

Constitutional Foundings in Southeast Asia

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*Southeast Asian Constitutional
Foundings: A Constitutional-History
Perspective*

KEVIN YL TAN AND BUI NGOC SON

INTRODUCTION

THIS BOOK EXAMINES the making, nature, and role of the first modern Constitutions in 11 countries in Southeast Asia: the Association of Southeast Asian Nations (ASEAN) States and East Timor. As almost all the countries in this book were former colonies of the various European powers, we take the ‘first’ Constitutions to be those that were drafted during the transition from colony to independent State. Thus, the Constitutions covered in this volume include those of: Philippines (1935); Indonesia (1945); Vietnam (1946); Myanmar (1947); Laos (1947/1949); Cambodia (1947); Malaysia (1957); Singapore (1958–1965); Brunei (1959); and East Timor (2002). The choices for Singapore and Brunei may appear odd since the Constitutions considered were not those that were drafted exactly at the point of independence. Brunei became independent from Britain only in 1984 but the Constitution being studied is that of 1959 which was an earlier effort to edge the absolute monarchy towards greater democracy. In the case of Singapore, it became independent twice, first from Great Britain in 1963 as a constituent State of the Federation of Malaysia, and then again in 1965 when it seceded from the Federation as a unitary State. Thailand, the only Southeast Asian State never to have been colonised is ‘represented’ here by the contested versions of its 1932 Constitution which ostensibly transformed Siam into a constitutional monarchy.

This book is the outcome of an interdisciplinary project. While it draws on constitutional scholarship to understand the process and substance of constitution-making, it integrates knowledge in cognate disciplines, particularly historical studies and political science to better understand the process of constitution-making and the relationship between constitutions and state-building. Consequently, contributors of the book include both constitutional law scholars and historians. For each country, we asked contributors to offer

three things. First, to provide an *exploratory description* of the process and substances in making the first modern Constitution in the respective country. Questions posed, and hopefully answered include: How was the constitution-making body formulated? Who were in that body? How was the Constitution drafted? What were the constitutional questions that the drafters considered? How were these questions debated in the constitution-making body and among the public? How was the Constitution approved? Second, contributors were asked to provide an *explanatory analysis* of the internal and external factors surrounding the making of the Constitution. What are the internal factors (eg, political-legal tradition, colonialism, revolution, social-economic condition, political conflicts, social division, ideology, local intellectual environment) which influenced the making of this Constitution? What are the external factors (for example foreign constitutional experiences and constitutional ideas, international bodies, or international experts)? What are the interactions between the internal and external factors? Third, we asked contributors to offer *some reflections* on the role of the first constitutional document in the founding of the modern nation-state and the subsequent state-building process in the country. How did the constitution impact the founding of state-institutions (legislature, government, courts, etc.)? Does the constitution still influence the subsequent constitutional development and even contemporary constitutional design and practice? If yes, how is this?

Contributors presented their chapters in the two-day workshop held in Singapore by the Centre for Asian Legal Studies at the National University of Singapore Faculty of Law on 9 and 10 November 2017. Following the workshop, the country rapporteurs were invited to revise their papers in light of the comments received.

It is not our intention to summarise the country studies in this introduction but rather to address common themes in the Southeast Asian experiences of constitutional foundings, and locate these experiences within the general study of constitutional history. We make two claims. First, constitutional history is important to understand constitutional law and constitutionalism, but the study of constitutional history requires us to move beyond looking purely at what courts do and how they interpret Constitutions (juriscentric originalism) and western liberal conceptions of government and constitutionalism. Second, the inquiry into constitutional foundings in the Southeast Asia requires us to consider a range of historical issues, including: the historical conditions and functions of the foundational Constitutions; the historical internal and external factors that influence the process and substances of foundational constitution-making; and the possible lasting impact of the foundational constitutional values in the subsequent constitutional trajectory. We pursue this dual argument in two parts. Part I addresses the issues regarding the significance of constitutional history and constitutional history studies, while Part II discusses general themes regarding the foundational constitution-making in the region. Part III concludes.

I. THE STUDY OF CONSTITUTIONAL HISTORY

Why should we be concerned about the first Constitutions in Southeast Asia, most of which were drafted decades ago? For a start, it is a truism that the development of constitutional law and constitutionalism in the region cannot be detached from history. Thus, it is important for us to study constitutional foundings in Southeast Asia to understand not only constitutional history but also contemporary constitutional development and constitutionalism in the region, especially since they are informed by foundational values embedded through these first constitutions. In fact, the significance of history in constitutional development and constitutionalism has been repeatedly underscored. Long ago, the German philosopher GWF Hegel argued that constitutionalism is the self-determination of identity of a given people, and is an ongoing social and historical process.¹ In the same vein, the Kenyan scholar Okoth-Ogendo posits constitutionalism ‘can become a tradition only if it forms part of the shared history of a people.’² Similarly, Michael W Dowdle argues that ‘in identifying a political identity, history provides the best source material for constitutionalism’ since it ‘is history that distinguishes the collective “people” of one particular terrain from those of another.’³ Felix Frankfurter, who served as an Associate Justice of the United States Supreme Court, also considers the US Constitution ‘most significantly not a document but a stream of history.’⁴

Unfortunately, while there has been heightened growth in Asian constitutional scholarship in recent years, most scholars tend to focus on contemporary constitutional issues, leaving Asian constitutional history largely understudied.⁵ Hart Publishing has published single books on the Constitutions of five Southeast Asian States, namely Indonesia, Malaysia, Thailand, Singapore, and Vietnam.⁶ All these volumes contain very useful historical introductions and contextual

¹ GWF Hegel, *Outlines of the Philosophy of Right*, trans., T. M. Knox; ed., Stephen Houlgate (Oxford University Press, 2008), 263.

² WO Okoth-Ogendo, ‘Constitutions without Constitutionalism: Reflections on an African Political Paradox,’ in *Constitutionalism and Democracy: Transitions in the Contemporary World*, ed. Greenberg et al (Oxford University Press, 1993), 65.

³ Michael W. Dowdle, ‘Constitutional Listening,’ (2012) 88 *Chicago-Kent Law Review* 151–152.

⁴ Quoted in Sanford Levinson, *Constitutional Faith* (Princeton University Press, 1988), 33.

⁵ There are, of course, exceptions but these have been few and far between. See Kevin YL Tan, ‘The Making and Remaking of Constitutions in Southeast Asia: An Overview’ (2002) 6 *Singapore Journal of International & Comparative Law* 1–41; and ch 1 ‘Constitution- Making and State Building’ of Wen-chen Chang, Li-ann Thio, Kevin YL Tan & Jiunn-rong Yeh, *Constitutionalism in Asia: Cases and Materials* (Oxford: Hart, 2015).

⁶ Timothy Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Oxford: Hart, 2011); Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis* (Oxford: Hart, 2012); Andrew Harding and Peter Leyland, *The Constitutional System of Thailand: A Contextual Analysis* (Oxford: Hart, 2011); Kevin Tan, *The Constitution of Singapore: A Contextual Analysis* (Oxford: Hart, 2014); Mark Sidel, *The Constitution of Vietnam: A Contextual Analysis* (Oxford: Hart, 2009).

study and add richly to our knowledge about constitutional experiences in Southeast Asia. However, this body of literature has three major limitations.

First, these books focus mainly on the individual constitutions of the single countries and lack substantive comparisons or identifying commonalities and differences in constitutional responses to the challenge of founding new States. Second, these books focus more on contemporary constitutional issues than the historical context of making the first Constitutions and their relevance to the trajectory of state-building in the respective countries. Third, this body of literature has yet to cover all the constitutions of Southeast Asia – Brunei, Cambodia, Laos, Myanmar, the Philippines, and East Timor. Beyond the Hart series, there are some books about the Constitutions of these jurisdictions, but they are also country-focused books and substantively lack historical constitutional comparison.⁷ This book, therefore, seeks to fill the gap in the knowledge about constitutional history in Southeast Asia.

This book also taps into the scholarship associated with the recent revitalisation of the comparative study of constitutional history. A regular forum in this area has been active,⁸ to address the lack of study into ‘the comparative dimensions of constitutional history.’⁹ Some specialist periodicals in this area have been published regularly.¹⁰ Early comparative writings about constitutional history focused mainly on royal institutions in Europe in the Middle Ages.¹¹ In addition, RR Palmer’s book *The Age of the Democratic Revolution* is identified by the author as:

an attempt at a comparative constitutional history of Western Civilization at the time of the French and American Revolutions; but “constitutional” is to be understood in a broad sense, without much emphasis on formal provisions, and in close connection with the political, social, and intellectual currents and the actual conflicts at the time.¹²

⁷ BA Hussainmiya, *The Brunei Constitution of 1959: An Inside History* (Bandar Seri Bagawan: Brunei Press, 2000); Hor Peng, Kong Phallack, Jörg Mendel, eds., *Cambodian Constitutional Law* (Phnom Penh, Konrad-Adenauer-Stiftung, 2017); Andrew Harding, *Law, Government and the Constitution in Malaysia* (Kuala Lumpur: Malayan Law Journal, 1988); Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Singapore: Academy Publishing, 2012); Andrew Harding, *Constitutionalism and Legal Change in Myanmar* (Oxford: Hart, 2017); and Rufus B Rodriguez, *Constitutionalism in the Philippines* (Manila: Rex Book Store, 1997).

⁸ In recent years, the University of Illinois College of Law Programme in Constitutional Theory, History and Law; the University of Bologna School of Law; and the Centre for Constitutional Studies and Democratic Development have jointly held annual conferences on ‘Constitutional History: Comparative Perspectives.’ For information about the recent workshop in 2017, see <https://calendars.illinois.edu/detail/?eventId=33286731>.

⁹ Ibid.

¹⁰ They are the *Journal of Constitutional History/Giornale di Storia Costituzionale*: www.storiacostituzionale.it/index.html; and the *Historia Constitucional*; www.historiaconstitucional.com/index.php/historiaconstitucional.

¹¹ Gordon Griffiths, *Representative Government in Western Europe In The Sixteenth Century: Commentary And Documents For The Study Of Comparative Constitutional History* (Oxford: Clarendon Press, 1968); and H Mitteis, HF Orton, *The State in the Middle Ages: A Comparative Constitutional History of Feudal Europe* (American Elsevier, 1975).

¹² RR Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America, 1760–1800: The Challenge*, updated edition (New Jersey: Princeton University Press, 2014) 3.

In recent years, scholars have produced some significant work in this field, such as one comprehensive study of the history of the German Constitutional Court from a comparative (American) perspective.¹³ Justin Collings suggests that to translate ‘comparative history’ into ‘comparative constitutional history,’¹⁴ three approaches are possible: (a) ‘perspectival histories’ (an author’s own perspective on a single jurisdiction); (b) ‘thematic histories’ (a single theme across jurisdictions); and (c) ‘relational histories’ (multiple jurisdictions within a single chronological frame).¹⁵ This book falls within the third of Collings’ categories.

The general inquiry of constitutional history in Southeast Asia is still underdeveloped and thus hampered by two limits. The first is jurisdictional. Studies have focused on single jurisdictions and have always linked back to colonial antecedents. The second is substantial in that few studies have looked beyond how history is used in judicial decision-making.¹⁶ Our modest attempt in this volume in understanding the history of foundational constitution-making in Southeast Asia hopes to add to this scholarship.

II. CONSTITUTIONAL FOUNDINGS

This historical inquiry into constitutional foundings moves beyond juriscentric originalism: how courts should interpret the constitution according to the understanding of the foundational generation.¹⁷ Rather, this inquiry is broadly concerned with the historical conditions and functions of the foundational Constitutions; the internal and external factors that influence the process and substances of foundational constitution-making; and the possible lasting impact of the foundational constitutional values in the country’s subsequent constitutional trajectory.

A. Conditions and Functions of Constitutional Foundings

A theory of ‘constitutional foundationalism’ holds that (a) a Constitution is the culmination of a liberal revolution; (b) this foundational constitution-making is

¹³Justin Collings, *Democracy’s Guardians: A History of the German Federal Constitutional Court, 1951–2001* (Oxford: Oxford University Press, 2015).

¹⁴Justin Collings, ‘What Should Comparative Constitutional History Compare?’ (2017) *University of Illinois Law Review* 475.

¹⁵*Ibid.*

¹⁶The organisers of the Illinois-Bologna Conference note that: ‘In some nations, notably the United States, constitutional history plays an important and sometimes decisive role in the resolution by courts of questions of constitutional law. The conference will take up the place of constitutional history in constitutional adjudication.’ see <https://calendars.illinois.edu/detail/7?eventId=33286731>.

¹⁷See, eg, Randy E Barnett, *Restoring the Lost Constitution: The Presumption of Liberty* (New Jersey: Princeton University Press, 2004).

a clean break with the past; and (c) the making of such a Constitution is foundational to the creation of a new democratic constitutional order.¹⁸ The Southeast Asian experiences of constitutional foundings do not resonate with these constitutional foundationalist claims.

To begin with, foundational constitution-making in Southeast Asia is not solely the result of a liberal revolution. The process of decolonisation resulted in various different conditions impacting the foundational moments: revolution (in Vietnam and later Laos); evolution (in Singapore and Malaysia); royal determination (Thailand); and segregation (East Timor). Even when constitution-making is the culmination of a revolution, this revolution is not necessarily a liberal one. For example, the making of Vietnam's 1946 Constitution was the culmination of a communist revolution that ended French colonialism in Indochina.¹⁹

A related observation is that foundational constitution-making in Southeast Asia is not necessarily a radical repudiation of the past. Many first Constitutions in the region continue the colonial and traditional legacies. The monarchy, for example, was retained in the cases of Thailand, Laos, Cambodia and Brunei.²⁰ The traditional communitarian values continue to inform the first Constitution of Indonesia.²¹ In Laos, the citizens' family duties, the role of Buddhism as the state religion, and the institution of King's Council are reflective of the State's traditional values.²² As the making of the foundational constitutions in the region is not the codification of values and achievements of liberal revolutions, they are not necessarily a fundamental framework for the creation of a democratic constitutional order. In fact, no democratic constitutional governments were created following the making of the first constitutions in Southeast Asia although the Philippines might be considered somewhat of an exception here. Instead, different types of constitutional orders were created after the making of the foundational constitutions in the region.

Few Southeast Asian experiences of constitutional foundings accord with theories of 'constitutional constructivism' in which constitution-making in transitional contexts is characterised by incremental change as societies move from authoritarian to liberal democratic rule while preserving continuity with its past.²³ While gradual constitutional construction and constitutional continuity

¹⁸ See Bruce Ackerman, *The Future of Liberal Revolution* (New Haven: Yale University Press, 1992) 16.; see also, Hannah Arendt, *On Revolution* (London: Penguin, 1977). For critical discussions, see Gary Jeffrey Jacobsohn, 'Theorizing the Constitutional Revolution' (2014) 2 *Journal of Law and Courts* 1–32.

¹⁹ See chapter on Vietnam.

²⁰ See chapters on Thailand, Laos, and Cambodia.

²¹ See chapter on Indonesia.

²² See chapter on Laos.

²³ See Ruti Teitel, 'Transitional Jurisprudence: The Role of Law in Political Transformation' (1997) 106 *Yale Law Journal* 2070; and Ruti Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000). For related accounts, see Andras Sajó, 'Preferred Generations: A Paradox of Restoration Constitutions' (1992–1993) 14 *Cardozo Law Review* 847; Venkat Iyer, 'Restoration Constitutionalism in the South Pacific' (2006) 15 *Pacific Rim Law & Policy Journal* 40.

are relevant, we do not see the incremental and continuing constitutional evolution culminates in the creation of liberal constitutionalism in Southeast Asia. The functions of the foundational constitutions in Southeast Asia are not to limit governmental powers in the name of individual liberty.

In contrast, in some cases, constitutional foundings are informed by communitarian constitutional values that are explicitly averse to liberal constitutionalism. For example, in Indonesia, the Javanese ‘Family Principle’ philosophy was transformed into a national ideology at its founding. The ‘Family Principle’ is the very anti-thesis of individualism, which renders the 1945 Constitution a communitarian and authoritarian constitution. The nationalists summoned Nazi doctrine of the totalitarian state, and models of the Soviet Union and the Chinese Nationalist Party government to legitimatise the ‘Family Principle’.²⁴ On the other hand, the constitutional founding in East Timor drew on international legal and constitutional norms and ideals,²⁵ an example of what has been termed transnational or international constitutionalism.²⁶

It is hard to make generalisations about the roles and functions of foundational constitution-making in Southeast Asia, varied and inter-mixed as they are. This is especially so in a colonial context when independence is won in different ways. For sure, new constitutions signal new beginnings and almost all constitutions may be considered to be foundational documents in the sense that they represent a break from the past, at the very least in terms of sovereignty. At the same time, they may be drafted to express nationalistic ideas and ideals and traditional values, and as a symbol and document to unify the nascent State. In many cases, it is a mix of all these functions.

B. Historical Factors in Constitutional Foundings

What historical factors influenced the process and substance of constitution-making? As the country studies show, different factors determined the course of constitution-making in each of the Southeast Asian countries. What might usefully be offered by way of analysis is perhaps for us, as comparativists to consider two broad factors: internal and external.

Internal factors inform the way foundational constitution-making is initiated, organised and carried out, and what goes into the Constitution. This kind of neo-functional enquiry takes serious account of the historical and political factors of constitutional development.²⁷ In the case of Southeast Asia, an unavoidable factor – indeed the ‘elephant in the room’ – has been the

²⁴ See chapter on Indonesia.

²⁵ See chapter on East Timor.

²⁶ Jiunn-Rong Yeh and Wen-Chen Chang, ‘The Emergence of Transnational Constitutionalism: Its Features, Challenges and Solutions’ (2008) 27 *Penn State International Law Review* 89.

²⁷ Ruti Teitel, ‘Comparative Constitutional Law in a Global Age’ (2004) 117 *Harvard Law Review* 2581.

decolonisation process. Except Thailand, the end of colonialism provided the impetus for the making of the first constitutions in Southeast Asia. Another influential factor is internecine political struggles. Political struggles among competing forces (eg the ‘revolutionary’ and royalist forces in Thailand; the Royal Lao government and the Lao Issara government in Laos; the Vietminh and non-communist forces in Vietnam) drove and shaped the process and substance of foundational constitution-making.²⁸ Other influential internal factors include: socio-economic conditions, intellectual environment, religion, and traditional values. For example, in Vietnam, the famine of 1945, the diversity of intellectuals (Confucianists, communists, western-educated intellectuals, religious leaders, and royalists) and anti-colonialist movements were relevant and significant factors that shaped its constitution-making processes and also the contents of its 1946 Constitution.

External factors include the influence of foreign or external players. Among such factors are foreign constitutional advisors, foreign constitutional texts and movements, foreign governments, international law and international or transnational actors, such as the United Nations. In some cases, constitution-making was influenced by ideas, values, and institutions of the former colonial powers (eg French influences in Cambodia, Laos, and Vietnam; the American influence in the Philippines; and the British influence in Singapore and Malaysia). However, external influences are not limited to colonial ties. Drafters of Vietnam’s 1946 Constitution were also influenced by English and American constitutionalism. In the case of Thailand, as constitution-making was free from colonial domination, constitution-makers drew inspirations from different constitutional models (including the Soviet, French and Chinese models).²⁹

Mechanisms of external influences on domestic constitution-making include: coercion, competition, learning, and acculturation.³⁰ Constitution-makers may be coercively influenced by their former colonists (eg Laos and Cambodia). Countries may also consciously borrow from foreign constitutional models to modernise the domestic political and legal systems (eg Thailand).³¹ Countries may incorporate foreign experiences into their Constitutions to socialise themselves to the ‘civilized world’ to gain more international recognition (eg Vietnam). The incentive to adopt transnational constitutional values to compete for foreign investments is less relevant as this is more associated with economic globalisation.³² Oftentimes, it is a mix of externalities given that constitutional

²⁸ See chapters on Thailand, Laos, and Vietnam.

²⁹ See chapter on Thailand.

³⁰ Benedikt Goderis & Mila Versteeg, ‘Global Diffusion of Constitutional Rights’ (2014) 39 *International Review of Law & Economics* 1.

³¹ Nelson Tebbe & Robert L Tsai, ‘Constitutional Borrowing’ (2010) 108 *Michigan Law Review* 459; and Sujit Choudhry (ed), *The Migration of Constitutional Ideas* (New York: Cambridge University Press, 2009).

³² Benedikt Goderis & Mila Versteeg, ‘Global Diffusion of Constitutional Rights’ (2014) 39 *International Review of Law & Economics* 1.

bargains need to be hammered out through negotiations among key political actors of all ideological stripes. Reaction to external influences is not always positive. Resistance is common in transnational constitutional interactions. This stems from a range of factors, such as nationalism, the protection of sovereignty, the expressive nature of Constitution, and the fear of western hegemony,³³ such as was the case in Indonesia, whose founders resisted western constitutional ideas and institutions in favour of traditional communitarian values.³⁴

C. The Legacies of Constitutional Foundings

The legacies of the constitutional foundings have, in some cases, a lasting effect on the subsequent constitutional trajectory of their respective countries. In some cases, the founding constitutional legacies continue to provide the ideas, inspirations for constitutional debates and mobilisation many years after their promulgation. Take the case of Vietnam for example. During the 2013 constitution-making process, many actors called for a return to the values of the 1946 Constitution. These actors included retired political leaders and senior officials; incumbent senior officials; liberal assembly delegates; distinguished legal scholars, intellectuals in different fields; ordinary people; and dissidents. They made their demands utilising various different fora: congressional forum, popular forums (state-owned popular medias, unofficial websites, and Facebook), and scholarly forums (national law journals and conferences, workshops, and seminars) and using the first Constitution of 1946 as the platform, they called for a constitutional referendum; a change of the nation's name from Socialist Republic of Vietnam to Democratic Republic of Vietnam; a multi-party system; a semi-presidential system of government; judicial independence; and private ownership of lands.³⁵

Foundational Constitutions may also inform and impact subsequent constitutional design. In Laos, we find some traits of its 1947/1949 Constitution in that of its socialist Constitution of 1991. For example, the name of its national legislature (National Assembly) is retained as well as the institution of vote of no confidence, which is most unusual in a communist state.³⁶ In Cambodia, despite radical differences, 'many traits of the 1947 Constitution can be found among the provisions of the 1993 Constitution. These include the restoration of

³³ Vicki C Jackson, 'Constitutional Comparisons, Convergence, Resistance, Engagement,' (2005) 119 *Harvard Law Review* 113–14; Kim Lane Scheppele, 'Aspirational and aversive constitutionalism: The Case for Studying Cross-Constitutional Influence Through Negative Models' (2003) 1 *International Journal of Constitutional Law* 296. For a recent account, see Ran Hirschl, *Opting Out of 'Global Constitutionalism'* (2018) 12 *Law & Ethics of Human Rights* 1.

³⁴ See chapter on Indonesia.

³⁵ See chapter on Vietnam. See also Bui Ngoc Son, 'Restoration Constitutionalism and Socialist Asia' (2015) 37 *Loyola of Los Angeles International and Comparative Law Review* 67.

³⁶ See chapter on Laos.

an elective mechanism for choosing the King; the establishment of a Supreme Council of Magistracy; and the principles for elections and functioning of the Senate, when it was reintroduced by a constitutional amendment in 1998.³⁷ The attachment to the founding constitutional legacies in constitutional debate, mobilisation, and design in Southeast Asia echoes Schepelle's observation that:

Constitutions in their moments of creation cannot be inspired solely by imagined futures. Perhaps even more crucially, they encode imagined pasts. Though they may look abroad for models, constitution drafters ultimately understand and react most of all to what they take to be the crucial histories of their own countries.³⁸

Reference back to the founding constitutional legacies may also be instrumental in gaining more legitimacy and social support for new constitutional designs as societies often prefer continuity to change. This may be done even if past constitutional experiences prove flawed, as in the case of Indonesia. In such situations, constitutional actors are not harking back nor clamouring for a particular constitutional form or arrangement, but rather for what might be regarded as ideals, values and other social meanings embedded in the foundational document and the process of its drafting.

III. CONCLUSION

This book makes a first small step towards a Southeast Asian contribution to the general scholarship on constitutional history in two ways. First, the inquiry into constitutional history is not necessarily associated with judicial institutions and constitutional adjudication. We believe that it is necessary to expand the scope of constitutional history studies to the study of the history of constitution-building generally. Secondly, as many of our case studies show, constitution-making in post-colonial conditions brought into play many other political and social factors, not least of which was the need for the nascent country to build both a State and a nation. The Constitution could be used to galvanise the disparate peoples of the new State but also to organise government in a way that would give the State enough authority and capacity to govern.

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³⁷ See chapter on Cambodia.

³⁸ Kim Lane Scheppele, 'A Constitution Between Past and Future' (2008) 49 *William & Mary Law Review* 1379.