

## Building Democracy After Conflict

# CONSTITUTIONAL MEDICINE

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Over the past decade, both scholars and those charged with the task of easing social and political conflict have rediscovered the discipline of constitutional design. This has been the case not only in democracies but also—and most significantly for present purposes—in nations struggling to move toward democratization. From South Africa and Bosnia to Fiji, Northern Ireland, Afghanistan, and Iraq, the art or science of constitution-crafting has been or is now at the heart of efforts to bring peace and free self-government to some of the world's most troubled lands. Countless other states, from Estonia and Sri Lanka to Guatemala, Indonesia, Nigeria, and the Philippines, have experimented with electoral systems, autonomy deals for outlying regions, or the parceling out of ministerial posts and other offices with a view to accommodating various groups which, if not brought more fully into the tent of national life, could bring it down from outside.

More saliently still, questions related to constitutional design often dominate discussions about how to end the world's stubbornest dictatorships and begin repairing the damage that they have caused. Speculation about "what comes next" in places such as Iraq, Congo-Kinshasa, Sudan, Liberia, and Burma inevitably moves toward talk of power-sharing arrangements, how to involve communal minorities in government, and federalist or regional-autonomy provisions.

While constitutional design has made big intellectual strides over the last ten years, it still has much room for improvement, particularly when it comes to diagnosing particular cases and generalizing "lessons learned." Here a comparison with medical science may be helpful. The

physician's craft and that of the constitutional expert display a number of parallels. Just as a doctor seeks to diagnose and chart a treatment course for a sick person, the constitutional expert looks at an ailing society and tries to map a path to long-term health (defined broadly as reasonably robust levels of peace, prosperity, and free self-government). Most social scientists now agree that they are less in the cure and more in the illness-management or symptom-abatement business, but in the case of a truly dysfunctional body politic, even doing those things fairly well can be the source of enormous good.

The idea of seeing the life of a polity in biological terms is an ancient one that can be traced from early Greek antiquity through works by Plato, Aristotle, Cicero, Machiavelli, Locke, Rousseau, Hegel, T.H. Green, and others. The term "diagnosis" is Greek as well, and comes from the word *gnosis*, or knowledge. Whether political or medical, diagnosis—the pursuit of useable knowledge—begins with the gathering and sifting of empirical evidence. Fortunately, sources of such evidence are now more plentiful than ever given the burgeoning number of "third-wave" democracies that have appeared across Latin America, Africa, Asia, and parts of Europe since the mid-1970s.

Many constitutional designs have failed because the designers (whether foreigners or natives) ignored the basics of good diagnosis and treatment, beginning with the Hippocratic injunction, "First, do no harm." Consider Angola in the early 1990s. After a 15-year civil war had killed at least 1.5 million people, international mediators brokered a 1991 settlement between the ruling MPLA party of Eduardo dos Santos and UNITA, led by Jonas Savimbi. The settlement went awry, however, by calling for a winner-take-all presidential election that gave the smaller UNITA faction no incentive to embrace the frustrating task of being the "loyal opposition" in the country's legislature. When Dos Santos predictably beat Savimbi 49 to 40 percent in September 1992, fresh fighting became inevitable. Hundreds of thousands more died.

If constitutional designers need to be better at figuring out what ails a society, what template should they follow? A medical diagnosis should ideally draw from both a physical examination *and* a medical history of the patient, with other procedures used to help confirm findings if the need arises.<sup>1</sup> Diagnosis begins with a *clinical methodology*, which shapes how one properly gathers and interprets findings based on a history and examination. In the constitutional sphere, this would mean focusing on the socioeconomic, political, and historical indicators whose assessment is most likely to affect the diagnosis. From these indicators, the diagnostician develops an *etiology*, or account of what is causing the condition. *Differential diagnosis* seeks to rank the potential causes of a patient's clinical problem by their likelihood, seriousness, and treatability. Next come *diagnostic tests*. At this point, a constitutional expert might ask what data need to be gathered in order to assess the root

causes of political instability. Finally, a *prognosis* estimates the patient's probable course over time and anticipates likely complications of the disease. From this five-stage process can come strategies for prevention, therapy, and self-improvement.

A good way to start thinking about the application of medical techniques to democratic design might be to take broad typologies of sickness and ask how they relate to different institutional prescriptions. A constitutional diagnostician might ask: 1) How highly or poorly institutionalized are party and electoral politics in a given country? 2) Has the state collapsed, as in Afghanistan, or does it continue to function even under crisis conditions, as in Burma? 3) What is the level of actual violence as opposed to general hostility? Fiji and Sri Lanka both suffer from bitter ethnic polarization, for instance, but in the former, political killings are mercifully rare. Why the difference? 4) How many distinct ethnic or other communal groups are there? How big are they? Where do they live? 5) Are the major groups divided from one another by religious identity, language, ethnonational sentiment, geography, or some combination of these? 6) Could the core of the trouble lie in disputes over resources such as land or oil, as well as—or even more than—differences in culture or religious practice?

By asking questions such as these, one can make progress toward sorting out the type of case one faces. To take two fairly obvious examples: Northern Ireland, with its robust parties, functioning government, and geographic intermingling of religious-identity groups locked in a power struggle punctuated by occasional riots and acts of terrorist violence, differs widely from immediate post-Taliban Afghanistan, where party institutionalization was unknown, the state had collapsed, ethnic groups remained geographically separated, violence threatened to become pervasive, and resource-allocation contests dominated political discourse (as to a large extent they still do). While one may readily intuit that what could work in one country most likely will fail in the other, applying diagnostic tests in a systematic way lends a useful rigor to this essential first step in prescribing ways to reduce conflict in these two places.

The “medications” that constitutional therapists can administer chiefly consist of broad choices about who governs and how they are chosen. Who shall form the executive, and what powers shall it have? What role will the legislature fill? How shall it be chosen? How shall its seats be distributed? Will it have one chamber, or more? How centralized will be the government? Will distinct regions or minorities receive autonomy, and if so, just what will it look like? Institutional answers to questions such as these—and a number of less formal ones besides—need to be solidly in place for democracy to flourish. Or perhaps the key to conflict management in a given society will lie less in the realm of elections and diffused executive power and more in the structure of the

judiciary, the status of land reform, a changed educational system, better police forces, the sensitive and emotionally draining theater of truth commissions, civil society groups that can help improve intergroup relations, or all of the above. But the broad choices are at the heart of the constitutionalist's pharmacopeia.

Our comparison of constitutional design to medical diagnosis and treatment yields six hypothetical propositions that can be tested and hence might form a basis upon which methodological work can go forward. The propositions are: 1) Failed political institutions in divided societies often result from misdiagnosis. 2) The sequencing of constitutional therapies should follow the medical continuum of emergency medicine, convalescence, and long-term health management. 3) Political institutions must be properly aligned with one another. 4) The national patient must not be released from treatment prematurely—as has too often happened—if democracy is to endure. 5) There are limits to how much help and protection constitutions can offer a fragile and threatened polity. 6) Western experts, who increasingly advertise their preferred medicines directly to developing-world consumers of political institutions, often fail to take local contexts and conditions sufficiently into account.

**1) *Misdiagnosis.*** The importance of knowing the true state of a country and what ails it becomes apparent when one reflects on a major debate that currently rages among political scientists. This debate ebbs and flows as the “doctors of politics” weigh the relative merits and drawbacks of the two most commonly prescribed general courses of constitutional therapy for troubled countries. The first of these is widely known as “consociationalism.” The second we might call “moderation-focused incentivism.”<sup>2</sup> Exchanges between the advocates of one and the other have become a staple of recent scholarship in comparative government and democratization studies, with eminent proponents on both sides. The details of each approach and the controversies surrounding them need not detain us here, except as we pause to note that it is crucial to understand precisely what ails a country *before* trying to apply *either* of these methods to it.

Consociationalism, while it offers potent conflict-reducing solutions to divided societies that have no hope of generating accommodation among antagonistic groups, will harden divisions and hence can bring disaster to a country that does in fact have potential for such accommodation. Consociationalism, in other words, is a radical therapy that may well make some patients sicker, and should therefore be used only in desperate cases where other, less drastic methods will surely fail. By the same token, approaches that seek to provide incentives for moderation can also be very risky. If the circumstances are wrong in any one or more of a number of ways,<sup>3</sup> the incentives will not take and the country will

be left with institutions too easily dominated by one group or region. At the very least, progress will suffer because of an enforced conformity and lack of healthy diversity in viewpoints and ideas.<sup>4</sup> At worst, majority tyranny will become the country's plight. In the end, making an accurate diagnosis of where a country stands at the time of "constitutional intervention" is the key to choosing between these two broad classes of therapies.

Wrong diagnoses lead to wrong prescriptions, but one can grasp why diagnostic error is common by noting that symptoms—state failure or interethnic conflict, for instance—can be similar even though the underlying illness may differ. Are the tensions within Afghanistan about inherited ethnolinguistic differences, or do they have more to do with regional warlords' contests over wealth and power? Is the foundational illness of the six counties that make up Northern Ireland one of religious insecurity and intolerance or of economic disparity defined by a religious-identity proxy?

An illustrative case of clear misdiagnosis is that of the small Central African state of Malawi. In 1994, longtime dictator Hastings Kamuzu Banda finally gave in to domestic and international pressure and let multiparty elections be scheduled. Opposition politicians, along with Commonwealth and European donor countries, saw things too simply as Banda versus the rest, the dictator versus the democrats, the old versus the new. The gradual residential intermingling and intermarriage of ethnic groups had made identity politics seem but a faint threat at most. The continuation of Westminster-style majoritarianism (Malawi had been a British colony) and a strong presidency raised few eyebrows. Lurking just beneath the surface, however, was an ominous new form of identity politics that cut across older cleavages.

This unrecognized danger was regionalism. Centuries of indigenous conflict, colonialism, and missionary activity, along with thirty years of Banda's rule, had left residents of central Malawi at the top, with southerners below them and northerners in third place. In both the 1994 election and the one that followed it five years later, 99 percent of the total vote went to three parties, each based in a different region of the country.<sup>5</sup> History had crafted for Malawi a political system based on regional ties which the ill-judged paper constitution helped intensify into blunt polarization and the exclusion from power of the northern and southern regions. Today, Malawi wrestles with traumatic institutional failure and political fragmentation not least because its political institutions do nothing to moderate the geographical cleavages that split the country so badly.

**2) *Emergency medicine versus convalescent care.*** Designing political institutions is as temporally defined a task as the treatment of a sick person. While it might strike a physician as obvious that different stages

and severities of illness require different treatments, political doctors have shown a surprisingly weak grasp of this core medical tenet. More specifically, constitutional therapists have too often been unwilling or unable to see that what may work in a crisis may not be good for longer-term care. The institutions negotiated or imposed—say in Bosnia in 1995, Sierra Leone in 1996, or Afghanistan in 2002—are often forms of first aid, applied during a time of crisis. Their goal is to stop the bleeding and keep the patient alive in the field. Then emergency medicine takes over—often encompassing enhanced provisions for power sharing, decentralization, varying degrees of minority autonomy (for example, in South Africa and Kosovo), or even secession (East Timor) under international auspices.

After this in medicine come convalescence and long-term health management. In politics, such later phases should include measures like adapting or reinventing institutions to promote enduring democratic stability. Yet follow-up of this sort is relatively little discussed by theorists and is most often lacking in practice. Unfortunately, what often happens is that the first-wave institutions become barriers to subsequent reform and progress.

Two cases illustrate the point to varying degrees. In South Africa's 1994 elections for its transitional Constitutional Assembly, practical and political realities necessitated the use of a proportional-representation (PR) system based on large districts and closed lists of candidates. This arrangement maximized representativeness and participation along the lines of ideology, ethnicity, language, and gender—a crucial goal in the first days after apartheid—but at a high downstream cost in accountability, since the tie between representative and voter was so indirect and since party bosses were left in charge of most lists. In 1994 and again in 1999, a typical South African voter found herself unable to choose a named individual to represent her village or city (or even her region below the huge provincial level), and powerless to differentiate between candidates of the same party. A decade after the transition, there is wide agreement on the need for reforms to boost geographical accountability, but those who benefit from the current system—including numerous politicians from the ruling African National Congress—have proven hard to overcome. An electoral arrangement that made good democratic sense in a pinch has now become a damper on participation and accountability, and hence on democratic consolidation.

The disjuncture between institutional first aid and what is needed for longer-term health is even more pronounced in the case of Bosnia.<sup>6</sup> The November 1995 Dayton Accords brought closure of sorts to the civil war that had raged in this part of the former Yugoslavia since 1992, killing more than 100,000 people and forcibly displacing half of all Bosnians from their homes. But the hopes for peace born in Dayton, Ohio, rested on political structures that have made Bosnian politics about nothing but ethnic identity and political as well as physical sepa-

ration. Virtually no space remained for the evolution of moderate parties with the will and ability to appeal across ethnic lines.

The Accords divided Bosnia into the Serb-dominated Republika Srpska and an entity called the Federation, which takes up 51 percent of the land and contains a mix of Catholic Croats and Muslim Bosniaks. The national parliament has an upper house with five members from each of the three ethnic groups, while the 28-seat lower house draws half its members from the Federation and half from Republika Srpska. There is a three-person national presidency, but Serbs elect the Serb member, Croats elect the Croat, and Bosniaks the Muslim. Each community can veto any bill it deems “destructive of a vital interest.” The central state is relatively weak, with powers over foreign affairs and trade; more power lies in the respective legislatures of the Federation and the Republic, and these of course respond to no Bosnia-wide electorate. There is balancing at nearly all levels of the multilayered government—it is a function of ethnic segmentation. Elections under the Dayton system can never be anything but ethnic censuses.

To be fair, this crude, identity-freezing form of consociation may well have been necessary to get signatures on paper in Dayton and to stop the bleeding—literally—in strife-torn Bosnia. Yet there is no denying that the preoccupation with badly needed immediate results a decade ago meant surrendering to and even entrenching ethnicity in ways that have set up still more barriers against the admittedly never very rosy long-run prospects for ethnic integration and democratic consolidation. With Dayton giving the various parties no reason to moderate their ethnically based appeals or work together, the UN High Representative (UNHR) wound up stepping forward to fill the resulting power vacuum in a move never envisioned by the original peace plan.<sup>7</sup> Elections in 1996 and 1999 predictably saw all major parties appeal to hostile and polarizing notions of ethnic community and difference. The elections of 2002 actually saw a swing to even *more* extreme nationalist parties among Bosniaks and Serbs. While some may argue that no institutional arrangements can guarantee multiethnic nation-building in the face of egregious polarization, Bosnians can have no hope of escaping the straitjacket of ethnic segmentation unless and until institutions adapt to open up space in which that can happen. Innovative forms of preference voting and rewards for parties demonstrating regionally dispersed appeals might provide a fillip at the margins for accommodating behavior.

**3) Institutional alignment.** Like medicine, constitutional therapy must be about more than treating particular ailments, considered in isolation. Therapy, whether medical or political, must consider the patient as a whole. If the patient is a polity, this means not only examining electoral systems but also addressing the accountability of those in power, the efficacy of the judiciary, and the like. As with the drugs and

other treatments that physicians prescribe, different institutional remedies for an ailing polity can work at harmful cross-purposes, have dangerous side-effects, or otherwise make things worse all around. The key in both disciplines is to study the case as a whole and come up with the best overall strategy to maximize benefits and minimize problems and dangers for the patient.

Since political prescriptions often come in the form of recommended institutional reforms, we should think of institutions as needing to fall into a proper overall pattern both horizontally (in terms of their relations with other institutions) and vertically (in terms of the various institutions' relations with the society whose flourishing as a free, self-governing entity they are supposed to promote). For example, a constitution that provides for a robust presidency might align well horizontally with a two-round electoral system. If a politically and geographically concentrated minority is also present, however, then the proper vertical alignment of such a system may be in doubt, since the rules prescribed are not the sort that mesh well with the need to incorporate and reassure minorities.

When political institutions do not work in concert, measures that individually seem fitting and positive may combine to produce an outcome that is far less than the sum of its parts or may even make things worse.<sup>8</sup> In constitutional design, for instance, switching a divided country to a seemingly beneficial electoral system (such as the moderation-promoting alternative-vote [AV] form of preference-ranking) may have untoward "drug-combination effects" if there is also a powerful parliamentary executive that can cut off significant minorities' access to power. Conversely, when institutions do work in concert the overall situation may improve to a degree greater than the incremental improvement caused by each institution, considered on its own, can account for. This is what students of institutions mean when they speak of "holistic complementarity."<sup>9</sup>

An example of how *not* to achieve the blessings of holistic complementarity was seen recently in the small and ethnically divided Pacific nation of Fiji, whose misbegotten 1997 constitution contributed to democratic breakdown. The constitutional-design process which unfolded on that troubled collection of islands in the mid-1990s had seemed ideal: A committee of three Fijians traveled the world consulting leading specialists on what rules might best serve their nation, whose "indigenous" Polynesian and Melanesian population has long insisted on monopolizing political power even as Indo-Fijians (also indigenous, but descended from plantation workers transported during the nineteenth-century) surpassed them numerically in the 1980s. Two coups and the removal of the first ever Indian-led government precipitated the constitutional rewrite, which was aimed at reassuring both groups in this highly segmented and ethnically bipolar state.

The commission recommended a full suite of human rights statutes, enforcement mechanisms, and judicial reforms. It also argued that Fiji should move away from its communal voting system (in which “indigenous” Fijians and Indo-Fijians elected representatives separately) to one using open seats that would force candidates to appeal to a multiethnic electorate. A further proposal called for the AV form of preference voting, on the grounds that this would give candidates of one ethnicity a strong incentive to try for the lower-preference votes of citizens from the other community. The inclusion of minority- as well as majority-party members in the cabinet reinforced all these measures.

These were all reasonable suggestions in and of themselves, but taken together they betrayed serious signs of misalignment. Despite the barriers erected against the prospect of one community alone winning power, neither the electoral system nor the multiparty cabinet reassured Fijians of Polynesian or Melanesian descent that they would have continued access to real power. Furthermore, control over the central government in the capital of Suva remained the big prize. There was insufficient enhancement of the powers of local governments to make these credible as acceptable “second-best” alternatives for parties that found themselves out of power at the center.

Aggravating this misalignment was the insistence of Fiji’s existing indigenous-dominated parliament (to which the new constitution was submitted for amendment and approval) on measures such as allowing only a third of the seats in the lower house to be open, leaving the other two-thirds still in communal hands and thereby destroying much of the incentive for multiethnic appeals. Moreover, parliament chose to apportion the new AV seats into single-member districts (SMDs). The small size of these SMDs, together with the concentration of “indigenous” Fijians and Indo-Fijians into separate territorial enclaves, meant that few districts had anything like the multiethnic mix needed to trigger the need for extracommunal electoral appeals.

Fiji’s electoral commission made such appeals even less likely when it decided to allow straight party tickets as ballot options. In 1999, nine out of ten voters chose a straight ticket. With no minority veto in the grand-coalition cabinet decreed by parliament when it adopted the new constitution, the system was headed for trouble. When the 1999 balloting resulted in an Indian-led party and two moderate “indigenous” parties forming a governing coalition, numerous Fijians of Polynesian and Melanesian extraction rejected it and backed a May 2000 coup. New elections held in 2001 restored Polynesian and Melanesian dominance. Ethnic hegemonism had pushed out democracy.

**4) *Premature release from treatment.*** During the twentieth century, the wealthy West would often help countries in crisis but then give the patients clean bills of health even though underlying ailments remained

unaddressed. Over the last decade, even as democracy has joined the list of things that countries must adopt in order to be helped—and to help themselves—out of crisis, the false economy continues of too quickly discharging ailing societies from care. The West may aid transitions with billions of dollars, but all too often it backs away after the first multiparty elections and before the structural and civic foundations of democracy can grow firm.

Another timing mistake can take the shape of a rush to “surgery” (that is, elections) before the patient has been adequately stabilized. Without adequate infrastructure and security, elections can be traumatic experiences that harm peace-building processes. Nevertheless, donor countries often feel that they must press for speedy national elections regardless. The Bosnian elections that went forward on schedule, exactly nine months after the Dayton Accords, were not a sifting of policy choices, but only an ethnic head count.

The rush to elections amid fragile conditions often compels observers to fudge on the “freedom and fairness” standard and make inconsistent pronouncements on legitimacy from case to case.<sup>10</sup> The donor community rightly came down on President Robert Mugabe for stealing Zimbabwe’s 2002 elections, but ignored neighboring Zambia’s equally flawed election the year before, and positively encourages Uganda’s President Yoweri Museveni, who until fairly recently has categorically rejected the very idea of multiparty voting and still has yet to embrace it despite recent signs that he might be tilting in that direction. It did not help that South African observers—acting out of amoral expediency—ratified the Zimbabwean result. As Thomas Carothers notes, inconsistent application of the democracy imperative is hardly new. During the Cold War, all U.S. administrations honored democracy promotion in speech while in fact shielding compliant authoritarian and illiberal regimes from pressure to change.<sup>11</sup>

**5) *The limits of therapy.*** Just as medicine cannot save every sick or injured patient, even the best-crafted political institutions cannot do it all. With a patient there are a number of things that can reduce the effectiveness of treatment. An overwhelming external shock, insufficiently powerful drugs, or a patient unable to take the prescribed medicine—all these causes of medical failure have parallels when it comes to constitutional therapy. Lebanon’s power-sharing scheme kept the peace among Shi’ites, Sunnis, Druze, Catholic Maronites, and Arabic-speaking Greek Orthodox Christians for nearly thirty years until it collapsed amid civil war and regional intervention in 1975. Rwanda had a Hutu-Tutsi national-unity government, but still saw one of history’s most intense genocides in the spring of 1994. Even the best formal constitution will be hard-pressed to counteract the inherent fragility that haunts states such as Afghanistan, Liberia, and Sierra Leone.

Like medications, institutional remedies by themselves are seldom if ever sufficient. Social and political networks of various kinds also need to be working if long-term political health is to be attained. A fully functioning judiciary, a progressive educational system, high levels of employment, robust economic development, and strong internal security provide the groundwork for a stable polity. At times of sickness appropriate medicines have to be taken, but there is also no substitute for sound diet, exercise, prudence, and indeed a certain amount of luck.

**6) Direct advertising to consumers.** When constitutions are crafted today, who is doing the designing, who is advising those designers, and does this all matter? The recognition that there are limits to formal democracy's effectiveness has not forestalled the stealthy growth of Western states—like drug companies—advertising directly to consumers. Academics and civil servants are increasingly involved in advising on institutional issues under the auspices of their own national governments, the European Union, the Organization for Security and Cooperation in Europe, the United Nations, or (mostly) Western-based NGOs.

To one degree or another, advisors tend to recommend what they know and consciously or unconsciously “sell” their own domestic brand of democracy. This holds true for Americans who often advocate versions of federalism and the separation of powers, British experts who favor SMDs and “first-past-the-post” voting rules, Australian advisors who believe in the virtues of alternative-preference voting, or Germans who press for federal units that look much like *länder* and elections that feature both SMDs and party-list PR.<sup>12</sup> None of this is to deny that such recommendations can have merit; rather, it is only to highlight the close relationship between what one knows at home and the pharmacopeia that one takes into the field.

It is worth noting that today's would-be constitutional therapists must work within much tighter boundaries than did their predecessors of just a few decades ago. In the early 1960s, for instance, Kennedy administration experts urged the British to change Guyana's electoral system to party-list PR on the eve of Guyanese independence with the goal of giving the more malleable Forbes Burnham and his Afro-Guyanese People's National Congress a decisive edge over left-leaning nationalist Cheddi Jagan and his Indo-Guyanese Progressive People's Party. The manipulation worked just as planned. Jagan was shut out of power from independence in 1964 until genuinely free elections finally took place in 1992.

A happier example of Western experts behaving with a relatively free hand is furnished by the U.S. military lawyers who worked under orders from General Douglas MacArthur to draft a new constitution for occupied Japan—a task that they accomplished in just a single week in February 1946. The serendipity of it all is illustrated by the role of

Beate Sirota, the 22-year-old Russian-born, Japanese-speaking Occupation staffer who wrote clauses protecting the rights of women and children into the new charter, where they remain as cornerstones of Japanese democracy to this day.<sup>13</sup>

### Is There Still Room for Framers?

Constitutional therapists often get it wrong. The remedies they recommend, like certain combinations of drugs prescribed by doctors, can have unforeseen negative side-effects. And perhaps their whole enterprise represents an inefficient use of resources. Would not the time, energy, funding, and ingenuity that go into institutional “therapeutics” be better spent on such surefire enablers of successful democratization as security, economic development, education, and social uplift generally? Are these not the true sinews of stability and free government, the solid, broad-gauge underpinnings that make the niceties of liberal democracy possible?

In fact, the question of whether one should concentrate efforts on holistic constitutional therapy practically answers itself. If a state exists, it has institutions and they are never neutral—they determine how power and resources are distributed and how society is shaped. There is no side-stepping the choices.

The status quo will inescapably benefit one group or another. The decision not to pursue therapies—perhaps because of worries about the (hopefully) calculated risks that go with them—will be a choice to let the sickness of a troubled polity fester or even compound itself. While interested external observers may often find it appealing to “let the locals work it out for themselves,” even the most liberal-minded and culturally sensitive bystander should view such an approach as troubling.

Postconflict constitutions and political settlements are typically not the brainchildren of the *people at large*, but rather of established or newly dominant elites that often care far more about serving their own interests than they do about sharing power with rivals or the person in the street. Women’s and human rights groups, student leaders, civil society groups, and others closer to the person in the street than to the elites need to understand the tools and methods of constitutional design in order to make nonelite voices heard as effectively as possible. Otherwise, chances are that the new political institutions, whether domestic or foreign in origin, will fall too far under the sway of various elites and remain too largely outside the people’s hands. If elite dominance is to be the reality, perhaps the best that one can hope for is that the relevant elites will decide to prefer long-term stability and state-building to short-term partisan advantage, and will therefore embrace inclusive institutions that restrain elite power somewhat. South Africa in the first postapartheid years of the early 1990s is a good example of such a case.

As we have seen, the record of outside involvement in such treatments has been mixed even when intentions have been sterling, and outside actors have not always had such intentions. For these and other reasons, qualms about outside involvement are understandable—but only up to a point. In a sense, moreover, outside involvement may be ineluctable. As Thomas Carothers notes, democracy has never been crafted from scratch, or discovered indigenously with purely indigenous characteristics.<sup>14</sup> Wherever it is practiced, democracy is a hybrid of local and international methods and institutions that draw on lessons learned from Europe to the Pacific and everywhere in between.

Plainly there is no “one-size-fits-all” form of constitutional therapy. Particular circumstances and sound case-by-case judgment will always matter. Yet theoretical learning has a role to play as well, for we can be fairly sure that there are certain regular components and patterns that matter to democratic stability—and often are the determinants of democratic success or failure. It is probably true to say that while the very best constitutional package cannot save a state from the slings and arrows of truly grievous socioeconomic misfortune, a badly designed set of institutions can do a lot of harm, most often by worsening the creeping fragmentation and instability that often plague plural societies. Conversely, few would argue that Canada and Spain have hung together as unified nations by virtue of exceptionally clever federal arrangements. And citizens from Estonia to Kenya still disagree over presidentialism versus parliamentary rule.

The act of choosing a government is a contingency on which much can ride. In 1948, D.F. Malan’s National Party came to power in South Africa and began entrenching the insidious apartheid system on the basis of 10 percent *less* of the combined vote total than its rivals garnered—an outcome aided by South Africa’s anomalous “first-past-the-post” rule for electing legislators.<sup>15</sup> In 1970, the Chilean presidential-election system gave wide powers to Marxist Salvador Allende on the basis of a third of the popular vote—a popular mandate that proved untenable. In 1998, oppositionists in the small southern African state of Lesotho were so outraged when the government took 60 percent of the total vote—and with it every legislative seat save one—that they launched a coup attempt from which the country has yet to recover. In 2002, Turkey’s Justice and Development Party (AKP) won two-thirds of the seats in parliament on the strength of just one-third of the vote. Nearly half of all Turkish voters cast their ballots for parties that could not clear the 10 percent threshold needed to qualify for seats, and only one other party beside the AKP won any seats at all. These voters now look to Ankara and see in their national legislature no candidate or party to whom they gave their support. Will this have eventual implications for the legitimacy of the AKP and its sweeping reform programs?

All this said, why are we so committed to electoral democracy? If we have to follow such a murky and prosaic route to get there—and if once there, few agree on what democracy should look like in the particular case involved—why do we bother so? One motivating force is the belief, increasingly held in scholarly circles and also to a growing extent in the world of practical politics, that democracy offers the best prospects for peace and stability with a measure of decency in all nations, rich or poor, homogeneous or diverse. Adam Przeworski suggests that democracy is by far the best method for managing conflict in any society because at its core is “rule open-endedness or organized uncertainty.”<sup>16</sup> It is rational for political actors to agree to seek their interests through the democratic game when a) they believe that they have a chance to win; b) they know that they can always play again even if at first they do not succeed; and c) they reasonably expect to retain a menu of basic rights, some claim to have their needs addressed, and perhaps even a modicum of influence over broader governance issues even if they lose fairly persistently.

But at a level still deeper than all of this, there is something special about the link between democracy, choice, and what it means to be human and to live the human enterprise. Ultimately democracy is about individual dignity and collective decency. It is the political expression of human respect. Freedom and choice are two key aspects of dignity. While liberal democracy does not exhaust the full range of ways in which human dignity can be respected, it is practically speaking a necessary condition for such respect. An adequately functional democracy is the best construct for sorting preferences and protecting dignity that humanity has ever devised. Or as Winston Churchill famously put it in a speech to the British House of Commons on 11 November 1947: “No-one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except for all the others that have been tried from time to time.”

## NOTES

1. This categorization of clinical work is from David L. Sackett et al., *Evidence-Based Medicine: How to Practice and Teach EBM*, 2<sup>nd</sup> ed. (Oxford, England: Churchill Livingstone, 1997), 26.

2. For a sense of the views held by incentivists and consociationalists and how these differ, see the respective essays by Donald L. Horowitz and Arend Lijphart in Andrew Reynolds, ed., *The Architecture of Democracy* (Oxford: Oxford University Press, 2002).

3. For example, should heterogeneous single-member districts prove impossible to draw, then ethnic-based parties are likely to win majorities in their “own” areas. The need to appeal for the second or third preferences of voters from other communities becomes redundant. Such a scenario feeds the exclusionist majoritarianism that is possible under alternative-vote (AV) schemes.

4. As John Stuart Mill argues, the way to include the greatest array of talents in the governing process is to maximize social and intellectual diversity in the legislature. Shutting minorities and their views out of deliberations is an excellent way to stymie learning and advancement. John Stuart Mill, *Considerations on Representative Government* (London: Prometheus Books, 1865).

5. Deborah Kaspin, "The Politics of Ethnicity in Malawi's Democratic Transition," *Journal of Modern African Studies* 33 (December 1995): 614–15.

6. Carrie Manning and Miljenko Antić, "Lessons from Bosnia and Herzegovina: The Limits of Electoral Engineering," *Journal of Democracy* 14 (July 2003): 45–59.

7. Gerald Knaus and Felix Martin, "Lessons from Bosnia and Herzegovina: Travails of the European Raj," *Journal of Democracy* 14 (July 2003): 60–74.

8. Thomas Carothers broadens the notion of "holistic" medicine to include the idea that socioeconomic aid must also be balanced with political aid. Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Washington, D.C.: Carnegie Endowment for International Peace, 1999), 345.

9. Peter Hall and Daniel Gingerich define an institution as complementary to another when "its presence raises the returns available from the other." See Hall and Gingerich, "Varieties of Capitalism and Institutional Complementarities in the Macroeconomy," paper presented at the annual meeting of the American Political Science Association, San Francisco, Calif., September 2001.

10. Jørgen Elklit and Palle Svensson, "What Makes Elections Free and Fair?" *Journal of Democracy* 8 (October 1997): 32–46.

11. Thomas Carothers, *Aiding Democracy Abroad*, 4–5.

12. Ann Phillips, "Exporting Democracy: German Political Foundations in Central-East Europe," *Democratization* 6 (Summer 1999): 2.

13. Sirota had become fluent in Japanese while growing up in Tokyo with her Russian-Jewish émigré parents (her father was a concert pianist) before moving to the United States to study in 1939. As one of only sixty Caucasians in the United States who spoke Japanese, she was recruited for MacArthur's staff and put to work on the Civil Rights Committee of the constitution-drafting task force. Articles 14 and 24—which mandate equal treatment of the sexes in matters of marriage, divorce, politics, employment, property rights, and inheritance—were her handiwork, steamrolled through by MacArthur's senior officers. See Ray A. Moore and Donald L. Robinson, *Partners for Democracy: Crafting the New Japanese State Under MacArthur* (New York: Oxford University Press, 2002), 97ff; and also [www.pinn.net/sunshine/whm2001/gordon.html](http://www.pinn.net/sunshine/whm2001/gordon.html).

14. Thomas Carothers, *Aiding Democracy Abroad*, 63.

15. The National Party won 79 of the 150 seats in parliament (many by slim majorities in rural constituencies) with 42 percent of the national vote. Meanwhile, Jan Smuts's Unionist-Labour coalition won 52 percent overall, but its votes were overconcentrated in the form of lopsided margins in a relatively small number of urban constituencies, leaving the coalition with a minority of seats in parliament.

16. Adam Przeworski, *Democracy and the Market* (Cambridge: Cambridge University Press, 1991), 13.