

Principles of Constitutional Design

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of ebbing that is quite natural. The overall trend has been steadily, if not inevitably, upward. A more interesting question is why the trend has continued upward even during periods much less auspicious for democracy than is the case today. Certainly the growth and spread of economic wealth has been an important factor, as has the continuous pressure from existing democracies to spread and protect the idea of democracy. Nor can we discount the impact on the spread of democratic ideas of growing international trade, the proliferation of international organizations, and other forms of cross-national exchange strongly aided by the spread of inexpensive mass communication technology. Still, as was suggested in Chapter 1, the diffusion of written constitutions may serve as both a surrogate for all of these factors as well as an independent variable.

Concluding Remarks

From the very beginning, the existence of a written constitution did not coincide with the presence of democracy. In 1789 the United States was still a developing nation both economically and politically. Some have suggested that in the absence of full adult suffrage the United States did not become a democracy until well into the nineteenth century. Robert Dahl has plumped for the 1960s as the beginning of true democracy in the United States. Certainly this has to be wrong. Constitutional democracy does not rest on a single variable, or on the perfect achievement of an ideal. Furthermore, as has been amply demonstrated, as democracies develop more fully, they actually move away from pure democracy institutionally by increasing the separation of powers as the level of popular control increases. Indeed, many today are loath to term countries with full suffrage but insecure rights as anything but “hollow democracies” or “pseudo-democracies.” For this reason, the preference in this analysis has been to refer to constitutional republics rather than democracies as the long-term goal. “Democracy” as an ideal implies the absence of individual and minority rights to thwart majority rule, and the use of constitutions implies a democracy, and a majority, that is not free to do anything it wants whenever it wants. The actual choices made by citizens of “democracies,” such as increasing the separation of powers to slow down majority rule and the use of rights to thwart majorities in certain policy areas, prove that “democracy” per se is not

what people outside of the academy really want. What democratically inclined people want is popular sovereignty rather than simple popular control.

Using the definition of a constitutional republic from Chapter 1, the United States became one in 1800 with the peaceful transfer of power from one party to another. Curve B in Figure 1.1 represents the curve of best fit using this definition. Other definitions are available. For example, if we use Dahl's definition, curve B would begin someplace well into the twentieth century and rise even more rapidly to a current count of more than one hundred constitutional republics. This curve would track curve A even more closely with a diminishing average time between the use of a written constitution and the emergence of a constitutional republic. Among other things, this would imply a stronger future for democracy than is probably the case. In fact, democracy is a difficult system to implement and maintain, and democratization is not something limited to new nations from the Third World. In a sense, curve B can be viewed as a learning curve that represents the struggle for more peoples to understand what democracy implies and requires, and to implement effective institutions to achieve what has been learned. The people of the United States are still in the process of learning, and to require that they understood in 1820 what they know now is essentially anachronistic. Any reasonably stable democracy will tend toward more effective democracy, and it is argued here that democracy will thus tend toward what is more properly termed a constitutional republic with at least *de facto* popular sovereignty if not *de jure*.

Curve A is misleading in one respect. It seems to imply a continuing rapid increase in the number of countries with a written constitution. In fact, there are fewer than half a dozen countries left without a written constitution. As of about 1998 the number has abruptly stopped growing and should be represented by a horizontal line. Curve B should continue to rise gradually, but the prospects for the curve to continue rising at the rate exhibited since 1945 are dim. Perhaps more important, the percentage of the world's population living in a constitutional republic may not increase at all until countries like Russia, China, or Indonesia make the definitive move to such a political form. Most constitutional republics are very small, and some of the medium-sized countries like Venezuela, Mexico, Nigeria, and Turkey tend to slip in and out of the category.

Existing constitutional republics will continue to use economic trade and capital investment as tools for helping in the spread of democracy. There is a very strong correlation between average per capita income and the presence of stable democracy, so this is not an unimportant consideration when predicting future diffusion. Still, it is not entirely clear whether democracy follows wealth or wealth follows democracy. Saudi Arabia and Iraq should be democracies using the per capita income predictor, and many or most of the small democracies should not. Rather than representing the diffusion of wealth, the curves in Figure 1.1 may represent the diffusion of an idea. The United States was well down the road to democratization at a time when most European nations were much wealthier but governed by monarchies and autocracies. Twice during the twentieth century the United States has had to assist European democracies against nondemocratic invaders who were anything but poor, and then engage in a fifty-year Cold War to preserve the fruits of the second intervention. The statistical correlation between average per capita wealth and democracy is so recent as to approximate a historical accident when one takes the long view.

Figure 1.1 implies another hypothesis that probably cannot be tested empirically in any satisfactory way with the statistical techniques and small number of examples currently available to us. This hypothesis is that an idea, or set of ideas, has taken hold and represents a general evolutionary trend. Chapter 2 laid out an evolutionary framework for viewing human history. It was suggested that at some point humans began to evolve culturally at a much more rapid rate than nature does genetically. The eventual result was species dominance over the rest of nature, and the eventual ability to organize larger and larger numbers of people under government. Certain ideas took hold that resulted eventually in the spread of political organization to most members of the species, much as did the control of fire, agriculture, and the mining and working of metals. At different times in human history, similar clan organizations spread over much of the Earth, as then did military kingships, empires, and eventually the nation-state. If one takes the long evolutionary perspective, we find that technical innovations in social, economic, and political organization spread and competed with each other. Over time, politically organized peoples overcame and largely extinguished less competitive forms of organization. There were a few democracies thousands of years ago, as well as peoples with what

amounted to constitutionalism. Four hundred years ago, the Iroquois, for example, certainly had a constitutional system, if not a democracy, in the midst of less fully articulated political systems, and the advantage this gave them has been clearly demonstrated. Although it was not a historical necessity that democratic ideas should be linked to the idea of a constitution, even random processes may have inevitably produced the combination.

We may be living in an era when the combination of the two political technologies of democracy and constitutionalism is leading to another evolution in human organization that has a competitive advantage. This is not to suggest the superiority of some peoples over others, but instead to suggest that all humans tend to prefer political organization that better secures for them the liberty, self-preservation, sociability, and beneficial innovation that led them to invent government to begin with. In this view, the political forms we now have are not the end of history. Instead, we as a species are still in the midst of learning, improving, and preserving that which serves us better. Other, better forms of organization lie in the future, and other curves of diffusion as well. At least we can hope. The hope rests on a view of humans as fundamentally “rational” in the sense of wanting more of what we value as humans, as well as seeking appropriate and effective means for achieving this goal.

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