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**Case Study  
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# **The Constitution-Building Process in Post-Soeharto Indonesia**

Edward Schneier

## **Introduction**

Few nations celebrate their constitution days with anything like the patriotic fervor that generally accompanies celebrations of independence; but constitutions do have important symbolic and even mythic functions, often playing an important role in defining the legitimacy of regimes. “Constitutionalism,” Jon Elster argues, “stands for the rare moments in a nation’s history when deep, principled discussion transcends the logrolling and horse-trading of everyday majority politics, the object of these debates being the principles which are to constrain future majority decisions.”<sup>i</sup> With the United States, and the more recent case of South Africa standing as models, the ideal of such transcendence has much to commend it.<sup>ii</sup> Indonesia’s failure, conversely, to enjoy its constitutional “moment” presents what is probably the more typical path. Its 1945 constitution was as much a revolutionary manifesto as it was a blueprint for governance, and the failure of a 1955 constitutional convention to reach a consensus before it was dissolved in 1959 left the country with a charter of governance so loosely constructed that it could, with equal logic, support the authoritarian “guided democracy” of the Soeharto years and the more recent years of reform.

With the rapid and unanticipated fall of Suharto in 1998, Indonesia drifted into the uncharted waters of monumental change. Left with a body of authoritarian rule papered over by the quasi-democratic framework of the 1945 constitution, the forces of *reformasi*— the loose coalition of groups that tumbled the Suharto government— were without leadership, direction, or unifying ideology. Through a series of constitutional amendments, statutes, and evolving procedures, the government is slouching its way toward constitutional democracy; but has yet to provide the kind of transcendent moment called for in the Elster model. “The gap between the founding father’s stress on freedom from colonialism and the emphasis of today’s generation on democratization and decentralization,” as one of the keynote speakers at IDEA’s 2002 conference on reform put it, “has not been addressed.”<sup>iii</sup> Instead of providing a rare moment of reform, the governing elite has chosen a more incremental process that remains incomplete.

## **The Development of the Indonesian Constitution**

Walter Murphy's insistence that we not confuse a written constitution with constitutionalism, and that the written document known as *the* constitution in most countries seldom tells us all we want to know about how a government is constituted,<sup>iv</sup> applies with particular force in Indonesia. Many of the most important aspects of Indonesian government are unmentioned in the written text, and the distinctions between ordinary statutes and formal amendments are virtually impossible to delimit. In outline form, a history of the evolution of the Indonesian constitution includes a variety of legislative, executive, and judicial acts on a time line that would feature the following key events.

- April 1945: Adoption of the original constitution creating an independent Indonesia, defining the basic principles of "Pancasila," (belief in one God, national unity, humanitarianism, consultative democracy, and social justice), and empowering the upper house (MPR) of the legislature to determine the Constitution and Guidelines of State Policy.
- 1949: Round Table Agreement with the Netherlands produces a draft constitution for a federal "Republic of the United States of Indonesia."
- 1950: MPR repudiates the Round Table draft and substitutes a temporary constitution creating a unitary, parliamentary government with a largely symbolic presidency and a detailed Bill of Rights. Article 134 calls for creation of a constitutional assembly to enact a permanent charter.
- 1955: Generally fair elections are held for members of a constitutional convention, the *Konstituante*, which meets later that year, but fails repeatedly to reach final agreement.
- 1957-58: Regional rebellions and mutinies, and the surprising strength of the Communist Party in regional elections, are invoked by Sukarno to invoke martial law and introduce the concept of "guided democracy."
- 1959: Sukarno dismisses the *Konstituante* and reinstates the 1945 Constitution as an historic statement of basic principles not subject to amendment or addition.
- 1965: A violent rebellion of disputed origins against the right wing of the military precipitates a violent crackdown on the left and the banning of Marxist parties and writings
- 1966: Sukarno gives General Suharto emergency powers to restore order.
- 1967: an appointed emergency body— the Provisional MPR— provided for in the 1945

- constitution strips Sukarno of his powers and transfers them to Suharto.
- 1968: the MPR makes Suharto's presidency official.
  - 1976: All political parties, except three officially recognized by the government, are banned.
  - 1998: Soeharto resigns and is replaced by Vice President B. J. Habibie who agrees to call new, multi-party elections in 1999 rather than serve the full remaining years of Soeharto's term.
  - 1999: The MPR creates an independent election commission; limits the president's use of emergency powers, makes it possible to amend the 1945 constitution, and promises to ratify and endorse all UN human rights conventions. First Amendment, passed later in the year, gives the DPR "authority to establish laws," introduces annual sessions of the MPR, and creates an ad hoc committee on constitutional change (Pantita AdHoc I or PAH I) .
  - 1999: The DPR drafts a new election law. Elections for members of the DPR are generally regarded as relatively fair and free. Its members, combined with the military and functional group representatives in the MPR, elect Ibriham Wahid (generally known as Gus Dur) president and Megawatti Sukarnoputri as vice president.
  - 1999: Statute law enhances powers of local governments and transfers significant powers to them. Central Bank Law creates a financial services authority to regulate Indonesia's shaky banks, and reinforces the Bank of Indonesia's control over monetary policy.
  - 2000: The MPR's constitution committee (PAH I) holds a series of public meetings and agrees to explore alternatives in twenty-four areas. Excluded from consideration are: establishment of a parliamentary state, federalism, or rejection of the Pancasila. Later in the year, the MPR passes the Second Amendment formalizing the role of the DPR in approving the budget, overseeing the executive, and legislating. The DPR is made an entirely elective body; the principle of regional autonomy is guaranteed; and most of the Universal Declaration on Human Rights is incorporated into the constitution.
  - 2001: In an important display of the changing balance of power, the MPR replaces President Wahid with his Vice President, Megawati Sukarnoputri. Despite questions

- about whether the MPR was legitimately in session, the courts refuse to intervene, and the military refuses to heed Gus Dur's pleas for intervention. The Third Amendment bans impeachment on policy grounds, but strengthens the DPR to create a system of checks and balances with an independent election commission, state audit board, and judicial commission. Authorizes creation of a constitutional court.
- 2002: Fourth Amendment consists largely of technical provisions relating to separation of powers. Removes military, police, and functional group representatives from the legislature; approves two-round system of popular election for the president; and recommends a 30% quota for women on party lists. The proposed "Jakarta Charter," requiring adherents of Islam to carry out shariah law is effectively tabled.
  - 2002 : DPR reinforces the split between the police and the army and transfers control over the police from the Minister of Defense. The law calls for "respecting human rights," but emphasizes internal security.
  - 2003: DPR statutes create Constitutional Court, reform the 1925 budget procedures, and further strengthen the Bank of Indonesia. Detailed laws on political parties (including a 30% quota for women), and presidential elections completed. MPR authorizes appointment of Constitutional Commission to integrate new amendments and statutes.
  - 2004: Elections for DPR, the newly created Regional Assembly (DPRD), and two rounds of presidential elections receive generally positive evaluations.

### **The Background to Reform**

As the above listing shows, Indonesia's progress toward constitutional democracy has been disjointed, uneven, and episodic. The five-year struggle to establish itself as an independent nation in 1950 imposed a *de facto* tradition of an executive-centered, quasi-military regime operating largely under emergency powers in the context of a *de jure* parliamentary democracy. The 1945 Constitution, though it theoretically created a mixed presidential system that strongly favored the two-house parliament, lacked either the checks and balances of a true separation of powers system or the tradition of government responsibility that performs some of the same functions in parliamentary

systems. Its failure to place meaningful limits on the president's emergency powers, and to leave a number of key institutional issues unresolved, left it open to executive usurpation, particularly in times of crisis. Rather than give the legislature its own defined constituency, for example, Article 2 provided for an unspecified number of additional representatives of "groups prescribed by statute." Flawed as it was, and as frequently as it was superseded by declarations of martial law, emergency situations, and other evasions concocted by the Sukarno and Suharto regimes, it managed constantly to maintain the facade— and sometimes the fleeting substance— of constitutional democracy.

The 1945 Constitution was the first of what was to become a long series of post-colonial charters that represented both reflections of and reactions to the colonial heritage. Dutch control over Indonesia never fully extended throughout the 17,000 plus islands of the archipelago. Focused largely on commerce, the Dutch settled primarily on a handful of islands beginning with those useful in the spice trade, then high-volume plantation crops, and later petroleum and other resources. Outside of Java, Sumatra, and a scattering of other islands, control was loose at best. Working through both a colonial hierarchy and a network of cooperative local regimes, "the administrative structure of the Netherlands Indies was a baroque monument to complexity" that did give some of the Indonesians experience in governing themselves. "In managing the affairs of their own subjects, the rulers of most of these states enjoyed a high degree of autonomy so long as they did not attract the attention of the colonial authorities by hindering European economic interests, dallying with foreign powers, or unduly afflicting their own people."<sup>v</sup> The Japanese occupation during World War II, and the occupation of the Netherlands by Germany, both strengthened the independence movement in Indonesia and weakened Dutch ability to reimpose colonial rule.

The defeat of the Japanese navy in the Leyte Gulf in 1944 made it clear to the Japanese and Indonesians alike that military control could no longer be sustained; and the February 1945 fall of the Philippines convinced even the most reluctant of the occupying forces that the time had come to grant some form of independence to the islands. An Investigating Committee for Preparatory Work for Indonesian Independence, convened by the Japanese military, drafted a brief document setting forth the five basic principles known as "Pancasila;" established a mixed-presidential, unitary form of government; and declared the creation of an Indonesian state encompassing all of the islands previously controlled by the Dutch, plus the formerly British provinces of north Kalimantan,

Singapore and Malaysia. The Japanese refused to accept claims on the former British colonies, and persuaded the Indonesians to remove both them and the so-called “Jakarta Charter” which would have allowed the adoption of Moslem Law. But having reached this agreement, it was not until after the unconditional surrender of the Japanese on April 15 that Sukarno and Mohammad Hatta, the acknowledged leaders of the Indonesian independence movement, publicly proclaimed the establishment of a new Republic of Indonesia.

In the chaotic years following this proclamation, the incipient government faced, at various times, British and Australian military forces seeking to overthrow remaining Japanese influences and what they saw as their Indonesian collaborators; remnants of the Japanese military; a reviving Dutch military presence; and internal bids for autonomy and control from various regional movements, a strong Communist insurgency, and conservative Muslims. When finally in 1949, the United Nations pulled the plug on Dutch hopes of re-colonization, the peace treaty created a federated United States of Indonesia that gave essential sovereignty to the Sukarno-Hatta government, but left the Dutch and others with significant provincial influences. A year later, the provisional constitution was repudiated, and a new provisional constitution created a unitary state and parliamentary democracy to be governed, until elections could be held, by the existing (largely appointed) parliament and president.<sup>vi</sup> The 1950 constitution, despite the fact that it was not fully implemented until 1955, and was drafted by a small handful of insiders, represented the high-water of democratization and the triumph— particularly in its defense of human rights— of the reform wing of the nationalist movement and its leader Vice President Hatta. It was not until 1953 that the government announced plans for elections, and 1955 before they were actually held. And the tenure of the freely-elected, but badly divided parliament proved short. As Adam Schwarz summarizes the incipient crisis, “The failure of the 1955 election to interject more predictability into the political process and the gradual deterioration of the economy had increased dissatisfaction with the Indonesian parliament. Meanwhile, constant regional rumblings had persuaded many military leaders that the nation’s civilian leadership was unable to hold the country together.”<sup>vii</sup> With financial and covert military help from the U. S. Central Intelligence Agency, a series of regional revolts— including a 1958 attempt by units of the army to set up a rebel government in West Sumatra— led Soekarno to disband the *Konstituante*, impose martial law, and restore the 1945 Constitution.<sup>viii</sup> Hatta resigned.

The Dutch legacy has remained a potent force in both the formal constitution of Indonesia and in a set of cultural legacies and collective memories that continue to color the ways in which many Indonesians think about governance. In direct form, much of modern Indonesia's criminal and civil codes have been drawn from those established by the Dutch. While many of these old laws have been supplemented, supplanted, and refined by a series of court interpretations and legislative acts (including a new criminal code nearing completion), the Indonesian legal system continues to be spiced by a lingering flavor of Dutch law. Until 2002, the national budget was still structured in accordance with a 1925 Dutch code. Second, the large and complicated bureaucracy—created to sustain Dutch control, co-opt an indigenous elite, develop and economic and political infrastructure, and extract profits—remains remarkably intact. The corrupt practices built into colonial bureaucracy have been expanded and refined. Finally, the geographic boundaries of modern Indonesia are essentially those established through the European wars that defined the Dutch East Indies.

More subtly, the founders of the Indonesian Republic, many of them trained in Holland, created a regime based on a combination electoral democracy and the more nuanced Javanese preference for consensus. The 1945 Constitution, crafted in the face of the Dutch attempt to retain control, gave extraordinary emergency powers to president Sukarno; but formally lodged sovereignty in a nested, two house legislature consisting of the People's Representative Council (Dewan Perwakilan Rakyat, or DPR), and the larger People's Consultative Assembly (Majelis Permusyawaratan Rakyat, or MPR) which included all members of the DPR in a larger nest of members including representatives of the military and other "functional groups" such as teachers, lawyers, and members of the military. Until the Dutch surrender, power was, per force, centralized in the military and the office of the President. Sukarno was slow to relinquish control, and the first "elected" assemblies were truly representative in only a symbolic sense. The 1950 Constitution, however, made the DPR a legislature in very much the same sense as the Dutch parliament, and the constitutional convention elected in 1955 made Indonesia one of the first post-colonial nations to engage in an autonomous constitution-building process. The divided convention, economic problems, international Cold War pressures, regional rebellions, and splits in the legislature that combined in 1959 to allow Sukarno to dismiss the convention and re-institute central control should not obscure how far—in relative terms—Indonesia had moved along the path of democratization in



1955. Even as the Sukarno regime packed the legislature with its own supporters, moreover, it continued to meet, and the later Suharto takeover took place entirely within the legal context of the 1945 constitution.

As the Suharto regime evolved, the system of guided democracy “balanced” executive power with a DPR and MPR comprised of “elected” DPR members, and those from “functional groups,” most importantly the military. Central control was based upon: (a) the abolition of all parties except those officially sanctioned by the government; (b) the ability of Suharto largely to hand-pick the representatives of “functional groups;” and (c) a substantial military presence in the legislature and other parts of the government. Under the principle of *dwi fungsi* (two functions), the military had a socio-political as well as military role in protecting the state, as part of which it was granted upwards of fifteen percent of the seats in the MPR. The military’s claim on a special role in Indonesian society had its roots in the four year struggle against Dutch and other post-World War II challenges to the Republic.<sup>ix</sup> Where Sukarno had retained power largely by triangulating between the military the well-organized Communist Party (PKI), Suharto, having literally eliminated the PKI, used his insider understanding of the armed forces more tightly to consolidate his power.

In doing this, Suharto gradually became more distinct from, and more powerful than the military. Accordingly, he perpetuated its standing in order to enforce social quiescence. At the same time, he developed new strategies by which effectively to manage the armed forces.

In brief, he rewarded loyal officers with promotions, business licenses, housing subsidies, loans, medical programs, educational opportunities, and gifts. But he also cultivated their factional rivalries, ones that involved officers from Java and those from the Outer Islands, “financial” officers and more professional ones, different generations with different training experiences, varying attitudes toward nationalism and Islam, and conflicting estimations of democracy’s worth.<sup>x</sup>

He also abolished the traditional *adat* system of local governments, further expanding the large central bureaucracy and supplementing it with a parallel police/military hierarchy stretching into virtually every town and village. Throughout the Suharto years, the legislature met, debated government bills, and in some cases actually forced their modification or withdrawal. By and large, however, it was so compliant a body that Suharto’s abrupt resignation in May 1998 left many wondering who or what, other than the military, might fill the void. The MPR played an important

role in legitimizing the transfer of power to vice president Habibie; an even more important role in setting up the 1999 elections and forcing Habibie to resign in favor of Abdurrahman Wahid, and finally in effectively impeaching Wahid in favor of his Vice President Megawatti Sukarnoputri. It has also been a major force in more recent constitutional developments; but although the 1945 constitution made it the supreme representative of the Indonesian people, the fact that (in 1997) 575 of its 1000 members were appointed rather than elected prevented it from ever really being taken seriously as a representative body. Until it changed its rules in response to the constitutional crises of succession in 1998 and 1999, moreover, the MPR was generally limited to meeting but once every five years.

### **The Road to Reformasi**

From 1945 through 1998, Indonesia's "progress" toward constitutional democracy could best be described through Lenin's famous phrase, "one step forward, two steps back." Since the fall of Soeharto, however, Indonesia's progress toward constitutional democracy has been both steady and strong. By one standard measure, Indonesian democracy has been consolidated in the sense that it has gone through two—three, if you count Gus Dur's impeachment—peaceful, democratic changes of regime. It has also conducted two legislative and one popular presidential election with generally good marks; and is in the process (in 2005) of electing local and provincial governments. The process of amending the constitution, while it did not satisfy reformist demands for a comprehensive, open convention, was, as one very close observer of Indonesian politics has put it, "not secret: plenary meetings were open to the press and public throughout, and many meetings for socialization or consultation took place. The entire amendment process appears to have been conducted in line with the Constitution, MPR Standing Orders, and other legal instruments in force."<sup>xi</sup> It remains to be seen whether this collage of pasted-together laws and amendments will coalesce into a portrait of a working constitutional democracy. A full assessment, however highly it graded formal institutional advances would have to acknowledge the substantial gap that continues to exist between constitutional structures and political realities. From the perspective of IDEA's fourteen-point check list of questions to be asked in assessing the state of democracy, the answers for Indonesia are, in almost every case, shrouded in ambiguity: it is, at best, democracy with an adjective, or in Sklar's phrase, "democracy in parts."<sup>xii</sup> The gap begins to appear at the most basic level of defining the

country itself.

At one level, Sukarno and Suharto did a remarkable job of binding a diverse archipelago into a nation with a single language and common identity. The nation's continuing rejection of calls for a system of Islamic law both reflect the basic moderation of most Indonesian Muslims,<sup>xiii</sup> and offers the hope that Indonesia will not have to balance the tasks of nation-building and democratization. At another level, countries held together by authoritarian regimes have generally found their imposed unities difficult to sustain. In Indonesia, widely publicized terrorist acts, scattered clashes between Christians and Moslems, and active separatist movements in Papua and Aceh are seen by some observers as either prompting a military takeover or "driving Indonesia towards Islamic statehood and alignment with an anti-Western, anti-capitalist ideology."<sup>xiv</sup> If the latter scenario seems far-fetched (and not directly related to the question of democratization), Western perceptions of such a threat could very well lead to a much expanded military role that would threaten the recent process of constitutional development, much as covert U. S. operations in the 1950s helped hasten the demise of democracy. The government's efforts to negotiate a settlement in Aceh and to offer special status to Papua within the framework of decentralization seem to be working, and there are grounds for hope that the revival of a genuine civic culture, particularly at the local level, can help stem the tide of ethnic violence; but long-simmering ethnic and regional conflicts, compounded by disparities in resources and a Java-centric economy will continue to produce tension and unrest.

The Suharto regime systematically destroyed virtually all authentic civil organizations, most importantly the local *adat* network of rural community governance. As these organizations are slowly revived, and as national networks of labor, industry, gender, and agricultural interests coalesce, a more pluralist culture will emerge. The two largest mass organizations in Indonesia, Muhammadiyah and Nahdlatul Ulama, moderate Muslim social welfare organizations, walked a fine line between silence and activism during the Suharto years. Although they have yet to play as significant a political role as their numbers might suggest, their support for *reformasi* and opposition to the Jakarta Charter have had a significant impact. With a combined membership of more than fifty million people, Muhammadiyah and NU are virtually the only independent organizations with the historical and institutional roots to form the core of Indonesia's nascent civil society. "Even under the New Order," as Hafner puts it, "Muslims were better able than others to resist state controls and

nurture alternative ideas of the public good.”<sup>xv</sup> But these are, for better or worse, religious not political organizations: in the process of reform no one has yet articulated an Islamic position on proportional representation, bicameralism, or direct election of the president. The significance of groups such as Muhammadiyah and NU in performing the social and political roles of civil society will increasingly impact the development of a democratic state; but they have not, by and large, been a force giving the constitution-building process a participatory base.

Far smaller, but also having been able to survive the New Order, are, interestingly, a variety of womens’ groups. This process began in the 1980s, when international womens’ groups, with the help of the United Nations, pressured countries throughout the world to establish organizations of independent women. Although a large, state-sponsored organization of civil servants’ wives was the already in existence, the Soeharto regime bowed to these pressures and allowed more independent women to form Non-Governmental Organizations that sometimes received international funding and support. With other independent organizations— student groups in particular— banned by the regime, the women’s movement became a key group in the *reformasi* coalition, and it remains one of the best organized collective of NGOs in Indonesia.<sup>xvi</sup> Few sectors of the NGO community have been as visible or active in the constitution-building process, a testimony less to the strength of women than to the weakness of other groups. The MPR’s willingness to seek out the views of citizen groups, while it has given a gloss of participatory concern to the process and produced some useful testimony, has thus failed to tap very deeply into civil society. Many NGOs are paper organizations funded largely by outside donors which sometimes limit rather than expand their ability and interest in representing large numbers of Indonesians.

In 1998, Chushnul Mar’iyah argued that, “The culture and process of the current formal political institutions— especially political parties— are major barriers to women’s equal participation in institutional politics.”<sup>xvii</sup> She pointed out that there had never been a female governor and only one *bupati* at the regional level,<sup>xviii</sup> and fewer than ten per cent of formal leadership positions overall. In the 1999 elections, four women were named as *bupatis* and three as city mayors, though there are still no female governors. The situation has improved at the national level where the DPR is at fourteen per cent and the new DPD more than twenty. Largely because their women’s groups provided a ready talent pool, only the Muslim party’s met the (unenforced)

constitutional quota of thirty per cent woman candidates, and most parties placed women in lower ballot positions than men.<sup>xix</sup> Women are also important in Indonesia's fledgling human rights movement.

Here again, most of the visible signs of constitutional democracy are present: the press is free enough to draw constant complaints from politicians and business leaders; the mass murders and arrests that characterized the military suppression of the revolt in East Timor have been at best faintly echoed in Aceh and Papua; arbitrary arrests are far less common. But the unpunished assassinations of the leader of the Papuan Independence Movement in 2001 and of the nation's leading Human Rights activist in 2005 give one pause. Whatever their commitments to civil liberties, post-Soeharto governments have been unable or unwilling to confront either the military or the police on questions of serious abuse, and the failure to repeal the 1960s ban on the PKI (Indonesian Communist Party) or to investigate its extinction raises further questions on the meaning of the constitution's words.<sup>xx</sup> "Since most of the communists were killed in the 1965-68 period, this provision will effect few people, but in the 1960s a good many people were accused without being communists, and this provision raises the ugly prospect of a return to such practices."<sup>xxi</sup>

Civil control over the military (TNI) is by no means assured, even under the presidency of former general Yudhoyono. The military's haste in trying to get foreign relief workers out of Aceh, and in increasing troop levels there just as the peace process appears to be going well, raises suspicions. The Indonesian TNI, it should be pointed out, is hardly ordinary. Aside from occasional border rows with Singapore and Malaysia, it has no real international role. It *is* organized as a virtual parallel, shadow structure of the civil government, with barracks in every regency and its own sources of revenue. Its business ventures are estimated to cover anywhere from sixty to seventy-five percent of its revenues, though there are rumors that they are willing to give these up. In addition to these non-transparent, extra-budgetary revenues, the military has retained much of its New Order immunity to prosecution. Only one low-level officer, for example, has been convicted for a series of well-documented atrocities in East Timor. A number of formal steps have been taken to reduce the military's political role by:

- (1) liquidating socio-political offices within its organization;
- (2) introducing limited doctrinal and curriculum changes;
- (3) banning its members from taking up civilian jobs while still in service;
- (4) separating the police from the military;
- (5) severing its ties with Golkar [a

political party, once the official party of civil servants, the military and “functional groups”]; (6) exercising a relatively neutral stance in the 1999 general elections [and even more neutral in 2004]; (7) accepting the reduction of reserved seats for the military both in national and local parliaments.<sup>xxii</sup>

While all this seems clearly to reflect a retreat from *dwifungsi*, and the military’s role in domestic affairs, TNI remains the rogue elephant in the environment of Indonesian politics. Whether this is more a function of military strength or “civilian incompetence and inexperience in defense-related issues... until a true multi-party democratic election system is established— and civilians acquire sufficient levels of knowledge on defense-related matters— the military’s role in politics will remain an important factor in Indonesian politics.”<sup>xxiii</sup>

Perhaps the clearest evidence of failure in Indonesia’s process of democratization is found in the area of law and justice. Despite an overhaul of the court system, the expansion of appellate rights, and the founding of a constitutional court, justice in Indonesia is neither swift nor predictable. The Constitutional Court has been predictably cautious in defining a role which is not very clearly defined, but it has shown itself capable of taking strong positions at least on questions of election law. In general, lawyers, prosecutors, and police, to the contrary, inspire little confidence. A car accident in Jakarta is almost never resolved with a call to the police, rather it is negotiated on the spot. In part this reflects a culture that eschews confrontation— even in court, the emphasis is on working things out— but it also reflects a profound mistrust of the legal system. Police corruption is routinized (there are, for example, set schedules of bribes for such things as renewing a driver’s license) *and* unpredictable. In a largely peaceful society, police (and military) violence is commonplace. Laws, including capital punishment, for those who are not wealthy or connected, can be harsh. In civil cases, a confusing array of Dutch and newer amendments to the code have yet to yield a uniform set of laws: cases are more or less negotiated out, and almost always appealed in the hopes that a second negotiating judge will see things differently. There is a growing supply of law books, and legal education is improving; but there is little demand for good legal research since cases tend to be decided on an ad hoc basis. While *reformasi* has produced more formal and informal scrutiny of the justice system, little reform has taken effect. Civil rights, in both procedural and substantive terms, remain insecure, particularly in areas where ethnic or social conflict gives the military a continuing role.

If the legal system epitomizes the failure of the constitution building process, the electoral process represents its success. The 1999 elections were, as in many states emerging from long periods of authoritarian rule, dominated in many areas by the old order, sometimes confusing, and seldom inspiring; but they were remarkably well run in terms both of providing decent ballot access across a huge, often ill-connected country, and in producing an accurate count. People who were eligible and interested could vote (and most did), without intimidation. The record was even better in 2004. On election day and in the months leading up to it, 541 international observers, covering all of Indonesia's 32 provinces monitored the legislative elections. More importantly, there were more than 400,000 domestic monitors covering 585,219 voting stations accommodating nearly 150 million eligible voters. Except in parts of Aceh province, there were no reports of observers being obstructed or denied access, and the process, by almost all accounts, was relatively transparent, fair, and honest. "Polling day," as described by an Australian team, "was peaceful, calm, friendly and festive and very much a community based event." In many towns and urban precincts, large crowds turned out to observe and celebrate the vote count. Fraud was reported by about four per cent of the observers, mostly in the same few regencies, and just two per cent of the polling places were rated poorly administered. In many rural areas in particular the reported "irregularities," were designed to accommodate local customs and facilitate access to a complex ballot, sometimes, it seems, at the expense of confidentiality. There is considerable concern that the 2005 local elections will suffer from under-funding and the absence of the kind of sustained attention given the process in 2004; but it seems clear that the election commission has demonstrated its ability to move far beyond 1999 in organizing remarkably smooth-running and generally honest election.<sup>xxiv</sup>

What these elections mean is another question. Indonesia presents the academically tantalizing case of disciplined parties without programs. An Asia Foundation Survey in 2003 found that three in four voters could not name a single difference between any of the parties, and most listed were vague. This did not mean, however, that voters were casting their votes for individual candidates: only two percent could name their representative in the DPR or had been contacted by him or her.<sup>xxv</sup> Whatever the glue of cohesion— patronage, payoffs, or networks of loyalty— ideology seems at best a minor factor. What they can do is enforce discipline on their members, and control careers. The downside of this system in terms of giving voters a real choice, in opening the process

of recruitment, in mobilizing a membership base, is substantial. In what has evolved into a presidential system it also cuts two ways in the process of governing. As Ellis points out, “Strong party control has two forms. It makes it possible for a president to build a legislative majority on a reasonably consistent basis, and not to have to rely on issue-by-issue cow-trading.... But it restricts leadership to those who came up with the party system.”<sup>xxvi</sup>

Party discipline and the newness of the separation of powers system make it impossible to evaluate the effectiveness of the legislature. That there has been a dramatic shift in power from the executive-dominated system of the New Order to the real new order of democracy is manifest in our time-line of constitutional change which shows every post-Soeharto change as legislative in origin. Gus Dur’s oddly rambling and unfocussed presidency, and the highly passive style of Megawatti, leave us a poor empirical base for deciding just what kind of balance of power will emerge, or what checks and balances will work. The machinery for effective and accountable government is in place, and it looks good. It remains to be seen what happens when they turn on the switch.

Even greater uncertainties prevail in evaluating sub-national tiers of the government where the first provincial and regency elections are now being held. Despite five years of experience, the experiment with decentralization has yet to produce the kinds of concrete results that would confirm the most fervent arguments or either its supporters or detractors. More than 460 regional governments have now been formed, and at least two and a half million civil servants transferred to them.<sup>xxvii</sup> As banal as it sounds, decentralization has worked better in some places than others, and the overall process of defining the boundaries between core and periphery have yet to be completed. More than at the national level,

In the case of post-Soeharto Indonesia, it is important to recognize that the shaping of new institutional frameworks has largely been the purview of those who were at least partially nurtured and incubated under the New Order.... [T]hese are interests that have been able to secure their position via new and shifting alliances; they have been able to essentially reinvent themselves within Indonesia’s new democracy, and indeed to appropriate it. New political players who flooded into the system as it opened have had little choice but to operate within the power relations and predatory processes already in place.<sup>xxviii</sup>

As government has been decentralized, so has corruption; and, in the final analysis, nothing in the long run may prove more subversive of the constitution building process in Indonesia than the



pervasiveness of what is commonly called KKN (Indonesian initials for Corruption, Collusion, and Nepotism).

Ever since Transparency International began its ranking system, Indonesia has ranked among the world's ten most corrupt. It is currently fourth. KKN has roots going deeply into a culture of gift-giving, the history of colonial administration, the unusual greed of the Soeharto family, and the very low pay levels of civil servants. A 2000 World Bank study found enormous gaps between the salaries of civil servants and their private sector counterparts, with the gap increasing with rank. Actual income, however, was found to have little to do with performance and often exceeded private sector equivalents through kickbacks, phony projects, rank inflation, bribes, and so on.<sup>xxix</sup> President Yudhoyono has promised to reduce the size of the civil service, and to implement the civil service reform and anti-corruption laws passed in 2000 (but largely ignored by President Sukarnoputri). Salary increases in 2000 and 2004, combined with an operating State Audit Agency and effective local governments may help; but there is little doubt that a pervasive system of KKN is a major impediment to the rule of law and culture of transparency that constitution building requires.

### **The Balance of Forces**

Suharto's abrupt departure in 1997 left the entire structure of New Order people and positions essentially in tact. The job of crafting the amendments and statutes that form the core of the constitution building process has been largely in the hands of many of the same people who served in prominent positions during the New Order. Almost all transitions to democracy involve a dialogue between the forces of change and some remnants of the old order, of an existing elite structure that knows it must yield some of its control over the process of governing in order to preserve some share of its privileges. The depth and breadth of the *reformasi* movement in 1997-98 surprised Soeharto and almost everyone else; yet it had almost no organizational base: the students demonstrated, found sufficient allies to force Soeharto's resignation, and then, basically, went back to their classrooms. The job of creating a true new order was left almost entirely in the hands of the very people who had formed the core of the old: with only its head cut off, the body of the Soeharto regime stumbled on.

The significant changes we have described can be explained in terms of four inter-related

factors. First, it should be acknowledged that many members of Indonesia's economic, military, and political elites— though relatively silent in the face of New Order repression— have been pushing reform for a long time. A new generation of military officers long wanted to get out of the economic and political game and focus on the job of being a professional soldiers. Modern business leaders were well aware of the ways in which the over-reaching of the Soehartos was stifling development. And a rising middle class of academics, professionals, clergy, and business people were seeking a stronger voice in shaping public policies. Second, the surprising strength of the reform movement served as a true wake-up call to the elite. Demonstrations in Indonesia have traditionally had a ritual character: busloads of police and demonstrators arrive at the appointed time, wait for the press to set up its cameras, and then begin shouting and pushing each other around. Demonstrators are “paid down,” organized and compensated by someone wanting to make a point; they are stopped by “paying up” to the organizers either through some concession to their demands or with actual cash. What the administration found in 1997 was that there was no one to pay up to, that the demonstrations throughout the country were spontaneous and real. As in the Philippines, a loose, largely internet connected network of political novices was forming a genuine social movement.<sup>xxx</sup>

Third, there was and is an important sector of Indonesia's governing elite that owed their status and formal position to their ability to go along with whatever was happening. Most observers agree that the amendments pushed through the MPR's PAH I in 2001 and 2002 were considerably more democracy-friendly than expected. “It is worth pondering the view of Jakob Tobing, chair of PAH I, that ‘most people did not realize what was happening until it was too late.’ While the implications of the amendments were understood by the constitutional reformers within PAH I, they were not realized widely until the major principles of change were already agreed upon and the Fourth Amendment already under discussion.”<sup>xxxii</sup> Atilla Agh coined the term “legislative tourists” to describe a set of East European legislators who essentially drift in and out of the system on a more or less honorific basis with little interest in the substance of policy. The presence of such legislative tourists in Indonesia substantially narrowed the range of key actors in ways very similar to those which allowed Mohammad Hatta and other reformers to shape a similar process in 1950. Bored with, and perhaps not really understanding the importance of dry procedural issues, they left it to the reformers to set the new rules of the game.

Finally, and I don't think this point can be over-emphasized, the construction of new rules in the twenty-first century takes place in the context of what Heinz Klug has called "the globalization of the rule of law." Klug, drawing largely on the case of South Africa, describes this as a dialectical interaction between a global text and "the local struggles and processes through which new rules are created and applied."<sup>xxxiii</sup> In emerging democracies, the influence of what DiPalma calls "demonstration effects" are of central importance.<sup>xxxiii</sup> As long ago as 1789, the authors of the *Federalist Papers* in the United States cited numerous examples from their own states and around the world to explain their constitutional decisions. In the process of designing its new government, Indonesians themselves made frequent references to other systems, or had them brought to their attention by the numerous international advocacy groups that offer advice on democratization. However much the U. S. founders actually used the lessons learned from their comparative and historical studies, the availability of sophistication of such analysis is of a very different order today, and their impact is manifest.

During its 2001-2003 deliberations on the restructuring of the Indonesian legislature, the MPR's commission on constitutional amendments, assisted by grants from the United Nations Development Program (UNDP) and IDEA, was able to bring a number of expert consultants to Jakarta.<sup>xxxiv</sup> A similar conference, sponsored by the Ford Foundation in 1999, another by the Jakarta-based Habibe foundation, and a number of smaller meetings, often involving consultants from the fast-growing democracy assistance "industry" were also held. The idea of enhancing the representation of women and other minorities by using a four-member district, single, non-transferable vote system for electing the DPRD emerged from these sessions. A number of more detailed, technical questions on bicameralism, reflecting the experiences of existing bicameral systems throughout the world were also raised for the first time at these meetings and found their way into the final product. As the new parliamentary institutions take shape, moreover, consultants from around the world continue to play a role: the Ford Foundation, for example, funds a staff advisor the Budget Committee of the DPR; the Jakarta bureau of IDEA has a branch office next to that of the Speaker of the DPRD; the National Democracy Institute (NDI) is providing similar support mechanisms for the eight regional legislatures in the Bird's Head region of Papua; and an Austrian development team is working with the courts. In addition, active democratization projects

in Indonesia are currently being supported by the foreign assistance foundations of both major German political parties; the Canadian International Development Agency; the Asia Foundation; the World Bank; the U.S. Agency for International Development's Democracy Reform Project and the State Department's Human Rights and Democracy Program; Australia's Community Development and Civil Society Strengthening Scheme, and so on.

The direct, measurable impact of these efforts is relatively trivial,<sup>xxxv</sup> but they are enhanced by the fact that from a local perspective they are "free." This can be very important in new democracies where the idea of spending money on the legislature may be a hard sell politically, or (unlike Indonesia) in very small countries or those severely short of such resources (East Timor, for example) where such efforts cannot be sustained internally. Like the "free lunch" in a tavern, the suspicion that it exists more to sell beer than end hunger limits the impact of direct assistance. But if the fast-growing deployment of democracy assistance professionals has had only a marginal impact on new constitutions, such deployment has the far more significant "effect of shaping the local imagination, whether posed as the only alternative or as a weight against the local alternatives."<sup>xxxvi</sup>

Whether resented or welcomed, the on-site resource people, or so it seems in Indonesia, have a sort of "Hawthorne effect" that by their very presence makes the existing work force more professional.<sup>xxxvii</sup> The crucial dimension of this kind of international influence lies in the capacity, willingness, and ability of local elites to explore this growing world of comparative insight. The direct exposure of key leaders to the workings of more mature world parliaments, courts, and bureaucracies is now commonplace; and whatever lessons they may draw from such observations tend to be reinforced at the meetings of groups like the International Parliamentary Union and the Association of Asian Legislators. Further reinforcing these internationalizing tendencies are the changing expectations of actors on the periphery of the legislature—journalists, lobbyists, local government officials—whose own exposure to other systems helps shape the environment within which the legislature operates. Legislators in Indonesia, who might not themselves have looked to insert local projects into the budget, who might not have intervened in administrative decisions, and so on, are being pushed into those roles by outsiders. It is striking in Indonesia how much the media's portrayal of the legislature is increasingly resembling counterpart portrayals in other countries, and how much the behavior of Indonesian MPs is gravitating toward more universal

standards. Formal legislative hearings, relatively rare in the DPR when I wrote about legislative oversight in Indonesia in 2002,<sup>xxxviii</sup> are now more common, and it striking how much more they are acquiring the look and feel of hearings in older legislatures. The Indonesian press has become far more willing (and able) openly to examine and criticize those in power, and in doing so has increasingly used yardsticks of behavior that, while by no means “un-Indonesian,” are, in the context of recent history, “untraditional.”

In addition to having a newly-independent media, a key distinction between pre- and post-authoritarian societies is found in the development of what can loosely be called “civil society.” In broad strokes, “The disorganization of civil society, the co-option of Indonesia’s capitalist and middle classes into a system of predatory politics, and the violent destruction of working class politics, have prohibited the emergence of coherent liberal and social democratic coalitions and forces from the ashes of centralised authoritarian rule.”<sup>xxxix</sup> By-and-large, Robison and Hadiz are right in arguing that “what is taking place in Indonesia... is the reorganization of the power relations incubated within the Soeharto regime, rather than their fundamental transformation.”<sup>xl</sup> But there is a dynamic by which a legislature’s growing ability to make marginal changes in policy emboldens its members and outside groups to seek incrementally larger inputs. There are sectors of the Indonesian elite that no longer feel it sufficient to work through the backdoor, and that the manifest institutions of policy-making are considered worth dealing with. And a legislator who has been overtly “lobbied,” as opposed to (or at the same time as) being bribed, begins slowly to his or her job as a legislator more seriously. The nascent lobbying community is, to be sure, heavily skewed toward the corporate side (though it is well-nigh a universal phenomenon that the “heavenly chorus” of group theorist’s heaven “sings with an upper class bias”),<sup>xli</sup> and that much of it is extra-national. But the NGO community is growing in Indonesia, especially in Jakarta. Much of this growth is funded and organized by many of the same advocacy groups mentioned above, but the women’s groups that were so evident during the constitutional amendment process continue to be a force at the national level. How much they, and other advocacy groups, can extend their roots beyond Jakarta and the funding support of their exogenous sponsors remains an open question. That they are part of the operating environment within which the government operates is not.

### **Direct Pressures for Change**

The deployment of global styles and norms gradually begins to limit the options available to public officials. Beyond socialization effects are more the tangible sanctions of global marginalization. As developed countries have begun to shift foreign aid resources to democratization, so can they be expected to allocate future resources according to performance. To the extent that organizations like the World Bank become increasingly serious in using democratization efforts as criteria in evaluating programs, so will the formal institutions of democracy begin to work democratically. At the same time, the commitments of the international community are not clear. While the infrastructure of democracy assistance is more substantial, and the end of the Cold War has blunted some of the stronger pathologies of support for authoritarian practices, economic and foreign policy objectives will continue sometimes to trump democratization in the day-to-day conduct of governments. To give a recent example, concerns about civil liberties and due process in Indonesia became irrelevant to U.S. officials when it came to finding someone to punish for the Bali bombings.<sup>xlii</sup> There is, in other words, another side of the globalization of the rule of law that needs also to be taken into account.

A decade ago, the Indonesian military's manifest abuses of power— particularly in East Timor— led the U. S. Congress, in the so-called Leahy amendment, to cancel military assistance and training until there was reform. One of the first acts of the post-Suharto government, separating the police from the military, came partly in response to Leahy. The effectiveness of such external sanctions and threats are questionable and subject to numerous interpretations; but clearly are a factor in the policies of aid recipient countries and those (like South Africa under apartheid) subject to trade sanctions. Equally important influences on developing democracies come from the private sector. Efforts to toughen environmental laws, increase wages, strengthen unions, and so on have and will encounter both direct resistance from major multi-national corporations and even more important implicit threats. Every nickel of wage or benefit increases, policy-makers are constantly reminded, increases the likelihood of moving the factory and its jobs to another country. In Indonesia, where doing business has long been associated with the uncertainties that derive from widespread corruption, multi-national corporations are deeply involved in still another sense. While there is no doubt that most companies would prefer not to pay bribes, and are sincere in their support

of efforts to curb corruption, it is not so evident that those already operating in Indonesia are all that anxious to trade their purchased positions for the uncertainties of a free market. “Western investors,” as Robison and Hadiz put it, “were happy to invest in what they knew to be highly corrupt and poorly regulated markets... free of the demands of organised labor, social welfare lobbies, environmental protection and progressive taxation.”<sup>xliii</sup> The fall of Suharto simply spread the action: “No longer does Indonesia have one Suharto; it now has multiple Suharto’s spread across the archipelago. Demands for slices of the pie, as it was, got bigger— much bigger. In fact, in one of few year-end public appearances in December 2002, President Megawati Sukarnoputri clearly acknowledged that corruption had become even more rampant in the Reform Era than under the New Order.”<sup>xliv</sup> It has also become less expensive. Acquiring access to Sukarno was costly compared to what it costs to buy a few local bupati or a key group of party leaders. And as long as both Indonesian and foreign corporations find that corruption pays, the ability of democratic institutions in Indonesia to assert their own authority is problematic.

The neo-liberal emphasis on private property rights and individual guarantees of protection against the arbitrary actions of the state also contain a deep suspicion that these objectives might be short-circuited by democracy. Rule of a majority intent on diverting private resources into public programs is seen by neo-liberals as a threat to markets...

While there was relief that an increasingly corrupt and embarrassing regime was out of the way, at the same time apprehension at unfolding disorder and a concern that the new politics would open the doors to “populist raids on efficiency” gave rise to a clear nostalgia for the order and control of the Soeharto era. In other words, we must approach globalisation as a highly contingent process, and the interests assembled behind the neo-liberal agenda as ambiguous and selective in regard to liberal reform. In some circumstances, globalisation might be considered a force that will outflank social democracies in the West and accommodate many features of illiberal capitalism in countries like Indonesia in an ironic reversal of accepted truth.<sup>xlv</sup>

Robison and Hadiz argue that Indonesia’s reforms to date matter little: “institutions and the ways in which they actually work are contingent on the outcomes of contests between social forces.”<sup>xlvi</sup> Rather, I would argue that it the success of the constitution-building process is contingent on a continuing dialogue between elite and reform elements in Indonesia and their counterparts in the global environment, and that the institutional forms matter. Charles Beard’s

economic theory of the U.S. Constitution— that it was drafted by an elite of wealthy property owners protecting their class interests— is correct to an extent: they did protect the institution of slavery and the kind of stable commercial and monetary system that secured their status; but so is the view that the institutions they created deliberately opened the system to progressive democratization and social justice. This is precisely what has been happening in Indonesia, but with the crucial difference that the process has been globalized. Those elements of the elite in Indonesia that tend toward reform have been enormously braced by their far superior access to research and argument, and by their ability to cite exogenous but relevant examples to publicize their case. In a globalized media world, the reformers, quite simply, look better. On the international stage those who benefit most from, and are most comfortable with KKN are beginning to find it embarrassing is well: is this really the way that companies like BP, Shell, Exxon and Freeport want to be known? Does the Indonesian military want to be evaluated on the basis of its professionalism or its control over the sale of watches to tourists on the beaches of Bali? The success of the forces of *reformasi* in Indonesia depends upon their ability to use the institutional structures crafted since 1998 in the context of both internal social forces and their relations to the global environment. What counts in addition to the contest in Indonesia, as Klug puts it, is “the extent to which participants in postcolonial settings draw upon and interpret legal norms... from a variety of jurisdictions to suit their own locally defined ends.”<sup>xlvii</sup>

O’Donnell and Schmitter argue that the path of transition from authoritarianism toward something else can go anywhere from stricter rule or violence to democracy. “The outcome can also be simply confusion, that is, the rotation in power of successive governments which fail to provide any enduring or predictable solutions to the problem of institutionalizing political power.”<sup>xlviii</sup> But if institutions matter, they can, when well-constructed, provide road maps through confusion; and the global forces that have helped define a more democratic Indonesia have helped the forces of reform and given them the channels through which they can challenge the old order. If one reads the rather spare literature on democratization, there is a fairly even trichotomy between those who believe that the forces of popular sovereignty will prevail as the country “slouches toward democracy,”<sup>xlix</sup> those who feel that there are few grounds for hope; and those who remain agnostic. There is an interesting parallel here with what happened during Indonesia’s brief flirtation with parliamentary democracy



in the 1950s. Experts continue to argue whether it could not have been sustained under any circumstances, and those who see the failure as one largely manipulated with outside help: “Liberal democracy did not fail, it was killed.”<sup>l</sup>

Then as now, those who carried the spears that destroyed the nascent democracy were Indonesian, but those who provided the spears were not. The recent decision by the United States that the Indonesian military has met the specifications of the Leahy amendment— despite the fact that only one low-ranking officer has been convicted of war crimes in East Timor— is evidence not that the military has improved, but that the bar has been lowered. How significantly it changes the balance of power in Indonesia itself only time will tell; but decisions such as these, and countless everyday decisions to try to influence the legislature through the backdoor of corruption instead of through a more transparent process of lobbying, do matter. The Cold War arguments that supported Sukarno’s dismissal of the *Konstituante* and the later Suharto coup some 40 odd years ago may no longer be in place; but the struggle between the forces of democracy assistance and business as usual in the international arena will be as determinative of the outcome of the struggle for constitution building in Indonesia as anything happening in the country itself.

Let me return in concluding, to the distinction raised at the outset between constitutions cobbled together through incremental changes, elite negotiations, and serial compromises, on the one hand; and those that articulate broader ideals and promote national dialogues on the other. It has been article of faith among most contemporary supporters of *Reformasi* that Indonesia needs clearly to pull itself together in a mass-based, transcendent moment of constitutional reflection and choice to firmly legitimate a new democratic system. Having myself strongly supported this basic argument,<sup>li</sup> let me now offer two cheers for the other side. Three of Indonesia’s four key constitution-building transitions— the 1945 independence constitution crafted under the auspices of the occupying Japanese military, Hatta’s 1950 transitional effort, and today’s more recent reforms— were accomplished less through what Elster calls “deep principled discussion” than through “the logrolling and horse-trading of everyday politics.”<sup>lii</sup> If Indonesian have had their transcendent moment, surely it was with the 1955 *Konstituante* and its manifest failure to follow through. In explaining this inability to sustain itself William Liddle cites a commitment to democracy that was “neither broad nor deep,” and serious resource constraints to explain the ultimate failure of

democracy in the 1950 to 1959 period. But he also stresses a serious lack of “structural focus:”

It was not a fragmented political culture that doomed democracy. Rather it was the absence of any widely accepted, central decision-making or problem-solving agency or procedure that could have resolved these differences on behalf of. . . a compelling but workable conception of modernity.

The 1955 elections might have played that role. But neither of the deliberative bodies they produced— neither the parliament nor the constituent assembly— enjoyed the working majority, whether made up of one party or a stable coalition of parties that could have made it effective.<sup>liii</sup>

The question is whether such working majorities could be found today. One of Charles Lindblom’s key arguments in defense of his “Science of Muddling Through” is that it is generally easier to agree on concrete policies than on the values different parties hope to attain through them.<sup>liv</sup> It has been far easier for Indonesians to agree on direct election of the president, on decentralization, on bicameralism, and so on than on their reasons for supporting such policies. More importantly, the MPR’s process of ‘muddling through’ has, in a way that the *Konstituante* could not, prevented the kind of hardening of positions that occur when issues become wedded to one another in an attempt to think comprehensively. Where many of the 1955 delegates viewed virtually all issues in terms of their linkage to that of shariah, the post-Suharto MPR was able to simply take the Jakarta Charter off the table and focus on each proposed change in terms of whether it was likely to make things better or worse. And the rather “sloppy” process by which it would approve an institution like the Constitutional Court, yet leave it to subsequent legislation to define its jurisdiction, allows for the kind of flexibility and interpretation that is often lacking in today’s long-winded and over-specific constitutions.

The process, to be sure, has left many loose ends, has failed to resolve significant internal contradictions, failed substantially to involve the public, and has left no symbolic heritage; but the proof of its failure or success will, as it always does, have far less to do with how it looks and reads than how it works. That the process of constitution building in Indonesia has not involved substantial public input is less important than whether the institutions it has produced allow such participation in the policy process. My read is that it has.

## Notes

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- i. Jon Elster, "Introduction," in Jon Elster and Rune Slagstad, eds., *Constitutionalism and Democracy* (New York: Cambridge University Press, 1988), 6.
- ii. See, for example, the reports on two IDEA workshops, *Negotiating a Political Settlement in South Africa: Are there Lessons for Burma?* (Stockholm: International IDEA, 2000).
- iii. International IDEA, *Continuing Dialogues towards Constitutional Reform in Indonesia* (Stockholm: IDEA, 2002), 3.
- iv. Walter F. Murphy, "Constitutions, Constitutionalism, and Democracy," in Douglas Greenberg, Stanley N. Katz, Melanie Beth Oliviero, and Steven C. Wheatley, eds., *Constitutionalism and Democracy: Transitions in the Contemporary World* (New York: Oxford University Press, 1993), 3-25.
- v. Robert Cribb, "Nation Making in Indonesia," in Donald K. Emmerson, ed., *Indonesia Beyond Suharto: Polity, Economy, Society, Transition* (Armonk, N.Y.: M. E. Sharpe, 1999), 10.
- vi. M. C. Ricklees, *A History of Modern Indonesia* (Bloomington: University of Indiana Press, 1981), 199-202.
- vii. Adam Schwarz, *A Nation in Waiting: Indonesia's Search for Stability* (Boulder, Co.: Westview Press, 2000), 13.
- viii. On the U. S. role, see Theodore Friend, *Indonesian Destinies* (Cambridge, Ma.: Harvard University Press, 2003), 60-63.
- ix. William Case, *Politics in Southeast Asia: Democracy or Less* (Richmond, Surrey: Curzon Press, 2002), 38.
- x. *Ibid.*, 39.
- xi. Andrew Ellis, "Constitutional Reform and the 2004 Election," in Thang D. Nguyen and Frank-Jürgen Richter, eds., *Indonesia Matters: Diversity, Unity, and Stability in Fragile Times* (Singapore, Times Editions, 2003), 67.
- xii. Richard L. Sklar, "Democracy in Africa," *African Studies Review* (1983), 26: 34.
- xiii. See Robert Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton, NJ: Princeton University Press, 2000).
- xiv. Michael Vatikiotis, "Indonesia Matters— Diversity, Unity, and Stability in Fragile Times," in Nguyen and Richter, p. 214.
- xv. Hefner, 217.
- xvi. See the essays on the development of the Indonesian women's movement in Julia I Suryakusuma, *Sex, Power and Nation* (Jakarta: Metafor Publishing, 2004).
- xvii. Chusnul Mar'iyah, "Center-Regional Relations in Indonesia: Women's Exclusion from Formal Politics," in R. William Liddle, ed., *Crafting Indonesian Democracy* (Bandung: Mizan Media Utama, 2001), 291.

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- xviii. And she, interestingly, in a part of Sumatra with a strong matriarchal tradition.
- xix. The law mandating quotas left the issue of enforcement to the Election Commission which imposed no real sanctions on non-cooperating parties.
- xx. The ban applies not just to former members of the PKI, but to those who have been “directly or indirectly involved,” including, in one notorious case, a professional dancer who once performed at a party dinner.
- xxi. Donald L. Horowitz, “The Draft Law on Indonesian Political Parties Elections, and Legislative Bodies: An Analysis,” in Liddle, 139.
- xxii. Rizal Sukma, “Military and Politics in Post-Suharto Indonesia,” in Nguyen and Richter, 47.
- xxiii. *Ibid.*, 52.
- xxiv. From a Report of the International Observer Resource Center, “Election Statements: Indonesian Legislative Elections, April 2004,” unpublished collection of documents prepared for a conference of donors, Jakarta, October 13, 2004.
- xxv. International Foundation for Electoral Systems, *National Public Opinion Survey, 2003* (Jakarta: IFES, 2003).
- xxvi. Andrew Ellis, “One More Heave: The Debate on the Fourth Amendment to the Indonesian Constitution,” *Van Sorge Report*, (May 2002), 5.
- xxvii. Jakarta Office of the World Bank, *Indonesia: Seizing the Opportunity* (Jakarta: The World Bank, 2000), 56.
- xxviii. Richard Robison and Vedi R. Hadiz, *Reorganizing Power in Indonesia: The Politics of Oligarchy in an Age of Markets* (New York: Routledge Curzon, 2004), 256.
- xxix. World Bank, 15-16.
- xxx. Vincent Boudreau, “Diffusing Democracy? People Power in Indonesia and the Philippines,” *Bulletin of Concerned Asian Scholars*, 31(1999), 3-18.
- xxxi. Ellis, “Constitutional Reform...,” 67.
- xxxii. Heinz Klug, “Hybrid(ity) Rules: Creating Local Law in a Globalized World,” in Yves Dezalay and Bryant G. Garth, eds., *Global Prescriptions: The Production, Exportation and Importation of a New Legal Order* (Ann Arbor: University of Michigan Press, 2002), 277.
- xxxiii. Giuseppe DiPalma, *To Craft Democracies: An Essay on Democratic Transitions* (Berkeley: University of California Press, 1990), 19.
- xxxiv. A report on this conference, with my introduction and some of the more interesting papers, is available from International IDEA, *Continuing Dialogues towards Constitutional Reform in Indonesia* (Stockholm: IDEA, 2001).
- xxxv. Though it is probably somewhat greater than it appears, since both donors and recipients share an interest in hiding its extent.

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xxxvi. Klug, 277.

xxxvii. In their studies of worker productivity at a Hawthorne, Illinois factory, Elton Mayo and his colleagues discovered that their measures of the effects of environmental factors on productivity were badly skewed by the existence of the experiments themselves. In many cases it was the fact of being studied rather than the contours of the study that made workers more productive. Hence the term Hawthorne effect has been used to describe any study in which the presence of the study in itself has a positive (or negative) effect on the outcome of the study.

xxxviii. For a panel co-sponsored by the Research Committee on Legislative Specialists on legislative oversight at the January 2003 annual meeting of the Southern Political Science Association in New Orleans.

xxxix. Robison and Hadiz, 253.

xl. *Ibid.*

xli. E. E. Schattschneider, *The Semi-Sovereign People* (New York: Henry Holt, 1951), 52.

xlii. While the prosecution may have presented its case badly, the court's punishment of what the U.S. press described as the mastermind behind the bombings was actually quite severe in light of the largely circumstantial evidence presented at the trial.

xliii. Robison and Hadiz, 34-35

xliv. Michael L. Bäk, "Slouching Toward Democracy: Social Violence and Elite Failure in Indonesia," in Thang Richter, 81.

xlv. Robison and Hadiz, 35.

xlvi. *Ibid.*, 256.

xlvii. Klug, 280.

xlviii. Guillermo O'Donnell and Philippe C. Schmitter, "Tentative Conclusions about Uncertain Democracy," in Guillermo O'Donnell, Philippe C. Schmitter, and Laurence Whitehead, eds., *Transitions from Authoritarian Rule: Prospects for Democracy* (Baltimore: Johns Hopkins University Press, 1986), 71.

xlix. Although Bak was first in print with this term, it has long pleased me as apt.

l. Daniel Dhakidae, "The Long Winding Road: Constraints to Democracy in Indonesian Politics," in Liddle, 68.

li. In my introduction to "Continuing Dialogues towards Constitutional Reform in Indonesia," and an October 1, 2001 op-ed piece in the *Jakarta Post*.

lii. Elster, *op. cit.*

liii. R. William Liddle, "Regime: The New Order," in Emmerson, 57.

liv. Charles E. Lindblom, "The Science of 'Muddling Through,'" *Public Administration Review* 19 (Spring 1959), 79-88.