

The Importance of a Democratic Constitution

1. The people have the right to choose their own form of government.

There are many different types of government in the world. Different countries need different forms of government to suit their particular circumstances and traditions. The people of a country therefore must choose the style that they think right for their country. Rulers have no right to impose a form of government different from the one that the people chose. Democracy means not only electing politicians but also choosing the form of government. If the people have not had the opportunity to choose their own form of government, then democracy does not exist. As point 3 will explain, the people generally codify these choices in a *constitution*.

2. The people have the right to put enduring limits on their government.

Once the people have chosen their form of government, then the rulers may not thereafter change it. By choosing the form of government, the people have the right to limit the government officials, who may not depart from the rules laid down by the people. The people typically put several kinds of limits on officials.

- First, they divide power among different parts of the government: they give the president certain powers and the judiciary other powers, and so forth. Once the people have marked out this division, the officials may not shift it. The president may not, for example, try to intrude on the domain of the judiciary by deciding court cases himself, and he may not intrude on the domain of the legislature by making laws. This division of power between different parts of the government has a technical name: *separation of powers*.
- Second, they sometimes divide powers between the central government and more local governments such as provinces. They might, for example, give the central government power over the military, and they might give local governments power over local schools. Once the people have made this division, neither the central government nor the local governments may try to change it. The local government may not, for example, try to take over the military, and the central government may not try to take over local schools. This division of power between center and periphery has technical names: some people call it *federalism*, and others call it *autonomy*.
- Third, they require that the government respect the people's individual rights. Different constitutions protect slightly different collections of individual rights, but the trend of world history has been to protect more and more rights, not fewer. Commonly, constitutions protect the individual right to religious practice, self-expression, criticism of the government and protest, political organization, non-discriminatory treatment, and fair criminal procedures. Once

the people have protected these rights, the government may not invade them except in truly exceptional circumstances spelled out by the people in the constitution itself.

- Fourth, they require that the government shall be accountable to the people through regular and free elections. Frequently, the people detail the rules governing elections in some detail: when and how often elections will occur; who may vote; who may stand for office, and so on. It is especially important to make rules providing that elections be free, fair, and transparent, or else the vote-counters—rather than the voters—will be choosing the representatives. It is also especially important to provide for multi-party democracy, or else the people will not be making a choice between real alternatives. Once the people have made these rules, government officials may not contravene them, as for example, by staying in office longer than their term, or disenfranchising certain people, or intimidating voters, or refusing to register political parties. This set of rules governing elections also has a technical name: *electoral law*.

3. Once the people have chosen a form of government and limits on the government, they have the right to entrench those rules in a constitution.

The people create and limit the government; the government is like the servant or the child of the people. In the constitution, the people give instructions to their servant, the government. A constitution must therefore be as clear and specific as possible, or else the instructions will be vague. For that reason, the constitution is typically a written document. The term *constitution* literally means *creation* or *foundation*, because in the constitution the people create and found a government, which has no legitimate power apart from the people's will expressed in the constitution. The people must therefore take certain steps to ensure that the constitution functions as a set of instructions to the government from the people.

- First, the people must play a *dominant role* in the process of drafting and adopting the constitution. Ideally, the constitution should be written by a constituent assembly elected by the people, with heavy representation of traditionally under-represented groups such as women and ethnic minorities; the people should have opportunity for input both before and after the draft is written; and the draft should be adopted only if it passes a referendum vote.
- Second, the constitution must be *entrenched*, so that the government may not freely change it. If the government may change the constitution by ordinary legislation, then the constitution will place no effective limit on the government—and the point in the constitution is to allow the people to place enduring limits on their government. Therefore, it should be difficult to amend the constitution, and any amendment should be adopted only if it passes a referendum vote, perhaps with a requirement of super-majority support.
- Third, the people must create a *constitutional enforcement mechanism* to ensure that the government pays heed to its instructions. Unless the constitution is actually enforced, it is only a paper tiger. Therefore, the people must not only create limits on their government; they must also create a mechanism or mechanisms to enforce those limits. One of the most important enforcement mechanisms is the holding of free and fair multiparty *elections*: if the people feel that their government is violating the constitution, hopefully they will vote the government out

of office. But elections are seldom sufficient by themselves. Elections occur only periodically, and in between the government might be committing large scale constitutional violations with impunity. The people might also have a limited understanding of the meaning of the constitution and/or of the facts of government wrongdoing. Therefore, it is generally thought important to create *a full-time professional watchdog* with great constitutional expertise and access to information about the government's behavior. Though technically part of the government, this body must in substance exist outside the government, so that it can scrutinize the behavior of office-holders. Ordinary people must also have access to this body so that they can challenge government wrongdoing experience in their daily lives. Typically, this body is a court, but it could also be an independent council or commission.