Institutions and Procedures in Constitution Building

March 4-March 7, 2008
Princeton University

Draft Proceedings
(These proceedings accompany papers.
The proceedings do not duplicate material in the papers.
This draft does not contain country-specific text boxes.)

Co-Hosted by Princeton University's Bobst Center for Peace & Justice, Interpeace, the Princeton Law and Public Affairs Program, and International IDEA

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Goals

This meeting continues a discussion started in May 2007. The purpose of these two conferences, and others in the Princeton series, is to help refine our understanding of the influence of the design of constitution drafting processes on a variety of outcomes. Some of these outcomes are *behavioral* and include sense of political community, sense of inclusiveness, levels of trust among political elites, ability to deliberate or persuade v. horse-trade, ability of delegates to take a long view, and willingness to compromise. One participant pointed out that dogmatic groups are hard to negotiate with. Some of the outcomes pertain to what might loosely be called *"drafting quality":* clarity of rules, consistency in use of terms across parts of the draft, precision, the degree to which the implementation path is clear, the degree to which the terms are likely to promote self-enforcement, and coherence (recognizing that some contradictions may be deliberate efforts to push conflict off to a future date, when it might be more resolvable). Several participants suggested that congruence between existing community values or social structures and the values and structures implied in the text ought also to be treated as a "drafting" outcome, as should the ability to handle future problems as well as current challenges. Some outcomes are *attitudinal*. Whether people think the constitution is legitimate matters, for example. Ultimately, we are also interested in broader outcomes, such as the willingness of officials to abide by the terms of the constitution (v. suspend the document).

A few years ago, the international policy community called for clear "best practice" guidelines for constitution writing, as well as for other kinds of activity. More recently, we have stepped away from this language, recognizing that context strongly shapes the kinds of practices that are effective, that the skills of negotiators also condition which procedures and tactics are most useful, and that each approach has its own set of benefits and difficulties. Careful and limited generalization is still possible. If it were not so, the whole idea of providing advice would be unintelligible. However, today, at these meetings and elsewhere, general statements are more nuanced and the aim is to take context more fully into account and to consider ways of offsetting or mitigating

undesirable consequences of features that may be dictated by tradition or by necessity. As Nicholas Haysom observed at one of our meetings, "the proper aim is to deepen the imagination" of negotiators and the architects of constitution writing processes.

By contrast with the May 2007 meeting, this session has been organized to draw out advice with respect to "institutions and procedures." "Participation" or public consultation will be the subject of a later session, organized by Interpeace and the U.S. Institute of Peace.

Context

The new wave of constitution making has several distinct causes. Institutional crisis and the shift to multi-party rule as an attempt to generate greater governmental accountability necessitated new constitutions in some instances. In others, people have lost confidence in democracy and now seek to re-work some of the institutional arrangements putt in place earlier. Wars and peace settlements, or the collapse of federations, have also precipitated the creation of new constitutions. In some instances, constitutions and constitution making are frameworks for continued negotiations and must assume the difficult task of creating order.

Participants pointed to several features of context that might shape the kinds of deliberative bodies and procedural rules that are helpful or harmful. Recommendations might reasonably vary according to

- The type of underlying conflict (nation building or institution building, for example)
- In the case of war, whether one party has one or whether one party thinks it is likely to win (if one party thinks it can win militarily, using constitution writing as a way to forge peace is pointless)
- Coherence of parties
- Whether political community exists or whether deep social divisions exist
- Degree of polarization
- Whether extensive media, civil society debate already in place (E. Europe and many other parts of the world)
- Single-party dominance
- Bureaucratic capacity
- Attitudes toward law, legitimacy of legal institutions
- Degree of trust in political elites or representatives
- Neighborhood and degree of involvement of neighboring countries in conflict
- Regional arrangements

Tradition or cultural preferences may shape choice of procedure very strongly. For example, national conferences are most common in Francophone Africa, where the model of the French revolutionary états généraux influenced the architecture of constitution writing processes. The talents of lead negotiators may also play a role. Most negotiators will favor approaches that play to their own skills.

Redefinition of a nation raises many complex problems not present when the need is to restructure political institutions. As Madison said when he wrote about American process, "we were very fortunate that we had already established a nation, all we had to do was establish a state." Although the Virginia constitution left many people out and Madison's statement was an exaggeration, the basic insight is significant. In many countries today, the most fundamental issue is nation-building.

Whether a division or dispute is "ripe for resolution" is important but it may not always matter as much as people think. There may be moments when it is easier to get agreement, but it is also the case that engagement in the constitutional process may *create* the conditions for its acceptance. Constitution writing can sometimes be transformative in this sense (and also in the sense of changing popular attitudes).

Winning Agreement on Goals and Ground Rules

A first step in constitution making is to ensure that those who are critical players are drawn into the conversation. Sometimes the key players, like major political parties, are evident. In some cases they may be less so. For example, in Somalia, people orient themselves toward clan elders. Failing to include clan elders in early negotiations disrupted later efforts. The incumbent must be on board as well. Finally, the key parties must have sufficient legal status or protection that they can act on behalf of others. It is impossible to hold a serious negotiation with people who are banned or in jail.

Unfortunately, today there are many settings where the parties are highly fragmented and leaders have a limited rapport with their followers. Neighboring countries may perceive a stake in the process and create contending parties as the discussions slowly move forward. Often there are also parallel negotiating centers or structures for constitution writing. In these contexts, forging a constitution can be extremely difficult and may require great procedural imagination.

Revision v. Constitutions de novo

One of the initial choices countries face is whether to engage in incremental constitutional change or to replace an existing constitution with a wholly new document that reflects a new order. In the incremental approach, the drafters must confront outstanding problems, remove the most offending passages or address glaring omissions, and generate momentum for continuing revision. Chile has pursued this strategy, to some degree, as has Indonesia. An advantage of this approach is that it can de-dramatize the constitution. In some settings, creating a constitution de novo and using the constitution to solve a range of difficult problems raises the political stakes and may increase division. Further, having a document to use as a reference point, whether an older constitution or a draft from a commission, helps larger deliberative bodies made up mainly of non-specialists focus their attention. Incremental change merits more attention than it has received for these reasons.

. Interim mechanisms in whole constitutions, in Eastern Europe, most countries amended prior text one of things we might think of is a 'salvage operation' on old constitutions. Many of these constitutions were not bad, window-dressing. 'revolution of rule of law' – suddenly laws on books become real. One of the ways Hungary was able to get consensus was that Hungary had signed a number of international agreements, moving these provisions into constitutions was relatively easy. Often, in ideological regimes, ways of using more docs in interim process, enforce documents as interim mech.

The Role of Representatives

Most politicians see themselves as delegates rather than trustees. They try to stand up for their constituents' immediate concerns. They emphasize short-term priorities over the country's long-term interests. By contrast, trustees elevate themselves above the fray. They take a longer view and seek to develop structures that will be able to manage tensions in the future and help the country adapt to new conditions. Inculcating a sense of trusteeship is very important to the success of a constitution writing process and it is something that few leaders of constitution making exercises are able to do. The tone set by the chair matters in this regard, as do decisions about how to handle past abuses, about timing vis-à-vis elections, and about procedural design.

The chair or chairs need not be neutral in order to foster a sense of "trusteeship." In South Africa, the constituent assembly was chaired by clearly political people, the chief negotiators for the two main contending parties. Both knew something about successful bargaining and negotiation before they assumed these roles, however, and they developed a rapport through earlier meetings.

Need for a Shared Narrative?

One participant suggested that the key to constitution making success in divided societies is forging a common narrative about how the country arrived at its current decision point and about the challenges that history has created. Agreement on the path and the challenges enables people to focus on solutions and makes negotiation possible. Others suggested that a common narrative is often difficult to forge, but it is helpful at least to build some shared assumptions or shared ground. It certainly is very hard to build a constitution if key players cling dogmatically to extreme ideological positions. Steps to soften ideological rigidity are important.

Whether people involved in a constitutional dispute want to be of the same nation may also be important to address up front. For example, in Canada the real question for some is "do we want to be a single people?" One meeting participant observed that, "Even talking about national bonds is offensive to people who have not drawn, by consent, into the 'nation.'"

Interim Arrangements

Often a significant overhaul of a constitution or the creation of a new constitution proceeds in phases, and interim rules and structures may be necessary to carry out the work of government in this period. If the society is deeply divided or emerging from

civil war, the major parties generally convene to negotiate a compact or peace settlement up front, usually by a roundtable agreement. The roundtable may spell out the way in which the subsequent process will unfold. It may specify that particular terms or features must appear in the final draft. And it may create a unity government or a transitional legislature.

There is a distinction between interim constitution making and interim mechanisms. Interim mechanisms are ad-hoc institutions or processes created to help bring people together. They help find out what the issues are for a broad range of important players. Interim constitutions provide a framework of rules and may have some enduring effect on the character of the document eventually developed as the "real" constitution.

Roundtables are a common feature of interim arrangements. Roundtables engage key parties or combatants in the development of the ground rules, the process, and constitutional principles or text in some instances. Roundtables are sometimes used prior to constituent assemblies or national conferences to win agreement on process and a few immutable principles. In some cases, as in the case of the Dayton Accords, they prepare and ratify the actual document, usually as an aspect of peace negotiations.

When a roundtable or a body set up as part of an interim arrangement sets out some "essential features" that the final document must contain, there must be some mechanism for enforcing this agreement. Failure to do so may cause a rupture later. The El Salvador process was jeopardized in just this way. The rebels wanted a new constitution. The government did not. Reform of the constitution was the compromise, but the legislature had to pass the reform. When the legislature tried to change a provision that had been part of the negotiation with the rebels, the rebels said the deal was off. The president of the governing party bowed to an appeal, re-convened the legislature, and addressed this problem, but only just in time.

In South Africa, the negotiators agreed to create a new constitutional court and gave the court the job of reviewing the final draft for conformity with 34 terms laid out in multiparty negotiations. Further, one meeting participant observed, "everyone understood that the deal would break down if people messed with it." In Bougainville, the peace agreement requires that both sides sign off on the draft before the document foes to parliament [but can parliament then change the document?]

Amnesties & Transitional Justice

To forge a social contract through a constitution, key parties must be represented and must feel that their safety will not be jeopardized by participation in a constitutional conversation. In some instances, the engagement of major players depends on grants of amnesty from prosecution for past abuse of office. If taken too far, however, such amnesties may make others feel that the perpetrators of violence or abuse will simply

reassert their power and undermine the security and well-being of others. It is difficult to forge lessons or generalizations that port well across national boundaries.

In the case of Benin, the participation and good will of the incumbent president depended in part on a grant of amnesty. Heads of state have often confused the difference between the treasury and their own pockets, and most are afraid of what will happen if they agree to negotiations. Benin's incumbent and its past presidents received an amnesty from the transitional legislature. "We paid the price of peace," said one participant. Prior to that point, some of the leaders of the constitutional negotiations impressed on key parties the desirability of having a positive place in history and also pointed out the likely consequences of resistance or of overplaying their hands. This sort of informal diplomacy helped in the initial stages, but the formal guarantees were important later.

Institutional Design

Use of Commissions or Other Specialist Bodies

Many constitution writing processes locate the development of an initial text or principles in a special commission. If the commission's members are highly respected and representative, this step may help strengthen civic consciousness among members of the public and raise the tone of the discussion, perhaps setting a model of trusteeship for the representatives who will deliberate about the text to emulate.

There are risks attached to the use of constitutional commissions prior to deliberation, and in some settings these may outweigh the advantages. Commissions may raise excessively high expectations about the possibility of constitutional engineering. Others may be inclined to spill too much ink, handing the deliberative assembly a lengthy document filled with too much arcane language and too many provisions that can't reasonably be implemented.

Choice of Deliberative Forum

Constitution writing may be incremental, through the gradual amendment of a document by a legislature, or it may involve significant re-thinking and the creation of a new text. Hungary offers a significant example of an incremental process that resulted in significant changes to the structure of the state. Chile and Indonesia may also fall partly into this category. Incremental revision may be under-used today. Creating new documents generally promotes division and raises the political stakes. However, incremental approaches are most workable where there is significant trust among political representatives and between representatives and their constituents. The contexts in which the UN and others work generally don't display this characteristic. The incremental option may not be available outside stable, liberal democracies.

With respect to deliberative forums, there are several standard formats and increasing numbers of hybrid approaches.

Directly Elected Deliberative Forums

The vote is often considered the only legitimate means by which citizens can authorize others to make decisions on their behalf, and much attention has focused on elected assemblies, in consequence.

- Specially elected constituent assemblies are generally selected by rules that allow for greater representation of minorities than is often the case with legislatures. They may operate in parallel with sitting legislatures, which conduct regular government business, or they may displace the legislature and assume responsibility for regular government business as well as for constitution writing.

- Legislatures sitting as constituent assemblies usually take their membership as given by the previous election but employ different sets of operating rules than they do when engaged in normal government business.

- Sitting legislatures sometimes play a central role in constitution writing, receiving a draft developed by a constitutional commission or other body in the form of a bill from an attorney general's office. There may or may not be special rules that apply for amending and voting on the final document.

Appointed Bodies and Indirect Elections

Several participants indicated that the use of the vote to authorize representation may not always be the right way to generate a legitimate deliberative body. Said one person, "The British tradition gets stuck on notion of parliamentary sovereignty. This can be a big problem if departure from the status quo is required to bring about peace or greater inclusiveness. So strong is the British norm that when alternative approaches are developed, a sitting legislature may object, intervene, and take over on the grounds it is the sole legitimate author. Yet the parliament is sometimes the source of the problem, the source of conflict, in a many states."

- Conferences or conventions try to achieve representativeness by allowing recognized political groups and civic or economic organizations to nominate all or some of the delegates. The role a conference plays in the development of a constitution varies from case to case. There are three main models.

- In most instances, the conference develops some essential features or makes recommendations about the form the text should take. It then elects or appoints a transitional legislature, one of whose tasks is to transform these ideas into a text, deliberate about the proposed provisions, and send a final draft to a national referendum. In these instances, the conference/convention is a consultative mechanism, although where its general principles are binding or where it has sole

power to select the members of a transitional legislature it may shape outcomes more strongly than consultative processes normally do.

- In a few instances, the conference or convention functions in the same manner as a constituent assembly, developing and debating the text itself and sending a final draft to referendum. Sometimes the conference includes the members of the sitting legislature and other elected members, as well as representatives from "estates" or social, economic, and occupational groupings.

- In some cases, the convention or conference develops its own draft, which it then submits to the head of state or the legislature for a vote, usually via the attorney general. Changes may be made by the office of the attorney general before submission for a vote.

Benin's National Conference

Benin was one of the first African countries to move to a multi-party system after the fall of the Berlin Wall. The single-party government was unable to pay salaries or deliver basic services, and the country's former leaders, civil servants, and students joined forces to demand change. Constitution writing was an important part of this transition, and the country decided to sponsor a large national conference as part of this effort.

In the words of one of the reform leaders, Robert Dossou, the conference had three main objectives. "The first objective was to help quiet the situation, to help people feel easy in their own company. The second objective was to prepare a new constitution and new regulations for the country. The third objective was to allow the political class to prepare itself for future competition. These are the main objectives of national conferences: To avoid violence and to preach a new *ambience* for the whole country."

The president issued a decree to convene a national conference. "The country's economy had collapsed and we were obliged to go back to a market system. We got together in a national conference to think about the kind of economy we want, and what kind of political system. During those 10 days, we decided about big principles. We decided that president of the republic would be directly elected by the people. We decided about the election, the electoral law, and the terms of office, and then the national conference elected some members of the constitutional committee, in charge of the drafting of the constitution, on the basis of the decisions made at the conference. The conference document was full of contradictions."

At the end of the conference, the conference appointed a prime minister in charge of assisting the head of state. Second, it appointed a high council to serve as a transitional legislature and later to become a constitutional court. The council was the drafting commission of the constitution...The council's constitutional committee wrote a draft, then the draft was sent to the whole transitional legislature, which made its own changes. We sent the final draft out, even to the barracks. After debate through country, the draft was submitted to referendum. Elections took place after the referendum."

Roundtables as Deliberative Bodies

In some cases, the main deliberative body is a roundtable among the leaders of contending parties brought together to negotiate a peace agreement. It is not uncommon for significant amendments to be negotiated as part of peace agreements.

Roundtables can be an important part of a phased process that includes other deliberative forums, as in South Africa or Poland. Where they are used as stand-alone devices for drafting and adopting a constitution, there are distinct risks. Popular knowledge of the constitution is likely to remain low, for example, and "constitutionalism" may be harder to develop. Groups that are not represented may become spoilers later. The information about preferences and problems available to the drafters may be limited.

The choice of forum

The choice of forum may depend on many things.

- Legal continuity is usually important. Where constitutions have been crafted using one approach or another in the past, it may be important to return to the same type of forum unless a strong break with the past is essential.

- There may be social constructs about where legitimacy comes from and how power is to be derived and passed on.

- Elected constituent assemblies appeal to a generally accepted means of authorizing delegates to act on behalf of constituents: the vote.

- Sitting legislatures may or may not have been installed by a vote widely considered fair. In South Africa, it was possible to use the parliament as a constituent assembly because the election to this body was "hugely legitimate." Not all legislatures may share this quality.

- Elected assemblies may under-represent minority views. They are essentially majoritarian institutions.

- Where elections are unlikely to deliver a representative body or may sow violence, or where trust in elected representatives is very low, it may make sense to consider a fully or partly appointed convention or national conference, though there may be difficult problems of representativeness associated with these as well. These bodies may then indirectly elect a legislature and help constitute a constitution-making committee or commission from the members in their ranks.

- National conferences and conventions tend to be larger than elected assemblies, although they are not always so. Large bodies may be more representative, but they are also more difficult to manage and can be very prone to breakdown. Deliberation is usually impossible in large settings. Provision for short public statements often leads to grandstanding and heightens tensions.

- Cost may limit options. In South Africa, a hybrid constituent assembly-legislature helped economize on election management costs and compensation costs.

- If warring parties are not represented in the drafting body, there is a risk that deals struck to stop violence will be undone. South Africa created a constitutional court and gave it responsibility for certifying that key elements established by an initial roundtable were reflected in the final draft. Comparable devices may be necessary in other settings, or armed parties may resume conflict.

- More inclusive processes may have a tendency to generate longer documents with provisions that are better handled by statute.

There was an undercurrent in the workshop conversation that questioned whether one type of forum or another was necessarily better at producing some of the outcomes desired. For example, one participant pointed out that Japan's constitution was largely imposed, but people gradually came to accept it. Another suggested that participatory constitution making did not necessarily produce higher levels of public acceptance or better drafting quality. Hungary's process, sketched in the textbox below, might have appeared destined for trouble but produced a happy outcome. Similarly, the consultative assembly set up by Jerry Rawlings in Ghana in 1991-2 fell short of some of the expectations people might have had for it. No political party participation was allowed, for example, Most of the consultative assembly members held positions in the government, and the bar association received the same number of seats (1) as the hairdressers Nonetheless, the constitution was adopted and the opposition even campaigned for it, feeling that there was no other way to induce change and imperfections could be addressed gradually.

Hungary's Constitution Making Paradox

Because it was so peculiarly closed and quick and had few of elements often mentioned as sources of success, the Hungarian case merits attention. Hungary had a pacted transition to a more open political system. A roundtable negotiated the key changes. A sub-committee of a sub-committee ended up drafting most of the document, which was eventually introduced to an illegitimate parliament as an amendment to the Soviet-era constitution. There were no expert bodies or constituent assemblies involved. The new constitution was then amended heavily and emerged years later as a document that has attracted considerable legitimacy.

Decision Rules and Design Details

The performance of deliberative bodies and of constitution writing processes writ large is influenced by the details of design and by the choice of decision rules. However, in some successful constitution making efforts, these rules remain in the background and are rarely referred to. In other settings it may be helpful to have flexible procedural rules, but everyone should be helped to understand the process and the points at which modification of the rules is possible.

Keeping the rules simple is also a priority. One meeting participant pointed out that in East Timor, the dominant party didn't understand the process, and this lack of understanding triggered conflict. In Nepal, a very large number of people who will come to the assembly will be illiterate and will represent marginalized communities. Developing a constitution will be difficult if parliamentary rules are in effect.

- Careful attention to committee and sub-committee design is important. The driving force in South Africa was the constitution committee of the Constituent Assembly. Every party was represented in a roughly proportional way. About 40 people were actively involved. The committee had a multitude of sub-committees, and much of the real work of negotiation and constitution writing took place in technical sub-committees, where the legal experts and representatives of different parties worked hand in hand. These small, specialized committees were helpful in building constructive interaction and agreement. Membership was a little fluid. In specialist areas some politicians only participated for a few days. Other people were more or less seconded full-time.

- Development of drafts by *competing* committees may create tension and delay. If multiple committees or bodies can claim to be authentic representatives and to issue competing drafts, the process may be endangered.

- To encourage delegates to act as trustees or to take the long view, as well as to offer information freely, it may be helpful for them not to know too much about the likely partisan affiliations or positions of others present. Random assignment of delegates to committees may prove more effective in producing informed agreement than allowing delegates to serve on committees that attract their interest.

- Scheduling the development of the constitution well before regular legislative elections is helpful. Delegates are then less likely to know what their positions would be in subsequent electoral contests or in government. They are likely to take a longer view and attend to a broader range of interests.

- Negotiating provisions in plenary sessions is not a good idea under most circumstances. A plenary session serves a ritual purpose and it is necessary. But it is not usually a good forum for reception of information or for deliberation.

- A constitution can have several readings. It is rare for a delegate to suffer "buyer's remorse" and vote against a document s/he has agreed to in a first or second reading.

- There may be reasons to have more informal, flexible rules for constitution making bodies than for regular legislatures. In constitution drafting, many delegates may lack familiarity with parliamentary procedure and find themselves at the mercy of those who do (who often use their knowledge of the rules shamelessly).

- Deadlines can be useful but they require some sort of enforcement mechanism—some way to penalize those who overstep them. Referenda on selected issues have been used in this way but a more common device is often the threat of a donor to withdraw support.

South Africa's Approach.

South Africa's interim constitution specified that a newly elected parliament would become the main constitution making body, building on agreements struck earlier. This body was selected through a highly legitimate election, at a time when executive power was shared by the main parties. Negotiators had easy access to political caucuses and kept caucuses and kept elites on board.

This arrangement had several implications. It meant that every single parliamentarian was involved, even if in a small way. It provided an opportunity to create some special rule informed by the experience of people active in earlier negotiations. At the same time, the constituent assembly could share the infrastructure and the experience of the parliamentary staff. There was no competition with parliamentary business. The ANC was the dominant party in the process, but the executive did not control the process, as it might have in an ordinary parliament.

The fact that the constitution was negotiated and deliberated by such a distinctive body may have given it a special place in the popular imagination.

Guidance about the helpful and unhelpful use of consensus rules remains a priority. We often think that consensus rules require majorities to reach out to smaller groups and take their interests into account. According to this view, consensus rules are helpful for building a document that will take the larger community into account. But consensus rules may also empower spoilers and give very small minorities veto power, as in Bolivia. Further, if the underlying problem that made revision of the constitution necessary in the first place is exclusion of a very small minority group, the definition of the supermajority required for a decision can be quite critical, because a 60 percent rule or even a 70 percent rule may not force the majority to reach out to those excluded.[1] The practitioners in the room felt it is often best to leave the exact margin

[1] Increasingly we are seeing constitution building processes where 70-80 percent majorities are required.

required for consensus a little flexible and to try to keep the number of votes to a minimum.[2]

The meaning of "sufficient consensus may vary in other ways too. In South Africa, sufficient consensus meant consensus when you could get it, but it also meant that if the ANC said no , the process broke down, while if a smaller party dissented, the process generally continued to move forward.

Publicity

There is usually a tradeoff between transparency/publicity and secrecy/ability to compromise. Public meetings enable the public to scrutinize the behavior of those who are negotiating on their behalf and they may help keep politicians honest, but they also increase the tendency to grandstand and pitch to constituencies. They may limit compromise and creativity. Confidentiality can generate suspicion, but it can also increase the chances of agreement and it may sometimes facilitate the development of interesting ideas. For example, in Sri Lanka, in the 1994-2000 drafting exercise, a select committee of parliament worked on a draft, drawing heavily on experts. The whole process was secret, but perhaps because of the role played by expert advisers the committee's proposals displayed a lot of empathy and concern for the general welfare of the country. The recommendations were far-reaching and imaginative. When released, however, other members of the cabinet opposed the proposals.

Participation

Popular participation in constitution making is a relatively new phenomenon, part of the "third wave" of democratization. Demands for participation come from citizens, but also from international experts. The importance of broad popular participation may vary with historical period and region, however. Where there is a tradition of interest group organization and representation, even if that tradition has suffered interruption, direct popular participation in the process usually receives low priority. The greater level of media activity and the stronger tradition of representation help ensure both that people have a chance to hear and debate terms without direct involvement and convey their views through established channels. By contrast, where civic groups, unions, media outlets, and political parties are few, less established, or of limited reach, direct involvement of citizens is more necessary as a way to convey and obtain information, enhance the orientation toward law, and build constitutionalism. Popular political participation attracts a higher priority in Africa and parts of Asia, as a result.

Particularly in societies where many people do not read or write, extensive oral public consultation may be especially important. A "day of record" may let aggrieved groups and individuals place issues on the table and be heard. Committees may also hold formal hearings, providing people another opportunity to speak. If a recitation of history

[2] Minimizing the number of matters brought to a vote may provide more flexibility for the chairs to limit excessive veto power and nonetheless reach out to small groups. Voting also takes considerable time and frequent voting can lengthen a constitution making process considerably, making it much more expensive.

is allowed at every meeting, including drafting sessions, however, time slips away and antagonisms may increase. It is better to separate the hearings or days of record from the deliberation of the assembly.

Finally, a broad consultative process may help obviate bad surprises, such as the sudden discovery that support for an agreement has disappeared because a disaffected, un-represented party has mounted a public campaign and has swayed popular opinion. Bringing the public into the process makes it less likely that deals will be struck that will be undone immediately.

In South Africa, a media campaign led to submission of 1.7 million suggestions. About 78 percent of people said they had heard something about the constituent assembly. In the eyes of some participants, the problem is that after the process was over "we dropped the ball." The discussion of the new constitution was absent from school curricula and from the popular imagination. "That is positively dangerous."

Participation is not without its troubles, however.

- Where the clan, not the individual, is the foundational unit of a society, representative systems may privilege the views of clan leaders. If popular participation yields preferences and priorities at odds with those of clan leaders, is there a device for resolving the differences peacefully?

- There may be tension between participatoriness and the length of the constitution or the degree to which it legislates. The more people who are involved in the process, the more people who want "their thing" in the constitution.

- Focus on participation and openness, forget that in the end in post-conflict and divided societies is negotiation between interesting groups. Seldom that it's not. Usually there's a problem, participation and open processes are designed to open up the legal space a bit. To bring in other groups. Tendency to downplay participation, but we need to think a bit more about role of negotiation.

- In all settings, the media can present difficulties as well as opportunities. The media may think the way to attract readers or viewers is to pick a fight between people who are on different sides of an issue and may have negotiated a careful agreement that could be put at risk. For example, one participant suggested that in Sri Lanka putting a finely-crafted constitutional negotiation that's been cobbled together in private by elites out for discussion is suicidal. The Sri Lankan media wants to see people fight it out. If the aim is to use the media to help root the constitution in the popular consciousness, the media have to be willing to do so.

Interactions between Content, Process, and Outcome

Processes, including the choice of drafting bodies, influence outcomes but so does the specific content of the document. Meeting participants discussed whether short documents that set out the design of governments had more impact on outcomes than constitutions that seek to forge new nations or transform values. This issue was left unresolved. However, there was fairly broad agreement on the need to avoid the use of constitutions to enshrine judgments that are better left for legislatures and require constant adaptation.

a. Treatment of Divisive Subjects

Fink Haysom led the discussion of divisive issues with the observation, "The most divisive issues is how to deal with divisive issues". "The truth is that constitution-making is divisive. It calls on people to separate themselves on issues, to state how they differ from other people. It raises the notion of the other rather than heals it. This is contrary to our rhetoric, but it is important to address nation building elements w/in it. Even if they have quite separate perspectives, they have a common destiny."

There is an enduring tension between breadth and depth: tension between two core values in any constitution making process. Support in a society and an underlying majoritarian support. Majoritarian decision making overwhelms minorities and minorities with a decisive and veto powers can hold the majority for ransom. There are always winners and losers.

In South Africa, we used a two stage process. Many of the questions we'll look at today had a two stage process: Each party was given a veto in the 1st phase in order to establish a set of principles to govern the final constitution. It is sometimes helpful to proceed in this manner in order to pre-guarantee the outcomes of the constitution making process. Bringing people together to come up with principles is also a confidence building measure. The second phase was majoritarian. Need it always be majoritarian? In South Africa, we thought so. It is the only way of giving weight to significant opinion. We accorded primacy to majoritarian decision making for this reason.

There are critical questions that arise about how the body will take decisions. Both the decision-making formulae and who is at the table are very important. Different electoral systems will guarantee some, preclude others and put different people at the table. If you decide on ***Universality*** as a principle, you have to face difficulties of decision-making. Small players really have an incentive to be spoilers. They never have enough power to rule, but they have the capacity to disrupt. Departing from consensus and going to ***majoritarian*** system may under-represent important groups. In South Africa, we developed the concept of sufficient consensus. Unlike in N. Ireland where they had a numerical formula, in South Africa it had to be consensus between an unspoken but known sense of who the big players were. Small parties couldn't hold up the process if one or two were out of line. Another option is to call for super-majorities.

Here are some additional observations.

- People don't find each other in structured antagonistic debates. Real movement takes place between the formal debates. Brokers must come up with techniques to get agreement on basic tenets of the constitution outside of the main debates.

- Should leaders be at the table? Leaders are the ultimate deciders, but they may stay outside the deliberations so that they may be brought in as a conflict mediators. The danger is that key decision-makers remain outside of the everyday process, and the people sitting around the table must have the ability to strike deals. However, the value of preserving the top leaders as ultimate arbiters in cases of hot dispute is very great.

- Structure constitution-making processes so that there is adequate time for NGOs and political parties to engage with the public between formal sessions. Rhetoric has to give way to compromise at some point and leaders at the table need to be able to tell their constituencies.

- Manage the text: Think very carefully about composition of secretariat and the body that manages the process. The technical way in which people get presented with the paper is important for defusing tensions.

- Create umbrellas and alliances. Encourage parties to work together. In cases like South Africa, there were two principal players willing to act as umbrellas. They could conduct a two party debate (w/ 30 sub-parties).

- The ways to fashion consensus are not that different from techniques in general negotiation: impartiality of chair person, breaking down issues into smaller issues, avoiding yes-no issues. Frequently parities will come with an agenda sequence. Generally from conflict resolution theory, we want to avoid agenda sequences. Some issues cannot be dealt with at the outset, some may be able to be dealt with later. It is important to have a notion of the agenda that isn't set, but flexible.

- An ***Expert committee*** fashioned solutions in South Africa after break down of 1st discussion. Also the ***technical committee*** is another tool that can be useful to deal w/ problems. Technical committees are a wonderful way to get agreement when there is still theoretical differences.

- Set up rules to deal with deadlocks (deadlock breaking mechanisms) and other break-downs.

- It is important to have a mechanism for penalizing parties for not coming to consensus. You can use time itself as a punishment, but this will usually favor one party over another.

- Courts can be used to resolve legal questions, as can arbitration panel. Example: Sudan used a tie breaking international expert. This device played to the

country's nationalism; people often do not want to be told what to do by an outsider.

- Build a team that is heavily invested in the process and its outcome: Paradoxically, the chief negotiator for the ANC might be considered Roelf Meier, the head of the National Party. He had to negotiate with the ANC constitution because he had to sell the document to the National Party. Why did he do this? He felt personally invested. He'd become such a co-manager that he was loyal to the agreements reached and spent considerable capital.

- Ambiguity is an important part of any process. It can often allow both parties to walk away with their interests protected. This can be very good, but also can defer the conflict. In South Africa, we often talked of having both pigs and swans in negotiating teams (swans – big picture; pigs – in the ground, details, arguing a position). Detail, therefore is also an important part of the agreement.

- Educational exercises may be helpful. It is difficult to have technical conversations with people who have no expertise and no negotiating skills. The people without the expertise won't take risks. They need the confidence to take those risks. Take multi-party groups on training tours together.

- Beware of constitutionalizing divisions. Can you protect minorities without referring to the very difference that makes them a minority?

Meeting participants made additional observations. One person pointed out that it is always easier for people to think about what has gone wrong in the past rather than what the future could look like. There is inevitably a tendency to dwell on the past, and constitution writers must take account of this.

Sometimes it is helpful to keep several issues on the table. In complex multi-later trade negotiations, there is some effort to keep items on the agenda to reduce the salience of an issue and to create greater opportunity for bargaining. The nightmare agenda is a Yes-No negotiation. It is also important not to allow agreement on each item ato become a prerequisite to negotiation of an important larger issue.

b. Ambiguity v. Generality v. Clarity c. Concreteness

Some constitution drafters have left contradictions embedded in the texts they have forged or have left terms undefined, feeling that the push for clarity might undermine comity. One debate focused on how best to conceptualize this tactic. Is the proper term for this device "ambiguity"? Some participants thought not. "Generality of words" may be a more appropriate description. Ambiguity leads in two irreconcilable directions, while generality may allow for a wide range of possible meanings, to be resolved later. Another debate focused on the desirability of the tactic. Those involved

in the South Africa negotiations thought the device was very helpful. However, one participant questioned the claim, suggesting that in Bolivia the decision to award indigenous peoples special rights coupled with the failure to define "indigenous" has led many different people to re-style themselves as "indigenous" and thereby moved the country closer to civil war.

Precision is important. In South Africa, the drafters spent two months trying to convey the difference between "assignment" and "delegation." Sloppy drafting can become a source of trouble later.

Sometimes terms carry political, ideological, or emotional baggage that can disrupt a process. "Federalism" is one example. Whenever possible it is important to focus on the concrete issue. Negotiations should be over tangible matters whenever possible. The book, *The Silence of Constitutions*, provides insight into avoiding terms like federalism and sovereignty. It is a litany of words having to do with power (not justice) to be avoided.[3] Economic issues can generate easier answers in the sense that there is verifiable data. You can bring in experts and people can listen to what they say.

Drafting

Philip Knight led the discussion of drafting. He opened by suggesting that several things make drafting particularly problematic. What are we trying to draft? What is the nature of the constitutional text itself in a community where many of the members don't read, and certainly don't read English? The first problem for them in addressing a written constitution is the word "*written*." A room full of elder councilors may ask why they have outside help, and why that help comes from lawyers to write a constitution. An advisor has to say, "well those are great questions, and why don't we talk about that for a while?"

The next problem, which is inherent in constitution writing, is the attempt to fix history (fix as photo-chemicals fix and image). In other words, a constitution is an attempt to limit the legitimacy of past regime, establish the legitimacy of new regime and offer a prophylactic for anyone to need to do this process again. It is always contingent with respect to the future because we are not totally arrogant enough to believe that there will not be things in the future that don't require some change in the document. Debaters need to be aware of these issues and be able to communicate that to the drafter.

The third aspect is the unique placement of the constitution with in the law. It affects every other law and is affected by none of them—it is a document without peer. For a legislative drafter who is accustomed to laws with a background or legal context, this puts the drafters in a somewhat uncomfortable place.

[3] Michael Foley. *The Silence of Constitutions.* London: Routledge, 1989.

The simplicity of the text is yet another challenging context. The sparse literary style of a text—doesn't argue, rationalize etc., it just declares things to be so. That is unusual and probably why reading legislative documents is so unspeakably tedious. This style runs up against people's aspiration and the sense of history in creating a founding document. They want a sense of grandeur to underline the importance of this kind of document. One of the functions of a preamble is to satisfy that urge—they allow for assertion of identity, declaration of purpose, for inspiration, for education. It is a great place for this kind of soaring language, but also an opportunity for some to write political tracts. There is a struggle for the drafter between that impulse and the impulse to write legislation.

Constitutions are also relatively simple forms of political texts. Within the wide range of legislative devices and also legislative alternatives, the constitution has a very limited scope: Constitutions create institutions, assign some powers and some limitations and assign certain rights. The drafter is used to having a handy full toolbox of legislative devises at his or her disposal, and is challenged to use these few tools. There are different ways of dealing with complex problems within the scope of the constitution. The experience of South Africa is an illustration. When they came to debate the freedom of expression clause, South Africans were concerned about what to do with hate speech, propaganda etc. Here is a point where the drafter can offer useful alternatives. The drafter can offer three alternatives: 1) You could ban that kind of speech (for example in clause 2 of the guarantee of the freedom of speech article), 2) You could limit the protection so that it doesn't cover all forms of freedom of speech. That will leave the decision of application to parliament to decide. When Parliament chooses to limit that freedom, they can do so without facing a constitutional challenge 3) You could just leave it, not mention it at all and then it would be left to the [general rights clause]. The role for the drafter is the provision of these alternatives.

Constitutions like every other piece of writing are ambiguous. They are ambiguous because words are ambiguous. Words are ambiguous because they do not have absolute meanings and they survive beyond the time that they are uttered. Constitutional authors project their ideas into an uncertain future. We are naïve in the extreme if we think our words will be certain in the future. People react to the inherent ambiguity of words in a variety of ways on a spectrum from *the ambiguity of hope* to *the ambiguity of fear*. Those who think they have something to win from the constitution tend to interpret the ambiguity with hope; those with something to loose, tend to interpret with fear. If the adoption decision is to be made by people who perceive themselves to have a lot to gain and have been involved: you should bet the constitution will be adopted. Those who have not been involved and perceive themselves to have something to loose: bet on not adoption.

What does a drafter do? There are four different models of work: 1) harmonizing the text, 2) drafting amendments or proposing amendments, or bringing texts up to date, working individually or in consultation, 3) advising as a lawyer would provide counsel; 4) preparing text in response to general visions offered by leaders. In assisting

indigenous communities, the fourth model may become dominant. In other settings, the first and second models may be central.

The drafter cannot delink drafting and giving advice. It is a professional duty to provide advice on the law that affects the business of the client. It is important to acquaint the client with the contextual issues and help the client steer a way through those issues so that the outcome for real people bears a close resemblance to what the negotiators had in mind. "My job is to consolidate intent," Knight observed.

The worst point for the drafter is usually the presentation of the initial text or framework document. People have vested enormous expectations in the document—high hopes, the spirit of a nation. What they receive is something that is flat and non-argumentative. They are disappointed. Their own vocabulary and style are gone. The spirit may seem to have disappeared. Apart from the shock, there is a sense of loss. But in harmonization, individual voices must disappear. The people who deliberate must be prepared for this. In South Africa, the flatness of the tone upset many members, but the management committee held fast in defense of the document.

The security of the document during its development is also an important responsibility. The drafters have to track changes, of course, but there are also times when draft chapters just need to "stay indoors" while negotiators talk. They cannot be read. And the drafter is responsible for ensuring they are not released. In Kenya, there was a leak during the drafting process, and the leak resulted in a challenge to the chair. It also happens occasionally that someone quietly inserts language after a committee has signed off. Security involves two things: keeping it in and keeping it safe.

Working with a style guide is very important. There will be several drafters. For the final document to have a single tone and a single meaning for each word, the team needs to work together. People often resist a style guide, but it is very important to develop one and to follow it.

Adoption: Use of Referenda

In some cases, adoption and ratification lies with the deliberative body that produced the draft. In other cases, it requires a referendum or some other special process. Marku Suksi provided a paper on this subject (not repeated here).

With respect to adoption of the final draft by the deliberative body (prior to ratification), there is something to be said for proposal and final adoption of whole document. Maybe this step serves a ritual purpose, but it is necessary, in the view of several meeting participants.. We typically send legislation through three readings. A constitution can be put out to public, or sent out for study, then brought back for third reading and a vote when no debate is allowed. This tradition is ancient. The risk that some might vote against the draft at third reading, feeling buyer's remorse, is pretty low.

Very rarely do people vote against something on a third reading that they agreed to on a second reading.

What shapes preferences for different methods of ratification? Culture and tradition makes a difference. Referenda have typically been more commonly associated with countries in the civil law tradition than in the common law tradition. The institutional context may also shape choices. For example, few countries emulate the US ratification process because few have a similar federal system. Third, there may be some preference for referenda if an important reason for drafting a new constitution is a struggle for popular sovereignty or self-determination.

Many contemporary constitution making settings may be precisely those in which people seek to assert sovereignty and a referendum is appealing. The challenge is to ensure that the citizens have a chance to make a thoughtful decision and do not simply take cues from leaders. Introducing impartiality into the civic education process is especially important and challenging. In Albania for example, the "yes" and "no" sides received quite balanced coverage.

There may be some challenging issues associated with the method of ratification.

- It costs a lot to sponsor an election or a referendum. If the constituent assembly has high legitimacy, it certainly costs less to allow its members to ratify the document.

- Referenda tend to be majoritarian institutions and the prospect of a referendum may mean that minority viewpoints are less well represented in the agreements struck in the constitutional assembly. Much depends on the margin required in the referendum.

- Sometimes referenda are most appropriately used during a process to build the credibility of the negotiators or to resolve a debate that might otherwise become a sticking point. In South Africa the constituent assembly was legitimate so there was no need for a final popular endorsement. However, early in the process, De Klerk used a referendum for whites only to ask whether they wished to go on with negotiations. In the Maldives, the most controversial issue was whether to have a presidential or parliamentary government. The negotiators put it to the people.

Post-Process: From constitutions to constitutionalism

In South Africa, surveys suggest that about 78% of people heard something about the constituent assembly through the media. "After the process, we dropped the ball. Neither school curricula nor the media seriously covered the constitution. That is positively dangerous if the ambition is to build a constitutional order."

Questions (from last day)

Can we offer useful maxims about the effects of deadlines on the quality of deliberation or other outcomes? Or is it impossible to offer any guidance about the use of deadlines?

Is voting provision by provision useful in settings where divisions are not strong but dangerous where a country is emerging from civil war?

Are there elements of process that influence the ability to implement the constitution?

Some of you say decision rules should be clear in advance (along with deadlock-breaking mechanisms). Others say the rules should be flexible. Which of these claims is right under what circumstances?

Name some ways to reduce the emergence of spoilers, 'phantom parties,' or new factions in the course of the process.

Should drafters sit in on committee discussions?

Are there 'best practice' guidelines about the use of referenda?

Can we elaborate the range of roles played by drafters and the different constraints contributions etc. involved?

To what degree should a constituent assembly represent the diversity of the country? Is full representation better at an earlier stage, instead of in the CA?

How do you find the more moderate parties? How avoid over-representation of extremes?

Which types of deliberative bodies or sequences of procedural steps are best suited to which kinds of contexts?

When is incrementalism preferable to the creation of a wholly new constitution?

In what circumstances are specialist bodies for developing constitutional proposals likely to be established?

Institutions and Procedures
Flip charts

A1. Outcomes/Measures of Success
Sense of political community
Sense of inclusiveness
Levels of trust among political elites
Ability to deliberate – persuade
Ability to take the long view
Willingness to compromise (v. grandstand or polarize)
Drafting quality-
    Clarity of rules
    Degree to which implementation path is clear?
    How says should handle ambiguity, generality, gaps.
Degree of isomorphism, congruence between values/social structure assume in document and values held in community (?)
Degree to which there are measures for enforcement
Degree to which respected by elites, public
Ability to handle future problems as well as current problems
Level of knowledge about state/government

B1. Different contexts
Type of underlying conflict
Coherence of parties
Whether political community exists or whether deep social divisions exist
Degree of polarization
Whether extensive media, civil society debate already in place (E. Europe and many other parts of the world)
Single-party dominance

C1. Specialist bodies: outcomes to seek
Buy-in by political elites
Public engagement
Place of constitution in minds of citizens
Cost (minimize)

C2. Specialist bodies: design elements (what people can shape)
Relationship to existing political bodies and cultural and historical traditions.
Relationship to parties, civil society stages
Role of informed brokers
Time frames
Incorporation of expertise
Methods of adoption
Methods of media communication
[Past my influence options that are acceptable]

C3. Elected bodies

Existing	Legislature as legislature
	Legislature as constituent assembly
New	Constituent assembly – special purpose
	Negotiated/Nominated
	National conference
	Appointed
	(Burma) National Convention
	(Solomon Islands) constitutional congress
Related to:	Direct Negotiation for political agreement, later constitutionalized
	Top down processes

Meeting Participants

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Professor Prempeh received his J.D. from Yale Law School. He served on the Yale Law Journal as a Note editor and was a Coker (teaching) Fellow for the first-year class. Professor Prempeh obtained his B.S. degree from the University of Ghana and holds an MBA from Baylor University's Graduate School of Business.

At Seton Hall Law School, Professor Prempeh teaches courses and seminars in constitutional law, comparative constitutionalism, business associations, international economic law, and jurisprudence. Professor Prempeh's scholarly interests are in the areas of comparative constitutional design, constitutionalism in new democracies, law and economic development, and U.S. antidiscrimination jurisprudence. ***Email:*** ***prempehe@shu.edu***

Anthony Regan is a constitutional lawyer who specializes in constitutional development as part of conflict resolution. Has lived and worked in Papua New Guinea for 15 years and in Uganda for over three years. In PNG he advised government on decentralization policy and law and taught at the UPNG Law Faculty, and was involved in the Bougainville peace process. In Uganda he was a constitutional adviser to the Government of Uganda. He has been an adviser to Bougainville parties in the Bougainville peace process since 1994, and has been involved in the Solomon Islands and Sri Lanka peace processes, and the constitution-making process in East Timor. His current research includes: conflict resolution in Melanesia, with particular reference to the lessons from the Bougainville conflict; ombudsman institutions and leadership codes as constitutional accountability and anti-corruption mechanisms; civil society in Melanesia.
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Peter Russell taught political science at the University of Toronto from 1958 until his retirement in 1996. He has published widely in the fields of constitutional, judicial and aboriginal politics. He has worked at constitution-making in many different countries, most recently in Nepal. His most recent book is Two Cheers for Minority Government (Emond/Montgomery, 2008). He is a past President of the Canadian Political Science Association, the Canadian Law & Society Association, and the Churchill Society for the Advancement of Parliamentary Democracy. He is an Officer of the Order of Canada.
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Dr Samuels holds a Law degree and Science degree from the University of Sydney, and a Masters in Laws and a Doctorate from Oxford University.

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Daniel Scher is Associate Director of Institutions for Fragile States, providing administrative and program assistance to the Director. Daniel is South African and a magna cum laude graduate of the Woodrow Wilson School. After graduation, he worked with faculty members in Princeton's Politics Department, conducting research on topics related to violence in Iraq, the effects of ethnicity on government policy, the development of EU human rights policy, and constitution writing. Daniel is interested in issues related to corruption and the promotion of transparency, and in many aspects of post-conflict reconstruction. ***Email: dscher@princeton.edu***

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Andres Torrez is founder and Chairman of Andean Consulting Group – ACG Bolivia. He has been national advisor for Club of Madrid and served as Executive Director of the National Constituent and Autonomy Council of Bolivia, as well as on various commissions and study groups on issues such as Democracy building process, Democratic Governance in Bolivia, Constitutional Design, Inclusion, Minority Rights and Autonomy, and Corporate Social Responsibility.

Mr. Torrez is a regular collaborator as a political analyst at several newspapers, Radio and Television News Programs in Bolivia and abroad such as CNN, VOA (Voice of America – USA), Bolivian media networks: ATB, Unitel, RED UNO, Panamericana among others.

He is Professor of Strategic Management in Government, Public Policy, and Constitutional Design at Maestrías para el Desarrollo, a Graduate Program at the Bolivian Catholic University - UCB. He is also an associate professor of Public management and Political Science at CIDES-UMSA, a graduate program at the largest Bolivian Public University, Universidad Mayor de San Andres. He has finished his Doctorate Thesis and is waiting for a formal dissertation at the Universidad Autónoma de Madrid. Has a Masters degree on Constitutional Law from the Centro de Altos Estudios Constitucionales de España, a second Masters on International Diplomacy in Madrid Spain, and obtained his bachelors degree on Economics at Texas State University, USA.

He has also been Director of the Public Policy Programme, at Maestrías para el Desarrollo, UCB. He has published on Democracy building values, Constituent process of Bolivia, and contemporary issues of popular democracy, decentralization and autonomy in Bolivia. Among his publications are: "Simulación de Asamblea Constituyente en Bolivia" - 2004 (Simulation of the Constituent Assembly of Bolivia),

"Actores Políticos y Sociales en Bolivia" - 2005 (Political and Social actors in Bolivia), "El proceso Autonómico en Bolivia" – 2006 (The Process of Autonomy in Bolivia), "Participación Ciudadana, Generador de Valor Público" – 2007 (Citizen Participation, Creating Public Value). ***Email:*** ***andrestorrez@acgbolivia.com***

Jennifer Widner has taught at Harvard and the University of Michigan. Her research focuses on problems of democratization, law, and development, with special attention to sub-Saharan Africa. Her most recent book is Building the Rule of Law (W. W. Norton), a study of courts and law in Africa and other developing country contexts. She has published articles on a variety of topics in Democratization, Comparative Politics, Comparative Political Studies, Journal of Development Studies, Current History, Daedalus, the American Journal of International Law, and other publications. She is director of the Mamdouha S. Bobst Center for Peace & Justice and is currently completing a global project, Institutions for Fragile States, on constitution writing and conflict resolution. Ph.D. Yale University. ***Email: jwidner@princeton.edu***

Ruben Zamora Rivas is one of the most prominent leaders on the democratic left in El Salvador, and is perhaps most well-known for his presidential candidacy in El Salvador's 1994 elections. He is a professor of political science at the National University of El Salvador and also holds a post at the Central American University as well as at the San Carlos University in Guatemala. He holds a law degree from the University of El Salvador and a degree in government and politics from Essex University, England. Ruben Zamora also worked on the Peace and Justice National Commission in El Salvador at the end of the civil war, and founded the Social Christian Popular Movement Party (MPSC) in the early 1980s. In the early 1990s he served as vice-president of the Salvadoran Parliament and founded the National Commission for Peace (COPAZ). While a Tinker VisitingProfessor at Stanford University, he taught a course on government and politics in Central America. He is the Founder and General Secretary of the Democratic Convergence (CD) (1990-2001); and the United Democratic Center (CDU) since 2002. ***Email: rizamora42@yahoo.com***

Occasional Visitors to the Workshop

Christopher L. Eisgruber became the Provost of Princeton University on July 1, 2004. He is the Laurance S. Rockefeller Professor of Public Affairs in the Woodrow Wilson School and the University Center for Human Values. From 2001 through June 2004, he served as Director of Princeton's Program in Law and Public Affairs. He is the co-author, with Lawrence G. Sager, of *Religious Freedom and the Constitution* (Harvard University Press, 2007) and the author of *Constitutional Self-Government* (Harvard University Press, 2001). He has also published numerous articles on constitutional law, religious freedom, and jurisprudence. Before joining the Princeton faculty in 2001, he clerked for Judge Patrick Higginbotham of the United States Court of Appeals for the Fifth Circuit and for Justice John Paul Stevens of the United States Supreme Court, and then served for eleven years on the faculty of the New York University School of Law. Eisgruber received an A.B. *magna cum laude* in Physics from Princeton, an M. Litt. in Politics from Oxford University (where he studied as a Rhodes Scholar), and a J.D. from the University of Chicago Law School. He is a member of the American Law Institute.

Stan Katz teaches at the Woodrow Wilson School, Princeton University. Formerly Class of 1921 Bicentennial Professor of the History of American Law and Liberty at Princeton University, Mr. Katz is a leading expert on American legal and constitutional history, and on philanthropy and non-profit institutions. His recent research focuses upon the relationship of civil society and constitutionalism to democracy, and upon the relationship of the United States to the international human rights regime. The author and editor of numerous books and articles, Mr. Katz has served as President of the Organization of American Historians and the American Society for Legal History and as Vice President of the Research Division of the American Historical Association. He is President *Emeritus* of the American Council of Learned Societies, the leading organization in humanistic scholarship and education in the United States.

Adam Meirowitz is a professor in the Department of Politics at Princeton University. His research focuses on a variety of subjects related to problems of social choice, including voting and accountability, the design of institutions to aggregate private beliefs and values, and deliberation. With Nolan McCarty, he is author of *Political Game Theory*. He holds a Ph.D. from the Graduate School of Business at Stanford University, an M.A. in Economics from Stanford University, and a B.A./M.S. from the University of Rochester.

Gabriel Leonardo Negretto is a research professor in political science at the Centro de Investigación y Docencia Económica (CIDE) in Mexico. He is at work on a book identifying the political, social, and institutional factors that affect the lifespan of constitutions. Through his project, “Political Conflict, Institutional Design, and Constitutional Instability in Latin America,” Negretto will explore the concept of constitutional stability from a theoretical, empirical, and comparative perspective. Furthermore, he will analyze the correlation between political and social stability and the lifespan of constitutions. Negretto’s most recent work is “Choosing How to Choose Presidents. Parties, Military Rulers and Presidential Elections in Latin America”,

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