



UNIVERSITY OF THE PHILIPPINES  
SCHOOL OF ECONOMICS

Discussion Paper No. 0412

September 2004

**An International Comparison of Constitutional  
Style: Implications for Economic Progress**

*by*

*Gerardo P. Sicat\* and Loretta Makasiar Sicat\*\**

\*Professor Emeritus, UP School of Economics

\*\*Professorial Lecturer, UP Political Science Department,  
College of Social Science and Philosophy

Note: UPSE Discussion Papers are preliminary versions circulated privately to elicit critical comments. They are protected by the Copyright Law (PD No. 49) and not for quotation or reprinting without prior approval.

# **An International Comparison of Constitutional Style: Implications for Economic Progress**

*by*  
**Gerardo P. Sicat**  
*and*  
**Loretta Makasiar Sicat**

## *Abstract*

Using the United States constitution as yardstick for its essential simplicity and completeness in describing the structure of government, the constitutions of twenty-two countries were studied for their language style, brevity and coverage of provisions. Most constitutions of later years have expanded coverage of institutions and the rights of citizens. The outcome is that constitutions became much longer because of broader content but also because they also cover details of institutional processes and structures. The expansion of concerns of constitutions also incorporated economic and social guarantees of citizens in addition to the guarantees of political rights and individual freedoms. Countries with simpler constitutional frameworks have experienced relative constitutional stability more than countries with long and detailed constitutions. The systemic collapse of socialist states in the 1990s brought about some return to constitutions that are simpler in coverage and which incorporate a balance of political and economic and social rights, including protection of property rights. The last part of the study comments on the implications of these constitutional structures to economic progress.

Key words: Constitutions; comparative study of constitutions; economic growth; economic reform; social and economic rights.

# **An International Comparison of Constitutional Style: Implications for Economic Progress**

*by*  
**Gerardo P. Sicat**  
*and*  
**Loretta Makasiar Sicat\***

## **Table of Contents**

<b>I.</b>	<b>Introduction: The demand for constitutional change .....</b>	<b>1</b>
<b>II.</b>	<b>A skillful and suitable constitution.....</b>	<b>2</b>
	Constitutional traditions .....	2
	The US constitution represents a useful benchmark .....	4
<b>III.</b>	<b>A review of selected constitutions .....</b>	<b>5</b>
	Provisions regarding the fundamental framework of government .....	5
	Brevity .....	6
	Directness of language.....	7
	Extent of coverage .....	8
	Reasons for long constitutions .....	10
	Economic rights and guarantees .....	11
	Constitutional stability .....	14
<b>IV.</b>	<b>Implications for economic progress .....</b>	<b>15</b>
	Brevity, content, and organization of constitutions .....	15
	Entitlements, economic and social rights versus property rights and individual initiative .....	16
	Constitutions and economic progress .....	16
	Bibliography.....	19

## **I. Introduction: the demand for constitutional change**

Constitutional reform in many countries arises from a variety of reasons. A nation might conceive of the existing constitution as defective. Certain provisions could be judged as being out of tune with the times. This situation might simply require an updating or revision of the erring provisions. This could mean changing of a given word or number, or a small section or an article. In such cases, no major overhaul of the constitution is undertaken, even though constitutional revision is of crucial importance.

The demand for major constitutional change could be a mirror of political, economic or social turmoil confronting a nation. It might be precipitated by a specific provision or a set of provisions that could be considered the reason for the unsatisfactory outcome. In other countries, the demand for reform could be related to a disappointing *overall* performance of the economy or to perceived defects of the political system. The

---

\* The authors are husband and wife and academic colleagues as well, with fulfilling careers as professors at the University of the Philippines (he in Economics, and she in Political Science). They have probably discussed most of the worthwhile issues under the sun, with constitutional change being in the forefront of their current discussion agenda.

demand for constitutional reform thus appears as a symptom of the country's malaise – political, economic or otherwise.

This study arose out of a curiosity. Recent intense discussion of constitutional reform in the Philippines has focused on the form of government. This demand for constitutional reform in this context is associated with the country's general drift in political and economic affairs. In examining the nature of the political debate, it became clear to the authors that constitutional construction might be as important as the discussion of the substance of provisions of the constitution on specific issues or institutions that are elaborated in the constitution.

In short, the style and delivery of the constitutional provision is as important as the central provisions elaborated in the constitution. A comparative study of constitutions would provide a leap into the issue of style, brevity and coverage of the constitutions. This is the reason for the larger representation of a sample of constitutions of the country's neighboring states in the Asian region. In spite of this regional bias, the authors tried to cover a wider list of countries with different histories and geographic location. An accompanying study extends the measurement of the constitutional attributes and relates them to economic performance.<sup>1</sup>

The demand for constitutional reform is found in many states.<sup>2</sup> All the 191 member states of the United Nations (in 2003) have had some historical experience with a constitution.

Part I (this introduction) provides a background for the paper. Part II discusses the desirable qualities of the constitution of a nation state. In general, constitutions are instruments to enable a nation to achieve the progress that it associates with nation-building. Part III reviews constitutions and compares them from the standpoint of style and coverage of constitutions of a wide sample of countries. Commentary is made in relation to the country's social or political history. Part IV summarizes trends and lessons from the review of constitutional styles.

## **II. A skillful and suitable constitution**

### **Constitutional traditions**

Two traditions have evolved in the construction of constitutions.<sup>3</sup>

The first of these – and the universal practice – is the written constitution, the country's fundamental law. A written constitution gives the advantage of a coherent and readily understood body of rules in one document. The written constitution is seen as a social contract between the people and the sovereign – a monarch or a government – and

---

<sup>1</sup> See G. Sicat and L. Makasiar Sicat [2004].

<sup>2</sup> A Google search of “constitutional reform” as a topic yielded around 85 pages of references. Just to indicate how large this set of entries is, it displayed 844 entries in the catalogue. The subject is full of references to active discussions in some countries and states, often showing websites of organizations interested in the issue and to link with other related sites. But based on the simple scanning of some of the titles, and a full view of some of the displayed entries, the entries cover many countries around the world. It is also full of active references for some studies.

<sup>3</sup> The discussion here on basic structure of constitutions follows the treatment of *Wikipedia, the free encyclopedia* in the internet.

it is deemed as emanating from the people, who vote on its acceptance often in a referendum.

The constitution is a higher law, superior to ordinary laws passed by the legislature. It can overrule laws deemed contrary to the fundamental law. It can be amended by procedure that is more difficult than the passing of ordinary laws. The interpretation of compatibility or constitutionality of ordinary laws is made by a supreme court. The American constitution is the oldest written constitution in active use today.

The second tradition is the unwritten constitution, like the British constitution, which also has withstood the test of long active application. The fact that the British constitution is unwritten as a single document does not mean that it has no written basis. In fact, it is based on all the constitutional conventions, precedents, prerogatives, and customary rules that are applicable.

In this latter tradition, all important legislation and concordats are part of the constitutional provisions. The acts of the British parliament that are in the nature of delineating significant policy and institutional processes help to form the constitution. Separate documents are themselves fundamental laws, such as the Magna Carta, created as a guarantee of fundamental rights before even the creation of parliament. In reality, under this system, any act of the parliament could have the impact of a constitutional principle. There is no difference in the passage of an ordinary law from a law that has a fundamental impact on the rules of government and of the governed.

In some respects, all countries follow aspects of the unwritten constitution even when they have a written constitution. They can craft new laws that are as fundamental in their provisions about the political or other aspects of the country's institutions. This could happen as long as they do not contradict the body of principles of the written constitution. These new laws help to reformulate the country's institutions within the written constitutional framework.

The unwritten constitution allows a country to govern with fresh legislation whenever significant changes are needed to put into effect the necessary reforms that a nation needs. No higher bar of amendment would be needed, except what would be required in the passage of ordinary laws.

Constitutions are written to provide a single, all-important statement about the fundamental governance of a country. Historical circumstances often account for the fact that a written document provides for guarantees for citizens against the potential adverse actions of the government, often in relation to the civil rights of the citizens.

A constitution is written or rewritten as an outcome of major upheavals in a given country. Constitutions are written, to paraphrase the famous words of Winston Churchill, with the blood, sweat and tears of a nation's heroes. Those who write the constitution are naturally the victors of a historical process. The provisions of the constitution contain the imprint of the victors. More often, these constitutions are framed by the wise men of the times. And many are these constitutions that have good and important provisions for making a country great. But also, most constitutions are written by committees – by constituent assemblies, by appointed wise men, and by elected representatives.

In modern times, civil rights have extended into many other forms of rights. While human rights were the first principles guaranteed the individual, many other social and economic rights have arisen. Other types of guarantees have also appeared, relating to the limitations of the actions of governments with respect to other political jurisdictions within a given state, and sometimes also those related to environmental issues.

### **The US constitution represents a useful benchmark**

To compare written constitutions of different countries, it is useful to have a yardstick of comparison. The objective of our study being to examine the constitutional framework of various countries requires that a standard of comparison be made available. Understanding one constitution first and then examining other constitutions on the basis of that one constitution makes it easier to proceed in examining specific characteristics.

For other types of studies in which the objective would be to compare a specific approach to, say, a special constitutional issue – like the structure of parliament or the judiciary – a different approach would be more useful. But in the context of this study, the use of a benchmark for comparison suits the purpose well.

What qualities make the US constitution a useful benchmark?

First, it is the oldest and most enduring among written constitutions. Second, it is brief and minimalist in content. Third, the language is direct. It is clearly written in a style that is simple and understandable.

Although essentially the work of a committee of learned men, it was unified in style by a single pen, which happened to have been quite eloquent.<sup>4</sup> Thus, not being written by a committee even though it essentially emanated from ideas contributed by this committee but written by this single pen, the constitution successfully communicates to its stakeholders through a uniformly simple style of presentation, with succinctly denominated details in every article or section.

The success in terms of unity and simplicity of this constitution makes it far different from many constitutions that are examined. A committee of men trying to draw a horse could end up with the likeness of a camel.

The coverage of the US constitution was confined to the structure of the government, the duties and functions of the various organs of this structure (legislature, president, and judiciary). In this way, its content is comprehensive and yet confined to the fundamentals of governance of the American union.

The US Constitution was adopted in 1791. Almost immediately after its adoption, 10 major amendments were incorporated to make up for a set of serious omissions that were discovered almost immediately. These amendments contained the bill of human rights. Between that year and 1913 – a period of more than one hundred twenty years –

---

<sup>4</sup> Thomas Jefferson, who became the third president of the US, is credited with authorship of the Constitution. It was not, however, a single effort. He had to incorporate the contributions of others who contributed to the debates that led to the decisions on the document. In short, while a single hand might have written it, the document itself was the result of many contributions by others.

only six other amendments were adopted. All of these amendments were in the nature of improving the set of political guarantees and other political rights or political processes.

All the subsequent amendments from 1913 to 1992 (the last year in modern times that an amendment was made) were in the nature, again, of political processes. There were only two exceptions to the amendments that were in the nature of being economic. In 1865, the constitutional amendment abolished the institution of slavery, an economic and social institution that had been part of the implicit principles of the constitution. The other economic amendment was the adoption of the income tax (1913).

In more than 200 years, the US constitution has withstood the test of changing circumstances, even though the 1865 amendment was the cause of a civil war that nearly destroyed the union. For its success as a document of government, it is the most stable of all constitutions. It was skillfully constructed and it suited the development of a young nation into more than two centuries of life without any catastrophic change in provisions even as generations of new actors in the political scene have changed the nature, directions and temperament of policies.

This study uses the US constitution as the yardstick for comparison. How that comparison is made is further elaborated in the next section.

### **III. A review of selected constitutions**

As stated at the outset, this study began as an exercise to understand some characteristics of modern constitutions that might contribute to the discussion of Philippine constitutional change. A result of the study is the bias of the selection process. This is the reason behind the wider representation of other Asian regions, including even areas that are considered not fully defined as states in their own right, the two sub-regions often included within China's conventional description of provinces: Taiwan and Hong Kong.<sup>5</sup>

As the authors got deeper into the research, they included more samples of countries. There was a predetermined limitation imposed on the study in order to finish the general framework at a much shorter time period.

Constitutions are written in the official language of the nation. A preponderance of constitutions is written also in the English language even if the main official language happened to be different. In part, this is because of the need for an official translation of the document for the international clientele of the country in question. The English language happens to be the dominant language of communication at present and no nation can afford not to have such a version for its most fundamental document. For this reason, the judgments on style, content, and so on are based on the English language versions of the constitution.

#### **Provisions regarding the fundamental framework of government**

As already mentioned at the beginning, the US constitution is used as the yardstick for the judgment about the fundamental provisions of the constitution. These

---

<sup>5</sup> The constitution of Japan was excluded from the set, in part because we could not secure the full English translation from the internet.

provisions have their attributes of *brevity*, *directness of language* and comprehensiveness of *coverage*. A scoring method is applied to make judgments about the various characteristics. The higher numerical score the wider is the deviation from the benchmark for the characteristic being reviewed.

Such scoring is applied to various characteristics that were deemed useful as base for the comparative study. A three score setting is used. The methodology of scoring is explained in greater detail in the complementary study where the scores became the basic means of quantifying constitutional characteristics.<sup>6</sup>

The coverage of the constitution under the minimalist framework of the US constitution is a list that includes: (a) the bill of rights for the individual, (b) the description of the major structures of government, specifically the functions of the executive and the legislature, (c) areas of jurisdiction clarifying the relations of the central government to local governments, including matters of taxation and internal trade, and (d) the structure of the judiciary.

Any departure of the coverage of the constitution from this norm leads to a higher score for coverage to 2 or 3. The ratings for the comprehensiveness of the *economic and social guarantees and rights* for the individual, including major economic provisions that affect the behavior of factors of production – labor, land and capital – are elaborated in the questions relating to the specificity of the economic provisions.

### **Brevity**

The constitutions with the briefest construction include France (1958; 1982), South Korea (1975), Indonesia (1945), and Hong Kong (1990). Overall, they are brief and direct in their statements of the various provisions of the constitution. Indonesia's brevity is extreme (discussed later, below). Some general principles that need definition are not qualified for clarity.

Were it not for their broader coverage, the constitutions of Canada, Australia, and Singapore would score higher for brevity. To some extent, brevity is not independently measurable from directness of language and, of course, extensiveness of coverage. An overall measure of all three would provide a relatively high score for brevity for these countries.

Countries with very long constitutions include India, Argentina, Brazil and Mexico. Here, the provisions often are stated in long winded statements or in repetitious provisions (sometimes in conflict with one another when studied more clearly) and the presence of excessive detail, whether it be in the statement of individual guarantees or in the description of institutions and processes. Moreover, they go beyond the coverage of fundamental governmental structures, using the US constitution as the yardstick.

---

<sup>6</sup> Any country that has similar characteristics for brevity, directness of language, level of coverage of topics is given an integer score of "1". Deviations from this basic score are given higher scores of "2" and "3." For instance, a score of "2" for brevity means that the constitution is longer, and "3" means very long (in relation to the US model). There is no judgment as to whether one constitution is better or worse than another constitutional document. See G. Sicat and L. Makasiar Sicat (2004).



Most of the other countries are found between these two tendencies. The constitutions tend to be long because they attempt to cover a growing number of provisions. More often, they excessively elaborate these provisions.

Of course, all countries are different. The length of their constitution represents an aspect of their political history. This document contains their hope of managing the ingrained fears of their citizens from the abuse or potential abuse that embodied their past experience with their rulers, institutions, and even their relationships with their fellow men.

Those countries which have been influenced by a heavy dose of socialist principles during the time of crafting of the constitutions or by particularly excruciating historical experiences with dictatorships have expressed themselves more freely in the subsequent written versions of the constitution. The end result is a long list of rights, a long list of institutions, and a long list of processes designed to work as safeguards.

### **Directness of language**

The constitutions of Australia, Canada, Chile, France, Hong Kong, Singapore and South Korea score well on this basis. Directness or clarity of language explains in the simplest possible manner what is being provided. The fundamental provisions are clear. They impart a sense of being easily understood, without any qualifications, especially when a statement is included that provides that new statutes would address specific rights or concerns. There is no suggestion that what is stated is a right or mechanism that is guaranteed immediately or absolutely.

At the other extreme, constitutions that did not score well on brevity also did not do well in terms of directness of the language. The more effusive the language the more the message becomes indirect. Argentina, Brazil, Mexico and India scored poorly in the directness of language. It took so long to say the message. Detail that should be provided in specific legislation are incorporated in the constitution on the mistaken belief that such details deserve a permanent place in the basic document.

The constitutions that appear in the middle ground in terms of directness of language also have missed the mark of relative brevity. Those countries that have average level of directness of language also happen to have constitutions that are of middle length. This is true for China as it is for Taiwan and for Russia, Kenya, Thailand, the Philippines, Malaysia and Sweden.

The constitution of Indonesia is remarkably brief as already stated. Brevity was at the expense of clarity of language. The generality with which certain provisions are stated often would require further clarification. But the provisions tended to end simply as declarative statements with no further reference to the topics. For instance, on the provision of natural resources, the principles invoked are “controlled by the state” and “exploited to the greatest benefit of the people” and “the poor and destitute [would have to] be cared for by the state.” These come at the end of the declarative statements of the respective provisions. Other constitutions [for instance, Chile, Korea, Singapore] that score higher on clarity would end up by stating that sensitive provisions in which the state undertakes to promise certain guarantees for the individual would have to be clarified by legislation.

An extreme comparison about the directness of language is between the Australian constitution and that in Argentina. In the Australian constitution, a central announcement about the duties of the Australian parliament enumerates in clear terms the different types of legislation that it might engage in. Long sub-paragraphs spelled out a simple enumeration. In the case of Argentina, the provision indicated in Article 22 on the duties of the legislature to approve treaties took only a few lines to state the treaty approving function and to explicitly state that treaties constituted some form of higher law that superseded laws that are normally enacted in the legislature. And then, to provide examples, the section continued with an enumeration of a long list of treaties that it had concluded.

In contrast, the constitution of France probably has the shortest and most effective preamble. It referred to two documents by simply citing them to be part of the preamble, and that was that. By simply recalling the Universal Declaration of Human Rights of 1781 and the preamble of the French constitution of 1946 as parts of the preamble, clarity was stressed remarkably. And then the constitution went on to discuss the structure of the government.

In terms of directness of language, China's constitution represents a middle ground in clarity. The Chinese constitution continues to be founded on socialistic principles. However, there are clear general guarantees that are provided in favor of private enterprise and private property. The preamble has technical clarity. That preamble stresses the recent history of the country, the version based on the communist revolution. In this respect, the constitution remains a clear reminder about the constitutional construction of the USSR and other countries that have closed off that chapter in their history with the adoption of more liberal constitutions. In this case, the post-communist constitutions of Russia and of Poland appear to have the same relative scores for directness of language.

The message on clarity and directness is that the Chinese constitution contains provisions that cover the basic rights of citizens and the structure of government and socialist production. Provisions allowing flexibility are included.

### **Extent of coverage**

Most modern constitutions differ from the American constitutional model in several ways. The most apparent is the willingness of constitutional framers to elaborate the structure of the governmental organs more fully. This means a more detailed exposition of the components of government, the duties of officers, the manner of their selection and appointments, and the processes involving their functioning in office as well as the removal of the most important officers.

Another direction in which the extent of coverage has enlarged is the increase in the number of constitutional offices that are considered vital, and therefore placed within the constitutional framework. Perceptions of government offices that are significant for governance in a given country have led to an increase of these offices that are given constitutional cognizance. Originally, government functions focused on the importance of the executive office, the legislative branch, and the judiciary. Together with this is the all-

important issue of governance relating the central government with its branches or subdivisions.

Hence, the elaboration of the relationship of central government with the sub-units of the government became a significant element in the constitutional framework. Then, there are specific services that are considered important for the functioning of government provided services. This means elaborating on the public service agency, which is intended to regulate specific services that are limited to utilities that are supplied by the government. For instance, in the case of Hong Kong, a small city that functions like an autonomous city-state even though considered a part of China, the great importance of shipping and aeronautics has required its definite mention in the constitution.

Attention to the mechanisms and structure for the conduct of the economic affairs of the government led to further elaboration of the constitution to include a wider list of governmental concerns and processes. This includes the definition of the structure for economic development and planning. The elaboration of the budgetary system of the government and the provision of checks and balance in the processes indicated the need for a government auditing office with constitutional recognition of its role. The importance of taxation and budgeting has led to the integration of the powers of taxation in the constitution. A number of constitutions have gone further by providing some principles related to the definition and regulation of the monetary, financial, and economic framework of the government.

This tendency was the result of the insecurity that many countries and their citizens felt during the economic slump of the 1930s when the Great Depression hit the world economy. The fascination for socialistic structures in government led to the creation of many new offices dealing with expanding government services.

An outcome of this tendency was to extend the contents of the constitution to include the economic rights and protection of citizens from economic malpractices. An extended list of economic rights became the vogue. Based on the contents of constitutions today, most of them now include a statement of economic and social rights of citizens. In the hands of imaginative constitution drafters, the inclusion of these rights and privileges could lead to the expansion of the constitutional document.

Almost all constitutions therefore have gone beyond the minimalist construct of the American constitution, even when the constitution itself is relatively brief in its construction of the essentials of government. This explains the reason for the higher score of most countries on brevity – meaning, they are longer than the American model.

Countries that followed the Anglo-Saxon or the British-American model have therefore also extended the coverage of their constitutions. The Australian and Canadian constitutions, which might be considered models of relative brevity, cover many more organs of government. Social and economic guarantees for their citizens and for their provinces are much more explicitly described than in the American constitution. In the case of the Canadian constitution, a trick was utilized to produce supplementary amendments through the inclusion of detailed schedules are appended as part of the constitution. Thus, the Canadian act of 1982, which amended the constitution of 1867, came out mainly as an add-on, together with the new schedules, to the basic document.

Chile's recent constitution of 1993, which represents a much narrower coverage of the constitutional issues of the past, was an overhaul of a socialist constitution that carried a lot of social and economic guarantees. The constitution provides the same basic guarantees but it places enormous emphasis on private property rights as against the various economic and social rights of citizens in a previous constitution. Crafted during the end of a dictatorial government that came to power by toppling a socialist government, the constitution provides safeguards that make it difficult to undertake the amendments proposed by others who might feel that the constitution needs further change through the normal legal process of amendment.

Countries that have experienced rapid progress in recent decades – especially those in East Asia – tend to have constitutions that go beyond the minimalist tradition. The focus of the elaboration of coverage is on the structure of internal government. Often this has to do with the definition of citizenship, the fundamentals of internal taxation, government budgeting, and defense and security institutions. This is a common pattern that could be extracted from the constitutions of South Korea, Taiwan, Singapore, Malaysia. In a similar fashion, the constitutions of the Philippines and of Thailand follow this tradition although in both cases, their constitutions are more elaborate.

Kenya's constitution – the only one from Africa included in this review – appears to have followed the model of other British commonwealth constitutions (with which countries like Australia, Canada, Singapore, and Malaysia have much in common). In addition to the usual safeguards found in these countries, there are specific safeguards for tribal and regional interests.

Countries that have exceptionally long and broad ranging constitutions are India, Brazil, Argentina, and Mexico. Not only is the coverage of specific provisions elaborated in great detail in these documents, the number of provisions that carry enormous detail is extended to a wide set of constitutional provisions on structure of government covering the functions and processes of specific offices. The fundamental aspects that all constitutions deal with, in the case of India, for instance, in which the matter of taxation and budgeting is spelled out in extensive detail, almost like a manual of taxation and administration. A reader gets the impression that the constitutional provisions already contain a lot of the tax code and the budgeting procedures.

### **Reasons for long constitutions**

A number of factors account for the inordinate length of some constitutions.

One of these is the element of distrust of government. In fact, this is probably the “original sin” that caused nations to promulgate written constitutions in the first place. The fear of arbitrary exercise of sovereign power by the rulers has caused some constitutional drafters to insist on introducing many details. “To make things constitutional” implies that the provision is higher in hierarchy of importance than ordinary laws, and therefore it cannot be easily removed from the provision of law. Citizens are therefore cloaked with an extra degree of protection from arbitrary exercise of governmental power.

Another reason for the lengthening of constitutions is the tendency to elaborate on the specific functions of state organs. This is especially true of revolutionary

governments, the elaboration of the functions and the specific relationships of various parts of the state machinery which were created to deal with new functions inevitably lengthening the document.

For instance, the constitution of the Soviet Union elaborated on specific state machinery to make clear the internal government structure. The central power of the government was specified in relation to local or regional states. The local organs of government and the economic organization of industry, cooperatives and collectives were defined and differentiated.

Even in its otherwise brief constitution, the French constitution included a substantial section on territories located outside of the French sphere in Europe. Here, the problem was to give constitutional recognition of the status of outlying regions as parts of the larger community. A clear enlargement also of the French constitution – also a factor in the various constitutions of many European states that are now part of the European Union – also resulted from relations with the European Union, a more recent development. In fact, the membership of the United Kingdom in the same community is one of the factors that currently drives the movement to write a constitution for the United Kingdom.

Another important reason is ideology. Ideology is the heart of constitutional construction. Those who draft the constitutions are the victors of a political process. Those who amend the constitutions are those who have lived through the country's historical epochs and who have found the shortcomings and therefore seek changes to an old constitution and thereby suit it to the times. It also involves the struggle among the political forces of the time. They have lived long enough to understand the limitations of the existing constitution.

Ideology might be focused on the all-encompassing goodness of government and its ability to do good for the people. The opposite of this is the belief that government has major limitations in performing all the functions of providing wise guidance in all matters, especially in economic and social life of the people. Therefore, the program of constitutional construction would be to reduce the damage that excessive government could inflict. The adoption of long constitutions by some governments is a reflection of the influence of socialism in its program to benefit mankind. This is further discussed in the next section, on economic rights and guarantees.

Perhaps another reason is the tradition of legalism in some countries. Because of the relatively higher development of the legal profession in relation to others, a country articulates much the need for codification. The preponderance of lawyers in some countries makes that profession dominant in governmental affairs and in the civil service. The influence of this group surpasses that of the other professions, such as business, engineering, science, and the arts. An outcome that is not altogether unexpected is that laws and constitutions tend to be longer than they would otherwise be.

### **Economic rights and guarantees**

The Industrial Revolution and the urbanization of society brought about explicit demands for improved living conditions of workers and of the general population. These demands led to explicit provisions for the economic rights of workers and of the poor.

Eventually, they steered the movements toward a program of guarantees that governments needed to fulfill to reverse the perceived ills of income inequality and the destitution of some people. In virtually many countries over the last two centuries the gradual shift of attention to these questions brought about greater concerns about the duties of the government in the economic arena, thereby expanding the role of government. Victories gained by revolutions in some countries and electoral shifts in favor of workers and urban residents in other countries have contributed to the changing emphasis on economic rights and guarantees in constitutional construction.

Thus, the major deviation of modern day constitutions from that of the American constitution is characterized by the extensive presence of economic and social rights and guarantees. The emphasis on individual liberties was no longer enough. The constitutions of many new countries that were devised by the dawning of the 20<sup>th</sup> century already contained the grist for this momentous deviation in content. The growth of socialism further got a boost with the Russian Revolution in 1917, and post-1917 constitutions contained these provisions. Constitutional developments during the post-Communist revolution until the 1990s indicate the wide influence of these developments on constitutional construction. Among these developments were the post-colonial constitutions of newly independent countries after end of World War II. As a result, many constitutions have acquired provisions that were explicit on economic rights and guarantees of the state to its citizens.

The socialist constitutions also brought an additional twist to economic rights by adding simultaneous reference to the duties of the worker. Earlier constitutions have made explicit mention of the duties of citizenships as essentially being civic obedience in character. But the socialist constitutions added the reference to the duties of able bodied workers to work. Not only are workers entitled to the right to work but they have the duty to work. For instance, Chapter II of the constitution of China has the title “rights and duties of citizens.” Its Article 42 refers to work as “a matter of honor for every citizen who is able to work” and it also refers to a section on “the right and duty to education” of citizens. In contrast, the Indian constitution contains a section on “fundamental rights” (Part IV) that is separate from “fundamental duties.” (Part IVA). The latter section is more in the tradition of civic duties of citizens, however.

The length of constitutions is often the result of reactions to previous political and social environments. When the political succession of new governments decide to toss away a previous constitution and decides to draft a new one, often it is because of strong reactions to the provisions of the older constitutions that they attempt to replace. The relatively shorter constitution of Chile, which was drafted during the transition from a dictatorship towards the return to democratization, continued to list many guarantees and rights that were stated in the previous socialist constitution. But ordinary statutes would be required to define them in actual implementation. In short, they are not engraved in stone in the constitution. In addition, there are strong provisions about the inviolability of private property rights.

The post-Soviet constitutions of Russia and of Poland are remarkably similar. They continue to cover social and economic rights. They also provide guarantees to private ownership and enterprise. They constitute a reaction to the earlier constitutions of the post-Soviet socialist era and the breakdown of the Soviet Union.

The 1993 constitution of Russia, the core of the former USSR, has a short preamble that practically sweeps away the foundations of the socialist past, and it emphasizes the objective of “a worthy life and free development of the individual.” It proclaims the support of competition and freedom to engage in economic activity of the individual (Article 8). Chapter 2 on human and civil rights and freedoms stresses the right of private ownership as being protected by law. In fact, this chapter begins with Article 17 and ends with Article 64, replete with positive statements about personal freedom, initiative, property rights to the point of repetitiveness. Each of the other former Soviet Republics has its own unique constitution. None of them is reviewed in this study. They no doubt follow the Russian example both in tone and in temperament after the hard fall of Soviet rule in that large country.

In contrast, the Russian constitution of 1918 was a revolutionary constitution, with a remarkable difference in tone in constitutional construction. The emphasis was on the rights of workers according to socialist principles. Inevitably, it was supplanted by the 1924 constitution (just a few months after Lenin’s death), which focused on many organizational issues of the government to achieve the state objectives of the new socialist republics. The 1936 Stalinist constitution introduced many of the economic guarantees to the socialist workers in addition to lip service to private ownership and guarantees of inheritance. The statement of socialist principles glorifying the worker’s state reached their apex with the construction of the Soviet constitution, which had contradictory provisions about economic rights and the severity of punishment in the case of deviant behavior from those rights.

For instance, Article 12 contains the famous principles associated with the Stalinist era: “he who does not work, neither shall he eat” and the principle associated with socialism in that era, “from each according to his ability, to each according to his work.” The defense of the fatherland was the sacred duty of citizens, adding that treason was “the most heinous of crimes” punishable with the full severity of the law. Those who would commit crimes against socialist property were “enemies of the people.” The Soviet constitution of 1977 tried to introduce more gentle reforms in a highly centralist constitution, including elements of liberalization of some aspects of the economic rules affecting individuals and enterprises.

Poland’s constitution of 1997 is a reaction to the 1951 constitution during the Soviet hegemony in Eastern Europe. To some extent, this is typical of the post-socialist constitutions following the fall of the Soviet Union. The Polish constitution had already undertaken revisions of its basic law, and it had reversed some of the strong features of the socialist era constitution by the 1990s. The section on economic, social, and cultural freedoms and rights (Section IV) contains twelve major articles that dealt with the economic rights of citizens. These, in turn, were modified or contradicted by the assurance of the protection of rights of citizens, consumers, customers and private enterprise. These various economic rights include the guarantees to the rights to property and to succession to these rights. This section is followed by mechanisms and recourse of citizens for the protection of their rights through the courts.

The manner of amendment of constitutions could affect their flexibility as constitutional documents. Sometimes the normal legislative process could require extraordinary votes within a parliamentary system. Otherwise, as happens in some

countries when a military leader emerges, as the result of accession to power through a military coup and the installation of a dictatorship, constitutional amendments would become relatively easy to introduce. Once established, the strong government could introduce amendments to the constitution. Under other setups the legal process of amending the constitution could take a long time or arduous route.

### **Constitutional stability**

The political stability of the state often predicates constitutional stability. Most constitutions have been revised over the long haul, not periodically and quickly. Countries that have experienced long and relatively peaceful political development undergo peaceful constitutional changes. Often, these are undertaken through the introduction of amendments of the basic law that does not require any major overhaul or replacement of the existing constitution.

Few constitutions really have the record of stability of the American constitution. And, of course, the preponderance of nations that have been only recently formed, especially after the Second World War, has had more frequent changes of constitutions. Among the countries with much longer histories of independent existence are the American states – the countries of Latin America, Australia and Canada among the samples studied here. It cannot be said that they have had stable constitutions. Australia and Canada might qualify for the description of having long-lived constitutions, although they have been subjected to basic changes, more correctly for Canada whose latest major constitutional change was in 1967, although its original constitution was framed in [1867]. Australia's constitution has been in force since 1901.

Many Latin American countries have had volatile histories. This is reflected in their constitutional histories. For instance, among the oldest, Mexico's constitution dates back to 1824, with major revisions being undertaken in 1836. But its current constitution dates back directly to 1917. Ideological or leadership swings characterize the constitutional changes undergone in Chile, Brazil, and Argentina.

The drastic changes of European constitutions have arisen from the internecine wars among the European states. Ideological divisions among the European states after the advent of socialism and social welfare politics dominated their politics of Europe especially during the 20<sup>th</sup> century. In addition, the initial triumph of the Russian Revolution caused enormous political changes in the landscape of Europe for at least four decades after the Second World War. With those changes came the avalanche of constitutional changes in many states. As an example, the constitution of the Fifth French Republic of 1958 is the constitution reviewed in this study.

After the collapse of colonialism, many new nation states came into being, equipped with their own written constitutions. Stresses arising from their experience of nation building led them to push for political and economic development. The new states of East Asia had remarkable economic progress during the recent decades. These states have maintained the basic content of their constitutional provisions intact but they undertook revisions to suit their individual governance. South Korea's constitutions have witnessed different changes. Although Malaysia's constitution was adopted in 1958,



many provisions of its constitutions have been changed through amendments. The same can be said of the constitutional changes in the constitution of Taiwan.

The Philippine constitution, among the oldest in Southeast Asia since it was adopted in 1936, was changed in 1973, and again in 1987. And today, discussion of new constitutional amendments is rife. Most of the changes being sought are in the nature of political restructuring of the legislative and executive branch. However, the critical problems of the Philippine case are rooted in the need to relax the restrictive economic provisions that prevent economic actors from expanding the economy, but not necessarily along the political directions that those seeking constitutional change want.

Interestingly, Thailand has the most volatile constitutional history in Asia. Between 1932 and 1997, Thailand underwent 15 constitutions and 17 military coups. The constitution of 1997 was the first undertaken with very extensive public debate and extensive public consultation. Many of the earlier constitutions were quickly drafted constitutional changes to benefit the ruling military clique.

#### **IV. Implications for economic progress**

To close the study, comments are in order concerning constitutional style and its relationship with economic change and progress.

##### **Brevity, content, and organization of constitutions**

The most stable political constitutions have been briefer and less elaborate in terms of content and organization than those that have suffered from major changes. More recently revised constitutions are less elaborate. In general, they contain provisions that are simpler, sharper, but also provide more leeway for flexibility than the documents that they replaced.

Constitutions with simpler structure and non-contradicting messages provide good guidance to the fundamental principles of government and their practice. In short, they need to be flexible to adjust to changing circumstances. Such a characteristic would make general principles capable of wider acceptance and not likely to invite strong reactions, especially if there is leeway for amending those provisions when they appear to be no longer relevant. As such, they become more stable.

In the sweep of history, waves of political changes would eventually come to challenge the principles on which any state is founded. Only those governments that are supple enough to withstand such waves would be able to keep their institutions working effectively. Others would find it difficult to resist major demands for constitutional changes, especially under pressure from strong leaders – a strong president, a military coup, or popular revolutionary fervor – or from altered power relationships within a country.

This suggests that drafters who hope to write constitutions for all time should resist the temptation to override it with details. Minute details are bound to create inflexibility, contradictions, and resistance to change. When such details cause political and social gridlock, the nation reaches a point where change becomes truly necessary.

For a constitution to survive, it is necessary to spell out a framework for amendments. Such framework needs to incorporate the possibility of escape from constitutional mistakes. That process of modification should not be made at such a high cost as to make change almost impossible. Otherwise, it sets the stage for the use of more drastic means of amending the constitution, such as complete replacement by an incoming government.

A corollary of this statement is that details would be better dealt with through ordinary legislation, not constitutional reconstruction. The constitution is the place for the grand principles and the fundamental structure of the government, not the details.

#### **Entitlements, economic and social rights versus property rights and individual initiative**

A major consequence of the Industrial Revolution was the requirement of social safety nets to protect the worker and his family. The demand for economic and social rights of workers led to a flood of new content in these written constitutions in the form of social and economic rights.

In some cases, these rights took the nature of entitlements rather than objectives to strive for. The banner for these new rights was led by those political entities that sought the socialist utopia. Moreover, as new nation states grew out from the post-colonial age, newly independent states followed these dreams of economic and social rights as entitlements for their citizens.

This tendency broke apart most dramatically with the collapse of the Soviet state in the 1990s. Such collapse took a dramatic turn and led to the rewriting of the many constitutions in the new states that formerly composed the Soviet state and those other countries that had fallen under its influence. Most of these new constitutions were fashioned after the earlier models of written constitutions of states that thrived under the market and private enterprise. The constitutions became simpler and were less burdened by the apparatus of details and social and economic entitlements.

Post-1990s constitutions have tended to emphasize the importance of property rights and the protection of private enterprise, indicating a sea change in the economic contents of the constitution. The market system allocated resources more efficiently than central allocation of resources led by the state.

Economic guarantees to workers and citizens could only be sustainable if the whole economic system could afford them. Otherwise, the cross-subsidies that funnel benefits to workers and citizens would tax the productivity of the economic process. An economic system that was essentially lagging in productivity growth could only collapse under the weight of the major subsidies that are mandated by the set of rights and guarantees stated in the constitutional document.

The list of rights and entitlements raises expectations to levels that are difficult and impractical to meet realistically on the basis of the nation's scarce resources. The result is a complicated politics of meeting those expectations. Moreover, such expectations put pressure on conflict of rights and stress the need for prior ordering of objectives and actions. Most constitutions undertake the enumeration of ideals and principles but they avoid the issue of ordering them when conflicts arise.

### **Constitutions and economic progress**

The constitution as the basic law of the land has a powerful impact on the channeling of economic resources. This may be done by explicit provision. But benign omission of provisions affecting them produces greater flexibility in the movements of factors of production. Such conditions favored economic growth. In fact, the growth of many countries during the 19<sup>th</sup> and 20<sup>th</sup> centuries benefited from the greater freedom of movements of the flows of capital, labor and other factors of production.

But a constitution can also create impediments to the movements of factors of production by regulating these flows within the constitutional document. Where ordinary legislation could have simply provided for the required legal controls, putting these details within the constitutional document, places impediments on essential flows of these factors of production, most especially capital.

Incidentally, this is one of the major issues of constitutional reform in the specific case of the Philippines, a unique element in its constitution that has hampered aspects of investment promotion in the country. This provision has been in existence for seven decades and has been most difficult to question because it is maintained by an alliance of the ruling classes and many nationalistic elements that favor restrictions. In today's more constrained environment, lifting these impediments would constitute a major advance in constitutional reform.

Long and detailed constitutions, those with a plethora of institutions and rules and regulations, are often designed in this fashion with good intentions. They direct the writing of the supreme rules by which those resources could be utilized or prevented in their use. But these are precisely the very rules that often render constitutions to be less flexible.

For instance, changing conditions and opportunities could require a specific economic action. But a constitutional detail could block timely action. In such cases, citizens and even the executive institutions of the country are constrained to call upon the judiciary to interpret the constitutional provision. Taking that step could cause delays. Constitutional micromanagement of economic activity could provide roadblocks to speedy and appropriate action through the rules made long ago by the constitutional framers. It could also deprive decision-makers of the needed flexibility during rapidly changing economic conditions. In such a case, it tends to depress the level of economic performance.

The constitution that is simply written has an enduring character. Because it is relatively brief, it contains few opportunities to give detailed directives on the manner by which economic agents are to behave. Such constitutions are based on general principles rather than on specific rules. They allow greater freedom of movement of the factors of production in pursuing economic activity in the country. They foster permissiveness and flexibility rather than impose prohibitions. When those governments discover that something is wrong with the processes that are developing, they introduce ordinary laws to control the framework of economic policy. In this way, they allow greater economic activity to proceed. At the same time, they are able to discourage undesirable outcomes or redirect the course of economic progress.

Some states fashioned constitutions that were complicated with various regulations and rules. The objectives could have been to assure that citizens have specific economic and social rights or that nationals be given the distinct privileges to benefit from the country's economic resources. By defining benefits and roles to be played at the constitutional stage, multifarious objectives and institutions placed restrictions on the way the factors of production were to be utilized.

These additional responsibilities constricted the freedom of action of economic agents to pursue efficient and productive directions. It placed enormous burdens on the state to provide services that were not in its capacity to immediately provide. Such well-intentioned rules predicated impediments to action and caused states to have reduced resources for growth when they should have more, for the types of responsibilities that they added to the government. .

Such recipes for actions have created tendencies for some states to pursue programs that often led to fiscal ruin. Additional functions engendered more expense of the state. Economic rights often required the provision of subsidies to various groups – to the endowed of the land as well as to the have-nots. In some cases, such rights were given to well-entrenched ruling classes to administer monopolies and franchises. In others, these were in the form of services to the poor who were provided many economic and social guarantees without the prior build up of economic capacity that could make them feasible through a system of taxation or affordable subsidy.

In countries that proceeded from simpler constitutional premises, factors of production were allowed greater movement because they omitted the issue of dealing with their regulation and control. The benefits of greater trade, of movements of capital and labor where needed made it relatively less painful to attain greater economic progress. In some countries that lacked domestic capital, the participation of foreign capital made capital accumulation easier to achieve. This permitted the absorption of labor and entrepreneurial skills in various sectors of the economy and helped boost the nation's productive capacity above its natural limits.

<<oo00oo>>

## ***Bibliography***

This study was made possible with the help of the internet google search of constitutional reform and of specific country constitutions, especially the latest updated [English] texts of the constitutions of different countries listed below.

Constitution of Argentina  
 Constitution of Australia  
 Constitution of Brazil  
 Constitution of Canada  
 Constitution of Chile  
 Constitution of France  
 Constitution of Hong Kong  
 Constitution of India  
 Constitution of Kenya  
 Constitution of Malaysia  
 Constitution of Mexico  
 Constitution of Poland  
 Constitution of Republic of (South) Korea  
 Constitution of Russia  
 Constitution of Sweden  
 Constitution of Taiwan, China  
 Constitution of the Kingdom of Thailand  
 Constitution of the Peoples Republic of China  
 Constitution of the Republic of Indonesia  
 Constitution of the Republic of Singapore  
 Constitution of the Republic of the Philippines  
 Constitution of the United States of America  
 Constitutions of the USSR (1918 [Russia], 1924, 1936, 1977)

United States. Library of Congress, *Country Studies* of some of the countries listed above are listed below, also available in the Internet:

Argentina	Mexico
Australia	Philippines
Brazil	Poland
Canada	Russia
Chile	Singapore
China (Peoples')	South Korea
Indonesia	Sweden
Kenya	Thailand

Sicat, Gerardo P. and Loretta Makasiar Sicat (2004), "The Constitution and Economic Progress: When "More Is Less and Less Is More," School of Economics, University of the Philippines Discussion Paper ---.

*Wikipedia*, the free encyclopedia, entries on constitution and countries studied,  
<http://www.wikipedia.com>.

World Bank, *World Economic Indicators*, Washington D.C., 2001

World Economic Forum, *The Global Competitiveness Report 2001-2002*, New York and Oxford, Oxford University Press for the World Economic Forum, Geneva, Switzerland, 2001.