of the constitution, acting directly or through their representatives in a constituent assembly. This is the theory of the constituent power, as distinguished from the government power which is constituted by the constitution. The exercise of the constituent power by the people is a manifestation of the sovereignty of the people, a fundamental concept that underlies most constitutions of modern times all over the world.

In terms of their substantive content, modern constitutions represent attempts by their drafters to design rationally a form of government that can best serve the objectives of the nation-state. As Loughlin puts it, their theorists 'imagined a situation in which somehow the people would come together to reject their traditional constitutions, the products of "accident and force", and would deliberate and devise a new framework of government from "reflection and choice"'.[18] Influenced by liberalism, social-contract theory and Enlightenment thought, and determined to put an end to the absolutism of the post-feudal state of the early modern era, the drafters of the first modern constitutions devised schemes of government for the purpose of minimising the possibility of tyranny, oppression or abuse of political power, and maximising the protection of political freedom and the individual's rights to life, liberty and property. Hence principles and institutions such as the rule of law, separation of powers, checks and balances, parliamentary elections and judicial independence were written into constitutions. Bills of rights[19] were also promulgated to specify and catalogue citizens' rights and freedoms which governments must respect.

After the birth of the first modern constitutions in the USA and France, the practice of constitution-making quickly spread throughout Europe in the course of the nineteenth century, and then all over the world in the course of the twentieth century. In today's world, almost all countries (Britain being the most notable exception) have written constitutions. The possession of a constitution seems to have been accepted by all as a hallmark of the legitimacy of a nation-state and its regime for both domestic and external purposes. However, as Grimm has rightly

[17] The most important of whom include Thomas Paine and Emmanuel Joseph Sieyès.
[18] Loughlin, 'What is constitutionalism?', p. 48.
[19] Such as the French Declaration of the Rights of Man and the Citizen (1789) and the Bill of Rights inserted into the Constitution of the USA in 1791.

pointed out, 'once invented the constitution could be instrumentalized for purposes other than the original ones, adopted only in part or even as a mere form'.[20] For political scientists and scholars of comparative constitutional law, therefore, the challenge is to understand and distinguish the different purposes or functions which constitutions have served,[21] and the different kinds of constitution or constitutionalism which have come into existence since the modern idea of the constitution was born in the late eighteenth century.

At the outset, a distinction may be drawn between what I would call 'pristine' constitutions and 'secondary' constitutions. Constitutions and constitutional thought first originated in Western civilisation, and were then transplanted to societies and cultures in other parts of the world such as the Middle East, Asia and Africa. Constitutions in Western states may therefore be called pristine constitutions, and those in countries outside the orbit of the West called secondary constitutions. Since constitutions and constitutional practices evolved endogenously in some Western states and were quickly adopted by neighbouring Western states with similar social structures, economic circumstances and culture, it may be assumed that constitutionalism in its original form was more compatible with Western culture and social conditions than with those of civilisations and societies to which the practice of having constitutions was subsequently exported. Pristine constitutions can therefore be expected to be more successful in practice than secondary constitutions. This is borne out by the phenomenon of 'constitutions without constitutionalism' mentioned above in this chapter.

Unlike the earliest pristine constitutions, the first constitutions adopted by regimes in the non-Western world were not enacted after a revolution in order to constitute a new state and a new political order, nor were they inspired by the liberal doctrine of the protection of individuals' rights against possible violations by the government. Instead, such secondary constitutions were designed to bolster the legitimacy of regimes threatened by Western powers and to enhance the effectiveness of their rule, although they did have the effect of modifying the existing political structure by introducing Western-style institutions such as parliaments and elections. Brown coins the term 'politically enabling documents'[22] to characterise such constitutions: instead of aiming at the limitation and control of government, they were promulgated by the existing regime to enable itself to be more legitimate and more effective, and thus more capable of survival when faced with domestic and external challenges. Examples include the Ottoman Empire's constitution of 1876, the Egyptian constitution of 1882 and the constitution promulgated

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[20]   Grimm, 'Types of constitutions', p. 105.
[21]   See, e.g., the discussion of the functions of constitutions in Saunders's chapter in this volume.
[22]   Nathan J. Brown, 'Regimes reinventing themselves: constitutional development in the Arab world', in Saïd Amir Arjomand (ed.), *Constitutionalism and Political Reconstruction* (Leiden: Brill, 2007), p. 47 at 49, 67.

by the Meiji Emperor of Japan in 1889. The Qing Empire in China also attempted to move towards a constitutional monarchy in the early twentieth century, but was overthrown by the 1911 Revolution before the constitutional reforms could materialise.

The Meiji Constitution was modelled on the Prussian constitution of 1850.[23] Although the movement of constitution-making engulfed European states – as well as the newly independent states in Latin America – in the nineteenth century, there was not yet a uniform practice of enshrining citizens' rights in constitutions, which were primarily documents defining the structure of government and the division of powers between various state organs. For example, neither the Bismarckian federal constitution of Germany enacted in 1871 nor the 1875 constitution of the Third Republic in France included a bill of rights.[24] And the achievement of constitutionalism in Europe in the nineteenth century suffered reversals and setbacks in the course of the twentieth century, with the Bolshevik Revolution in Russia in 1917 and the rise of Nazism and Fascism in Germany and Italy. Ultimately, the terror and atrocities of the Second World War prompted deeper reflections on constitutionalism, what it requires and how it can be sustained. As a result, what has been termed the 'postwar constitutional paradigm' came into existence,[25] in which respect for human dignity and equality came to be recognised as the core value of the modern constitutional state. This paradigm was exemplified by the German Basic Law of 1949, which affirms the inviolability of human dignity, declares the basic principles of the liberal-democratic order and the basic rights of individuals, and establishes a Federal Constitutional Court exercising the power of judicial review as guardian of the Constitution and the 'objective value order' affirmed by it.[26]

The end of the Second World War and the decolonisation of Asia and Africa that followed gave rise to many new states in the international community. The exercise of constitution-making proved to be extremely useful for the founders of the new states. Constitutions declare their newly acquired sovereignty and independence, and serve as a symbol of nationhood and of the unity and collective identity of the people of the new state. This wave of constitution-making is an illustration of 'constitutional learning' at work.[27] The idea of a 'constitution', which indigenous leaders of the colonised peoples had learnt from the metropolitan powers, was now used to put an end to colonialism and to proclaim the independence, liberation and empowerment of a new political community, whose territorial boundaries

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[23] Hiroshi Oda, *Japanese Law* (London: Butterworths, 1992), p. 28.
[24] See the discussion in Loewenstein, *Political Power*, pp. 142–3.
[25] Lorraine E. Weinrib, 'The postwar paradigm and American exceptionalism', in Sujit Choudhry (ed.), *The Migration of Constitutional Ideas* (Cambridge: Cambridge University Press, 2006), p. 84.
[26] See ibid.
[27] For constitutional learning theory, see David S. Law and Mila Versteeg, 'The evolution and ideology of global constitutionalism' (2011) 99(5) *California Law Review* 1163 at 1173–5.

were in many cases those carved out by the former colonial powers struggling against one another. But the widespread adoption of the 'Western' practice of constitution-making by newly independent states in Asia and Africa does not necessarily mean that the new constitutions were intended to serve the same functions and purposes as the 'pristine constitutions' (as defined above) or the contemporary 'postwar constitutional paradigm' (as defined above) in the Western world, such as the legal limitation of state power, checks and balances among state organs, and the defence of citizens' rights against the state.

Consider, for example, the cases of the Middle East and Africa. In the Middle East, constitutions were made in the new states that were created, some after the First World War and some after the Second World War. Their common features included strong executives, weak parliaments and weak courts.[28] Some introduced single-party systems.[29] As Brown observes,

> the constitutions of independence generally established some demo-cratic and liberal forms of government while depriving them of any tools to operate effectively . . . Elections were mandated in presidential systems but voters presented with a single choice determined by a stacked parliament. In monarchical systems, the king retained tools that allowed him to override or ignore elected parliaments.[30]

Starting from the 1950s, another wave of constitution-making swept the Arab states in the Middle East as new revolutionary regimes opposed to Western liberal values (which were now associated with imperialism) gained power. New national charters and constitutions were introduced which embodied the new ideology of the states.[31] 'Egypt led the way in this regard, issuing a "National Charter" after embarking on an "Arab socialist" path in 1962; this was followed by a provisional constitution two years later'.[32] The anti-liberal-democratic orientation of Arab constitutional patterns was challenged in more recent times, particularly after the US-led invasion of Iraq and the 'Arab Spring' in Tunisia, Egypt, Libya and other parts of the Middle East.[33]

In sub-Saharan African, there was also a trend of reaction against Western-style liberal-democratic constitutions soon after independence. For example, Kwame Nkrumah, founding father of Ghana as sub-Saharan Africa's first independent state, criticised the independence constitutions – usually modelled on those of the former colonial masters – as being intended for 'the preservation of imperial

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[28] Brown, 'Regimes reinventing themselves', p. 53.   [29] Ibid.   [30] Ibid., p. 54.
[31] Ibid., pp. 54–5.   [32] Ibid.
[33] See, e.g., Adeed Dawisha, *The Second Arab Awakening* (New York: W.W. Norton, 2013). For constitutionalism in the Middle East, see also Chibli Mallat, 'On the specificity of Middle Eastern constitutionalism' (2006) 38 *Case Western Reserve Journal of International Law* 13; Raja Bahlul, 'Is constitutionalism compatible with Islam?', in Pietro Costa and Danilo Zolo (eds.), *The Rule of Law: History, Theory and Criticism* (Dordrecht: Springer, 2007), p. 515.

interests in the newly emergent state'.[34] Other African leaders such as Tanzania's Julius Nyerere and Kenya's Jomo Kenyatta were also critics of Western constitutionalism.[35] Faced with 'the twin challenges of nation building and socioeconomic development',[36] African governments rationalised authoritarianism or even explicit constitutional endorsement of a one-party state as a political system appropriate for the conditions of their countries; they also preferred socialism to capitalism.[37] 'Between 1960 and 1962 thirteen newly independent African states, beginning with Ghana, amended or replaced their independence constitutions.'[38] It was only after three decades of failure in economic development that African countries turned again to liberal constitutional democracy. In the 1990s, as the 'third wave' of democratisation swept the globe, constitutional reforms were introduced in many African states to enable multiparty elections and constitutional transfers of political power to take place, and they have indeed taken place. Civil liberties have been expanded, and the courts have taken on a more active role in enforcing the rights provisions in the constitutional texts.[39]

Given the diversity of constitutional trajectories and experience among countries in different parts of the world, the question arises how their constitutions and legal–political practices relating to constitutions may be studied, analysed and classified. In the following, I will attempt to outline a conceptual framework for doing so, drawing on the brief historical survey above and the classifications of constitutions developed by Loewenstein and Sartori.

Loewenstein develops 'a new approach to the classification of constitutions' which he calls the 'ontological' classification.[40] 'The ontological approach, instead of analysing substance and content, focuses on the concordance of the reality of the power process with the norms of the constitution.'[41] Loewenstein thus distinguishes between three types of constitution: normative, nominal and semantic. Using a simile, he suggests that a normative constitution 'is like a suit that fits and that is actually worn'; a nominal constitution is like a suit which 'for the time being, hangs in the closet, to be worn when the national body politic has grown into it'; and in the case of a semantic constitution 'the suit is not an honest suit at all; it is merely a cloak or a fancy dress'.[42] The meaning of the classification may be further elaborated as follows.

In Loewenstein's view, 'A constitution is what power holders and power addressees make of it in practical application.'[43] A normative constitution is 'a living constitution', one that is 'real and effective', 'faithfully observed by all

34 H. Kwasi Prempeh, 'Africa's "constitutionalism revival": false start or new dawn?' (2007) 5 *International Journal of Constitutional Law* 469 at 473.
35 Ibid., at 481.   36 Ibid., at 475.   37 Ibid., at 475–7.   38 Ibid., at 474.
39 See generally Prempeh, 'Africa's "constitutionalism revival"'. See also Charles Manga Fombad, 'Constitutional reforms and constitutionalism in Africa: reflections on some current challenges and future prospects' (2011) 59 *Buffalo Law Review* 1007.
40 Loewenstein, *Political Power*, p. 147.   41 Ibid., pp. 147–8.   42 Ibid., pp. 148–50.
43 Ibid., p. 148.

concerned', and 'actually governing the dynamics of the power process instead of being governed by it'.[44] A nominal constitution is one 'that is not lived up to in practice',[45] because the 'existing socioeconomic conditions' militate against its implementation,

> but the hope exists, supported by the will of power holders and power addressees, that sooner or later the reality of the power process will conform to the blueprint. The primary objective of the nominal constitution is educational, with the goal, in the near or distant future, of becoming fully normative.[46]

The nominal constitution is said to have 'its natural habitat in states where western democratic constitutionalism has been implanted into a colonial or feudal–agrarian social order'.[47] Loewenstein believes, 'The novices in constitutional government in Asia and Africa will have to pass through an extended apprenticeship in the nominal constitution before they can graduate to constitutional normativism.'[48]

As regards the semantic constitution, Loewenstein defines it as one that 'is fully applied and activated, but its ontological reality is nothing but the formalization of the existing location of political power for the exclusive benefit of the actual power holders'.[49] 'Instead of serving for the limitation of political power, it has become the tool for the stabilization and perpetuation of the grip of the factual power holders on the community. The peaceful, non-revolutionary change in the location of political power is impossible.'[50] Loewenstein considers the constitution of the Soviet Union to be an example of the semantic constitution.[51]

If we apply Loewenstein's classification, then the pristine constitutions that evolved endogenously in the Western world, and the constitutions of liberal-democratic states in the world today, may be regarded as normative constitutions, while contemporary communist states' constitutions that explicitly affirm and justify the communist party's monopoly of power would fall into the category of semantic constitutions. Indeed, as Grimm points out, such 'socialist constitutions', together with constitutions of theocratic regimes, stand apart from other constitutions in the contemporary world in the sense that their legitimating principle is a 'supra-individual absolute truth' rather than based on values of individual autonomy, pluralism and consensus.[52] In the socialist constitution, the communist party's 'position is legitimized by superior insight in the ultimate aim of history and the true interest of the people'.[53] In practice,

> the Communist Party is the sole authoritative interpreter of the Constitution and the laws. The Constitution rather assists the government in achieving the pre-existing purpose of political rule ... The question is

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[44] Ibid., pp. 148–9.   [45] Ibid., p. 148.   [46] Ibid., p. 149.   [47] Ibid., p. 151.
[48] Ibid., pp. 151–2.   [49] Ibid., p. 149.   [50] Ibid., p. 150.   [51] Ibid., p. 152.
[52] Grimm, 'Types of constitutions', p. 114.   [53] Ibid., p. 128.