LEGAL STUDIES RESEARCH PAPER SERIES

PAPER NO. 16-02-01

June 2016

Constitutional Archetypes

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CONSTITUTIONAL ARCHETYPES

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95 *Texas Law Review* __ (forthcoming 2016)

It is a core function of constitutions to justify the existence and organization of the state. The ideological narratives embedded in constitutions are not fundamentally unique, however, but instead derive from a limited number of competing models. Each model is defined by a particular type of justification for the existence and organization of the state, and by a symbiotic relationship with a particular legal tradition. These models are so ubiquitous and elemental that they amount to constitutional archetypes.

This Article contends as an empirical matter that constitutional narratives of the state boil down to a combination of three basic archetypes–namely, a liberal archetype, a statist archetype, and a universalist archetype. The liberal archetype is closely identified with the common law tradition and views the state as a potentially oppressive concentration of authority in need of regulation and restraint. The legitimacy of the state is therefore contingent upon adherence to constitutional limits. In keeping with this conception of the state, liberal constitutions emphasize the imposition of limits upon government in the form of negative and procedural rights, as well as a strong and independent judiciary to make these limits effective.

The statist archetype, in contrast, is associated with the civil law tradition and hails the state as the embodiment of a distinctive community and the vehicle for the achievement of the community's goals. The legitimacy of the state rests upon the strength of the state's claim to represent the will of a community. Consequently, constitutions in

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this vein are attentive to the identity, membership, and symbols of the state. Other characteristics of a statist constitution include an emphasis on the articulation of collective goals and positive rights that contemplate an active role for the state, and an obligation on the part of citizens to cooperate with the state in the pursuit of shared goals.

The universalist archetype, the newest and most prevalent of the three, is symbiotically intertwined with a post-World War II, post-Westphalian paradigm of international law that rests the legitimacy of the state upon the normative force of a global legal order that encompasses both constitutional law and international law. Characteristics of this archetype include explicit commitment to supranational institutions and supranational law and reliance on generic terms and concepts that can be found not only in a variety of national constitutions, but also in international legal instruments.

Empirical evidence of the prevalence and content of these three basic archetypes can be found in the unlikeliest of places – namely, constitutional preambles. Preambles enjoy a reputation for expressing uniquely national values, identities, and narratives. If there is any part of a constitution that ought not to be reducible to a handful of recurring patterns, it is surely the preamble. Yet analysis of the world's constitutional preambles using methods from computational linguistics suggests that they consist of a combination of the three archetypes. Estimation of a structural topic model yields a quantitative measure of the extent to which each preamble draws upon each archetype.

The empirical analysis also highlights the growing commingling and interdependence of constitutional law and international law. The language found in universalist preambles mirrors the language found in leading international human rights instruments. The adoption of the same conceptual and normative vocabulary by both universalist constitutions and key international legal instruments amounts to the emergence of a globalized ideological dialect common to both domestic constitutional law and public international law. The rising use of this common language by constitutional drafters since World War II is a quantitative indicator of the growing extent to which constitutional law and public international law influence each other.

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INTRODUCTION: WHAT ARE CONSTITUTIONAL ARCHETYPES, AND WHY DO THEY EXIST?

It is widely held that constitutions express the distinctive identity, character, and values of the nations that adopt them.[1] This view is only partly true. Constitutions are inescapably ideological and expressive. What they express, however, is derivative rather than distinctive.

It is not difficult to grasp why constitutions are profoundly ideological documents. All regimes face the challenge of justifying and rationalizing their operation and existence, and constitutional drafting is perhaps the most obvious way in which they address this challenge. A constitution is not just a legal instrument, but also a highly visible trapping of statehood, like an anthem or flag or paper money. The fact that constitutions are a natural focus of attention confronts regimes with both the opportunity and the obligation to depict themselves to the world in a flattering or at least acceptable light.[2] Constitutions thus function as

[1] *See, e.g.*, ZACHARY ELKINS ET AL., THE ENDURANCE OF NATIONAL CONSTITUTIONS 38 (2009) (observing that constitutions perform the function of "defining the nation and its goals"); VICKI C. JACKSON, CONSTITUTIONAL ENGAGEMENT IN A TRANSNATIONAL ERA 155 (2010) (characterizing constitutions as "forms of national self-expression"); HEINZ KLUG, CONSTITUTING DEMOCRACY: LAW, GLOBALISM AND SOUTH AFRICA'S POLITICAL RECONSTRUCTION 67 (2000) (noting "the tendency in comparative discussions of constitutions and constitution-making to emphasize the historical uniqueness of individual national constitutions"); Mark Tushnet, *The Possibilities of Comparative Constitutional Law*, 108 YALE L.J. 1225, 1269–70 (1999) (employing the term "expressivism" to describe the long-held view that "constitutions emerge out of each nation's distinctive history and express its distinctive character"); Mila Versteeg, *Unpopular Constitutionalism*, 89 IND. L.J. 1133, 1135 (2014) ("Constitutional scholars routinely claim that one of the leading goals of constitutional law is to articulate, preserve, or construct the highest values of the nation and its people.").

This view has a long and distinguished pedigree dating back at least as far as Montesquieu. *See* Otto Kahn-Freund, *On Uses and Misuses of Comparative Law*, 37 MOD. L. REV. 1, 6 (1974) (quoting Montesquieu's *Spirit of the Laws*) ("Les lois politiques et civiles de chaque nation . . . doivent être tellement propres au peuple pour lequel elles sont faites, que c'est un grand hazard si celles d'une nation peuvent convenir à une autre."); Vlad Perju, *Constitutional Transplants, Borrowing, and Migrations*, *in* THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW 1304, 1309 (Michel Rosenfeld & András Sajó eds., 2012) (identifying Montesquieu, Hegel, and Savigny with the "mirror theory of law" that views a legal system as the reflection of "the spirit of the community").

[2] *See, e.g.*, Julian Go, *A Globalizing Constitutionalism? Views from the Postcolony, 1945–2000*, 18 INT'L SOCIOLOGY 71, 90 (2003) ("World society dictates that constitutions are necessary for modern statehood . . . . Written constitutions have become so important for state legitimacy in the world

formalized and formulaic narratives by which states justify and explain themselves to internal and external audiences alike.[3]

The constitutional articulation of an ideological narrative of the state may occur implicitly rather than explicitly, but it cannot be avoided altogether.[4] It is impossible to set forth the organization of the state, the relationship between state and citizen, or the basic legal framework for the resolution of political conflict without embracing a slew of normative propositions about how the state should be organized, how the relationship between state and citizen should be structured, and how political conflict should be resolved. To adopt a constitution is therefore nothing less than to adopt an ideology of the state in authoritative form.[5]

The ideological aspects of a constitution are not merely incidental or ornamental, but rather integral to its functioning. Indeed, in many cases, the expression of state ideology exceeds the other functions of a constitution in importance. Plenty of constitutions, especially those belonging to authoritarian regimes, do not satisfy the textbook definition of what counts as a constitution[6] because they fail to describe, much less limit, how state power is actually organized and exercised.[7] That does not mean, however, that such constitutions serve no

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system that some social scientists characterize them as a universal requirement."); John W. Meyer et al., *World Society and the Nation-State*, 103 AM. J. SOCIOLOGY 144, 153 (1997) (observing that constitutions are instruments by which nation-states "present themselves" as "rational and responsible" actors fit for membership in "world society").

[3] *See, e.g.*, Colin J. Beck et al., *World Influences on Human Rights Language in Constitutions: A Cross-National Study*, 27 INT'L SOCIOLOGY 483, 485 (2012) (describing national constitutions as "quite stylized" documents that reflect "globally standardized notions of what the state is about and what it is to do").

[4] *See* Robert M. Cover, *The Supreme Court, 1982 Term–Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 4–5 (1983) ("No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic . . . . In this normative world, law and narrative are inseparably related. Every prescription is insistent in its demand to be located in discourse—to be supplied with history and destiny, beginning and end, explanation and purpose.").

[5] *See, e.g.*, INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE, A PRACTICAL GUIDE TO CONSTITUTION BUILDING 47 (2011) (observing that "the principles set out in a constitution serve as a broad definition of the aims and purposes of government," "reflect the ideology or identity of the state," and "serve as the symbolic embodiment, as well as a celebration, of a society's commitment to an idea, value, or way of life"); sources cited *supra* note 1 (emphasizing the extent to which constitutions articulate and define the values and goals of the state).

[6] *See, e.g.*, ELKINS ET AL., *supra* note 1, at 38 ("Arguably, the most important role of constitutions is to limit the behavior of government. Constitutions generate a set of inviolable principles and more specific provisions to which future law and government activity more generally must conform."); Denis J. Galligan & Mila Versteeg, *Theoretical Perspectives on the Social and Political Foundations of Constitutions*, *in* SOCIAL AND POLITICAL FOUNDATIONS OF CONSTITUTIONS 3, 6 (Denis J. Galligan & Mila Versteeg eds., 2013) ("A constitution establishes a system of government, defines the powers and functions of its institutions, provides substantive limits on its operation, and regulates relations between institutions and the people.").

[7] *See, e.g.*, David S. Law & Mila Versteeg, *Sham Constitutions*, 101 CALIF. L. REV. 863, 870 (2013) [hereinafter *Sham Constitutions*] (compiling data on countries that "fail[] to perform upon self-

purpose or function. Even the most egregious of sham constitutions is created for a reason. A constitution that is not intended to perform the textbook functions of defining and limiting the state[8] must be intended to perform some other function. And perhaps the most obvious function that a sham constitution performs is that of offering ideological justification for the regime.[9]

Where the conventional wisdom goes awry, therefore, is not in positing that constitutions are ideological or expressive. The error lies, instead, in romanticizing them as distinctive manifestations of national identity. Constitutions are not endlessly inventive. For the most part, they address familiar challenges in familiar ways. A form of political organization must be chosen for the state, and there are a few basic forms from which to choose.[10] Likewise, the existence and organization of the state must be justified, and there are standard rhetorical and ideological moves for doing that as well. Constitutions do not all make the same choices, but the variety of choices is limited. The result for the reader is a continual sense of déjà vu. In matters of both institutional design and rights protection, constitutions tend to

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imposed, publicly proclaimed commitments" laid out in their constitutions); David S. Law & Mila Versteeg, *Constitutional Variation Among Strains of Authoritarianism*, *in* CONSTITUTIONS IN AUTHORITARIAN REGIMES 165, 165 (Tom Ginsburg & Alberto Simpser eds., 2014) [hereinafter *Constitutional Variation*] ("Some constitutions are the equivalent of Potemkin villages: they neither constrain nor accurately describe the powers of the state but instead exist primarily to present an attractive face to the world." (citations omitted)); Giovanni Sartori, *Constitutionalism: A Preliminary Discussion*, 56 AM. POL. SCI. REV 853, 861 (1962) (contrasting "nominal" constitutions that merely formalize political reality with "façade" or "trap" constitutions that appear to provide rights guaranties, but are disregarded).

[8] *See, e.g.*, ELKINS ET AL., *supra* note 1, at 36–38 (offering a "canonical" definition of constitutions as "codes of rules which aspire to regulate the allocation of functions, powers and duties among the various agencies and offices of government, and define the relationship between these and the public," and observing that "the most important role of constitutions" is, arguably, "to limit the behavior of government").

[9] *See* Law & Versteeg, *Constitutional Variation*, *supra* note 8, at 170–71 (hypothesizing that "authoritarian regimes approach constitution-making as a rhetorical exercise" in professing conformity to the values of "world society," and that civilian dictatorships in particular may be inclined to cultivate international support by ideological means). As discussed below, authoritarian regimes tend to adopt statist constitutional preambles that place heavy emphasis upon ideological justification of the regime's rule. *See infra* Part II (describing the statist constitutional archetype); *infra* Table 5 (identifying China, North Korea, Vietnam, Cuba, Iran, Laos, and Myanmar as possessing the most ideologically statist constitutional preambles in the world).

[10] *See, e.g.*, José Antonio Cheibub, Zachary Elkins and Tom Ginsburg, *Beyond Presidentialism and Parliamentarism*, 44 BRITISH J. POL. SCI. 515, 516–17 (2014) (describing institutional variation within the three conventional categories of "presidential," "parliamentary," and "mixed" systems); José Antonio Cheibub, Jennifer Gandhi and James Raymond Vreeland, *Democracy and Dictatorship Revisited*, 143 PUB. CHOICE 67, 69 (2010) (refining the conventional distinction between democratic and dictatorial regimes); Law & Versteeg, *Constitutional Variation, supra* note 7, at 168 (observing that authoritarian regimes are generally divided into three categories—monarchical, military, and civilian).

recycle familiar parts and themes.[11] Much the same is true when it comes to their ideological content: constitutions recycle a handful of archetypal narratives.

Countries routinely imitate one another in matters of constitutional drafting,[12] but the ubiquity of these narratives reflects more than just the convenience of copying from others. An effective constitutional narrative needs to satisfy a variety of functional and practical criteria that leave little room for creative fancy. Relevant criteria include consistency with the aims of the regime; compatibility with the institutions and structures that the regime seeks to justify as legitimate, including both the legal and political systems; and acceptability to a wide range of audiences, both domestic and international. The last of these criteria imposes considerable constraint on constitution-makers. States today find themselves situated within an increasingly elaborate web of supranational political and legal regimes that limit their options and foster adherence to established

[11] *See, e.g.*, ALBERT P. BLAUSTEIN, FRAMING THE MODERN CONSTITUTION: A CHECKLIST 1–32 (1994) (setting forth a checklist of all the provisions and options that a constitutional drafter would ordinarily need to consider); CHIBLI MALLAT, PHILOSOPHY OF NONVIOLENCE: REVOLUTION, CONSTITUTIONALISM, AND JUSTICE BEYOND THE MIDDLE EAST 156–57 (2015) (observing that "[c]onstitution-writing has been a remarkably unimaginative activity since the oldest and most enduring constitution in existence," and that most constitutions combine a "rhetorical" preamble with a "set core" of seven functional sections that "have represented the conceptual limits of modern democracy" since the framing of the U.S. Constitution); David S. Law & Mila Versteeg, *The Evolution and Ideology of Global Constitutionalism*, 99 CALIF. L. REV. 1163, 1243 (2011) (analyzing the rights-related content of all national constitutions, and finding as an empirical matter that constitutions tend to combine a core set of highly "generic" provisions with ideological provisions of a "libertarian" or "statist" character); Versteeg, *supra* note 1, at 1189 (finding that the rights provisions of national constitutions tend to embody "universal" norms rather than the actual values of the citizenry).

[12] *See, e.g.*, BLAUSTEIN, *supra* note 11, at vii–ix (observing that "[m]embers of constitutional committees, commissions and assemblies are sure to examine other constitutions and treat them as constitutional menus," and describing by way of example the unsatisfied demands of the South Vietnamese Constituent Assembly for "books containing the constitutions of other nation-states"); BEATE SIROTA GORDON, THE ONLY WOMAN IN THE ROOM: A MEMOIR 106–07 (1997) (describing how American officials under General MacArthur's command drove around Tokyo collecting foreign constitutions from libraries to inform their own efforts to draft a post-war constitution for Japan); Jon Elster, *Constitutionalism in Eastern Europe: An Introduction*, 58 U. CHI. L. REV. 447, 477 (1991) (noting that Eastern European countries "strongly [felt] the pull of the constitutions in Western Europe, especially those of France and Germany," as well as those of Greece and Italy); Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621, 650 (2004) (describing a "'contagion' effect" in the international spread of women's rights); W.H. Morris-Jones, *The Politics of the Indian Constitution (1950)*, *in* CONSTITUTIONS IN DEMOCRATIC POLITICS 128, 131–32 (Vernon Bogdanor ed., 1988) (noting that the framers of the Indian Constitution drew inspiration from the French, American, and Irish equivalents); Carlos F. Rosenkrantz, *Against Borrowings and Other Nonauthoritative Uses of Foreign Law*, 1 INT'L J. CONST. L. 269, 270 (2003) (observing that Argentina's 1853 constitutional convention was "cast in the mold of the Constitution of the United States").

formulae.[13] They must also contend with a proliferation of norms and expectations as to what a constitution should say.[14] These norms stem not only from the sheer ubiquity of various constitutional principles and provisions,[15] but also from the deliberate efforts of numerous institutions and organizations to generate and promote the equivalent of international standards of constitutionalism.[16] Overt defiance of these norms undermines the ability of a constitution to perform its justificatory function.

The difficulty of satisfying these criteria leads to widespread reliance on a handful of basic models or archetypes. While there are nearly two hundred countries at present with formal constitutions,[17] there are far fewer than two hundred political ideologies that might pass muster if reduced to constitutional

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[13] *See, e.g.*, David S. Law, *Generic Constitutional Law*, 89 MINN. L. REV. 652, 718–19 (2005) (describing "doctrinal recursion," an up-and-down feedback loop by which higher courts amalgamate the positions of diverse lower courts to impose new, homogenized rules back on the lower courts).

[14] *See, e.g.*, Beck et al., *supra* note 3, at 486 (noting the growing breadth and pervasiveness of human rights discourse at the international level); Elizabeth Heger Boyle & John W. Meyer, *Modern Law as a Secularized and Global Model: Implications for the Sociology of Law*, *in* GLOBAL PRESCRIPTIONS: THE PRODUCTION, EXPORTATION, AND IMPORTATION OF A NEW LEGAL ORTHODOXY 65, 70, 77 (Yves Dezalay & Bryant G. Garth eds., 2002) (noting the "intensification and expansion of world society and culture in the post-World War II framework," including the global development of "extremely elaborate conceptions of the collective purposes of the state in managing society").

[15] *See, e.g.*, MALLAT, *supra* note 11, at 156–57 (observing that the acronym "LEJ(F)ARC" covers all of "the basic items/articles/chapters that a constitution needs to cover: the Legislature, the Executive, the Judiciary, Federalism (or not, hence the parenthesis), Amendments, Ratification, and the Citizen's basic rights," that no constitution "includes less than these seven titles, or six, give or take one, federalism," and that constitution-making is consequently a "dull" and "remarkably unimaginative activity"); Philip Alston, *A Framework for the Comparative Analysis of Bills of Rights*, *in* PROMOTING HUMAN RIGHTS THROUGH BILLS OF RIGHTS: COMPARATIVE PERSPECTIVES 2 (Philip Alston ed., 1999) (describing a "core set of civil and political rights which is reflected almost without fail" in national constitutions and encouraged by a variety of regional initiatives); Law, *supra* note 13, at 659–60 (noting that transnational constitutional "commonalities" have become "so thick and prominent that the result may fairly be described as *generic constitutional law*—a skeletal body of constitutional theory, practice, and doctrine that belongs uniquely to no particular jurisdiction"); David S. Law & Mila Versteeg, *The Declining Influence of the United States Constitution*, 87 N.Y.U. L. REV. 762, 776 (2012) (listing twenty-five rights-related provisions found in over 70% of the world's constitutions).

[16] *See, e.g.*, INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE, *supra* note 5 (purporting to offer a comprehensive practical guide to constitution-making that covers, inter alia, what kind of constitution-making process is appropriate and what substantive matters a constitution should address); David S. Law, *Judicial Comparativism and Judicial Diplomacy*, 163 U. PA. L. REV. 927, 974 (2015) (describing the work of the European Commission for Democracy Through Law, more commonly known as the Venice Commission); THE UN CONSTITUTIONAL, No. 4, Spring 2015, *available at* http://peacemaker.un.org/sites/peacemaker.un.org/files/TheUNConstitutional_Issue4_May2015_0.pdf (describing the activities of various arms of the United Nations in support of national constitution-making processes).

[17] *See* ELKINS ET AL., *supra* note 1, at 51 (counting a total of 189 national constitutions in force).

form.[18] Over time, a few archetypal narratives have proven enduringly popular. The fact that these established narratives already enjoy legitimacy helps to ensure their continuing popularity. So too does a lack of obvious alternatives. The safest and easiest thing for states to do is to employ some version or combination of what is already tried and true.[19] And that, it will be argued, is precisely what they do.

The constitutions of today's nation-states draw from a limited pool of conventional ideological narratives. These standardized modes of ideological justification are so ubiquitous and so deeply ingrained in the "collective constitutional consciousness"[20] that they can fairly be described as *constitutional archetypes*. Such archetypes manifest themselves differently from country to country yet remain recognizable. For example, different constitutions invoke different national heroes, but the very act of invoking a hero by name in the constitution–be it a Bolivar,[21] or a Mao,[22] or a Kim Il Sung[23]–is unmistakably characteristic of a particular kind of ideological narrative.[24] In Jungian psychology, the hero is an archetype: it takes different forms across different cultures, but its

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[18] *See* KLUG, *supra* note 1, at 27 (noting "the consolidation of international political culture since the collapse of state socialism" and resulting diminution in the range of "ideologically inspired . . . constitutional alternatives" available to constitution-makers).

[19] *See id.* (observing that "political-legal ideas contained in the historically available models of constitutional experiences . . . help shape (and no doubt limit) the imaginations" of constitution-makers).

[20] Günter Frankenberg, *Constitutions as Commodities: Notes on a Theory of Transfer*, *in* ORDER FROM TRANSFER: COMPARATIVE CONSTITUTIONAL DESIGN AND LEGAL CULTURE 1, 14 (Günter Frankenberg ed., 2013) (likening "the global reservoir or archive, the collective constitutional consciousness or repertoire" from which constitutional drafters draw to an "IKEA" or "supermarket" where "standardized items are registered, stored, exhibited and available for purchase to constitution-makers around the world").

[21] CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR [CONSTITUTION], Oct. 20, 2008, pmbl. (Ecuador); CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA [CONSTITUTION], art. 9, LA GACETA, DIARIO OFICIAL 9 Jan., 1987 (Nicar.); CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUALA [CONSTITUTION] Dec. 30, 1999, pmbl. (Venez.).

[22] ZHONGUA RENMIN GONGHEGUO XIANFA [XIANFA] [CONSTITUTION] Mar. 14, 2004, pmbl. (China).

[23] JOSEON MINJUJUUI INMIN GONGHWAGUK SAHOEJUUI HEONBEOP [HEONBEOP] [CONSTITUTION] 1998, pmbl. (N. Kor.).

[24] Equally revealing from an ideological perspective is the explicit constitutional preclusion of national hero worship. *See* LA CONSTITUTION DE LA RÉPUBLIQUE D'HAÏTI [CONSTITUTION], Mar. 29, 1987, art. 7 (Haiti), *translated at* http://www.constituteproject.org/constitution/Haiti_2012.pdf ("The cult of the personality is categorically forbidden. Effigies and names of living personages may not appear on the currency, stamps, seals, public buildings, streets or works of art."); *id.* art. 7-1 ("Use of effigies of deceased persons must be approved by the Legislature."). *See generally* JUSTIN O. FROSINI, CONSTITUTIONAL PREAMBLES AT A CROSSROADS BETWEEN POLITICS AND LAW 38–39 (2012) (noting that "some preambles" refer to specific historical figures, and singling out the Nicaraguan preamble for containing "the highest number of references to historical figures" with "very strong ideological connotation").

meaning transcends any particular culture.[25] Likewise, in constitutional drafting, the invocation of heroic figures is indicative of an ideological archetype: the names of the heroes vary from one constitution to the next, but the type of constitutional storytelling that invokes heroic figures is deeply familiar and resonates on multiple levels.

This Article argues as an empirical matter that contemporary constitutional drafting reflects a tug-of-war among three competing ideological archetypes, which might be called the liberal archetype, the statist archetype, and the universalist archetype. Each is defined by a particular type of justification for the existence and organization of the state, and each draws nourishment from a different legal tradition. The liberal archetype owes a historical debt to the common law tradition and legitimates the state by placing limits upon its authority. The statist archetype draws disproportionate support from civil law countries and generates legitimacy for the state by invoking notions of community and nationhood that bind the people to one another and to their government. The universalist archetype, the newest and most prevalent of the three, is symbiotically intertwined with a post-World War II, post-Westphalian paradigm of international law that conditions the legitimacy of the state upon adherence to norms of a supranational character.[26] Whether by choice or necessity, constitution-makers lean heavily on these ideological

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[25] *See* MATHIAS SIEMS, COMPARATIVE LAW 29 (2014) (discussing Yoshiyuki Noda's positing of the existence of an "unconscious shared legal mentality" or "protodroit," inspired by Carl Jung's concept of psychological archetypes); David Lindenfeld, *Jungian Archetypes and the Discourse of History*, 13 RETHINKING HIST. 217, 223 (2009) (rehabilitating and reinterpreting the Jungian concept of the archetype as an "emotionally charged unit-idea that synthesizes multiple and disparate contents into a single powerful mental entity").

[26] *See, e.g.*, MICHELINE R. ISHAY, THE HISTORY OF HUMAN RIGHTS: FROM ANCIENT TIMES TO THE GLOBALIZATION ERA 218 (2004) (identifying the Nuremberg trials that commenced in 1945 as a watershed moment for international law because they held domestic officials accountable under international law for acts committed within domestic territory that were legal under domestic law); Seyla Benhabib, *The New Sovereigntism and Transnational Law: Legal Utopianism, Democratic Scepticism and Statist Realism*, 5 GLOBAL CONSTITUTIONALISM 109, 113–14 (2016) (observing that "the many human rights covenants concluded since WWII" are unique in that through them, sovereign states agreed to undertake self-limitation of their own prerogatives"); Antonio Cassese, *States: Rise and Decline of the Primary Subjects of the International Community*, *in* THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW 49, 51, 62–69 (Bardo Fassbender et al. eds., 2012) (describing the "international order" that emerged from the 1648 peace of Westphalia as merely a "cluster of entities, separate and unconnected" with each state exercising exclusive authority over its own territory, and tracing the subsequent movement toward a system in which states are increasingly accountable subject to legal restrictions on actions within their borders); Anne-Marie Slaughter & William Burke-White, *The Future of International Law Is Domestic (or, The European Way of Law)*, *in* NEW PERSPECTIVES ON THE DIVIDE BETWEEN NATIONAL AND INTERNATIONAL LAW 110, 111, 115 (Janne Nijman & André Nollkaemper eds., 2007) (defining "Westphalian sovereignty" in formal terms as "the right to be left alone, to exclude, to be free from any external meddling or interference," and "to be recognized as an autonomous agent in the international system," and describing "soft intervention" in the "domestic affairs" of EU member states as "the hallmark of EU-style 'post-Westphalian sovereignty'").

paradigms, and their adherence to these paradigms yields both ideological consistency *within* constitutions and transnational commonality *across* constitutions.

The existence of these archetypes is not simply a matter of conjecture. Empirical evidence of their prevalence and content can be found in the unlikeliest of places–namely, constitutional preambles. Preambles enjoy a reputation for creativity and originality, for obvious reasons: they provide an ideal venue for the expression of a nation's identity, history, and values in unapologetically ideological and rhetorical terms.[27] In letter and in spirit, they come closer to storytelling than to lawmaking. These qualities render the preamble the least standardized, most idiosyncratic part of a constitution.[28] If there is any part of a constitution that ought not to be reducible to a handful of recurring patterns, it is surely the preamble. Yet automated content analysis of the world's constitutional preambles suggests that they do, in fact, break down into a combination of the three basic archetypes described above. Indeed, it is possible to calculate a quantitative measure of the extent to which a given preamble draws upon each archetype.

The empirical analysis also highlights the growing commingling and interdependence of constitutional law and international law. The language found in universalist preambles mirrors the language found in leading international human rights instruments. The adoption of the same conceptual and normative vocabulary by both universalist constitutions and key international legal instruments amounts to the emergence of a globalized ideological dialect common to both domestic constitutional law and public international law. The rising use of this common language by constitutional drafters since World War II is a quantitative indicator of the growing extent to which constitutional law and public international law influence each other.

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[27] *See, e.g.*, BEAU BRESLIN, FROM WORDS TO WORLDS: EXPLORING CONSTITUTIONAL FUNCTIONALITY 50–52 (2009) ("[P]reambles are typically the portion of a traditional constitutional draft where the polity articulates its most important aims and objectives. It is the place, in other words, where constitutional framers proclaim their principal intentions, where they communicate their deepest aspirations for the newly created polity. . . . Precisely because of the preamble's comparative lack of enforcement power, a polity should have greater liberty there than in the rest of the constitutional text to proclaim unorthodox or controversial aims."); Tom Ginsburg et al., *We the Peoples: The Global Origins of Constitutional Preambles*, 46 GEO. WASH. INT'L L. REV. 305, 306 (2014) ("[M]ost constitutional preambles are framed as the quintessential expression of *national* values. Preambles often speak in the name of a distinct people, either real or fictional, who are both the creators and subjects of the constitutional order. Frequently, preambles recount key historical events such as the national struggle for independence. In this sense, they constitute autobiographical narratives, legitimating specific local actions, historical moments, and organizations."); Liav Orgad, *The Preamble in Constitutional Interpretation*, 8 INT'L J. CONST. L. 714, 716–17 (2010) (asserting that preambles set forth "the nation's core principles and values," "historical narratives of a state, a nation, or a people," and "statements about the national creed").

[28] *See infra* Part IV (quoting and contrasting three highly dissimilar preambles).

Parts I, II, and III of this Article define and contrast the liberal, statist, and universalist archetypes. The liberal archetype, per Part I, is steeped in the intellectual heritage of the common law tradition and views the state as a potentially oppressive concentration of authority in need of regulation and restraint. In keeping with this conception of the state, liberal constitutions emphasize the imposition of limits upon government in the form of negative and procedural rights, as well as a strong and independent judiciary to make these limits effective. The legitimacy of the state is contingent upon adherence to constitutional limits. Constitutions in this vein are relatively agnostic as to what goals, if any, society as a whole should pursue through the mechanism of the state.

The statist archetype, discussed in Part II, is identified with the civil law tradition and hails the state as the embodiment of a distinctive community and the vehicle for the achievement of the community's goals. The legitimacy of the state rests upon the state's claim to represent the will of a community. Consequently, constitutions in this vein are attentive to the identity, membership, and symbols of the state. Other characteristics of a statist constitution include an emphasis on the articulation of collective goals and positive rights that contemplate an active role for the state, and an obligation on the part of citizens to collaborate with the state in the pursuit of the state's goals.

The universalist archetype, the newest and most prevalent of the three, is borne of the growing interdependence of constitutional law and international law. As explained in Part III, it involves an ideological commitment to the notion that there exist universally applicable constitutional norms that all states must respect. From the universalist perspective, the legitimacy and authority of the state derive not from communal bonds or commitment to limited government, but rather from the normative force of a global legal order that encompasses both constitutional law and international law. Characteristics of this archetype include explicit commitment to supranational institutions and supranational law and reliance on generic terms and concepts that can be found not only in a variety of national constitutions, but also in international legal instruments. Part IV offers examples of actual preambles that typify the three archetypes.

The inspiration for the theory of competing ideological archetypes is the empirical analysis of constitutional preambles set forth in Part V. Part V.A explains why the analysis focuses on constitutional preambles. On the one hand, the preamble is the most obvious place to look for evidence of a constitution's underlying ideology: it is the purest and most concentrated expression of ideological content to be found in most constitutions. On the other hand, the fact that preambles are notoriously varied in style, organization, and content means that focusing on preambles cannot be criticized as a way of cherry-picking data that supports a reductionist view of constitutional ideology.

The fact that preambles are so heterogeneous, however, also poses severe methodological challenges. Conventional empirical methods require text to be

converted by the researcher into numeric data before it can be analyzed. The free-form nature of preambles makes it difficult to devise a satisfactory coding scheme that neither misses potentially relevant information nor tracks the researcher's unconscious biases.[29] The solution, as explained in Part V.B, is to employ a form of automated content analysis called topic modeling that is making inroads into the social sciences but remains relatively new to legal scholarship.[30] Topic modeling is well suited to the analysis of large numbers of complex, varied documents (such as constitutional preambles) because it is capable of identifying verbal patterns and substantive topics in raw text without any need for time-consuming and potentially erroneous hand-coding of the text into numeric form.

Consistent with the hypothesized existence of three constitutional archetypes, diagnostic tests described in Part V.C suggest that preambles consist inherently of a combination of three distinctive "topics" or vocabularies. Moreover, each of the three vocabularies corresponds to a unique archetype: there is a distinctively liberal vocabulary, a distinctively statist vocabulary, and a distinctively universalist vocabulary. Estimation of a topic prevalence model yields a numerical breakdown of each preamble into the proportion of liberal, statist, and universalist content that it contains; these ideological measurements are explored in Part V.D and listed in full in Appendix I.

Countries that possess the same genre of preamble also tend to share other characteristics, such as a common legal tradition and a similar selection of constitutional rights. Although full examination of the national and constitutional characteristics associated with each archetype is beyond the scope of this Article, Part V.E touches upon some of these shared characteristics. Whereas some preambles exemplify a specific archetype, the majority combine elements from multiple archetypes. Part V.F provides an overview of which archetypes–and which combinations of archetypes–are most common. Taking a historical perspective, Part V.G expands the analysis to a sample of preambles spanning over a century. The results highlight a strong trend over the course of the twentieth century in favor of the universalist archetype, which has gained popularity primarily at the expense of

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[29] *See* George S. Geis, *Automating Contract Law*, 83 N.Y.U. L. REV. 450, 468 (2008) (observing that efforts to force "unstructured data" such as "free-form text" "into more structured formats" to facilitate empirical analysis run the risk of "miscategoriz[ing] data or exclud[ing] important information").

[30] As of August 6, 2015, a search of Westlaw's database of law reviews and journals for the terms "automated content analysis" and "text analysis" uncovers no examples of the use of such methods. A search for the term "topic model," the specific type of content analysis employed in this Article, yields one result, a note that appeared in 2013 in the *Yale Law Journal*. *See* Daniel Taylor Young, Note, *How Do You Measure a Constitutional Moment? Using Algorithmic Topic Modeling to Evaluate Bruce Ackerman's Theory of Constitutional Change*, 122 YALE L.J. 1990 (2013). That note was authored in collaboration with Brandon Stewart, who is one of the creators of the software package used in this Article and whose assistance is very gratefully acknowledged. Even unpublished working papers in this vein are a rarity. *See* Michael A. Livermore et al., A Topic Model Approach to Studying Agenda Formation for the U.S. Supreme Court, July 10, 2015, http://ssrn.com/abstract=2553279;

the liberal archetype while the statist archetype has largely held its ground. Part V.H explains why any translation error involved in the use of English translations of various preambles is unlikely to affect the substance of the findings. Finally, in addition to identifying a variety of questions for further research, the Conclusion reflects on why the study of comparative constitutional law has become distinct from the study of comparative private law, and how the concept of constitutional archetypes might help to bridge the distance between the two fields.

I. THE LIBERAL ARCHETYPE

Whether implicitly or explicitly, liberal constitutions embody the premise that the state is not a positive force for the achievement of collective goals, but rather a potentially oppressive concentration of authority that must be regulated and restrained. In keeping with this conception of the state, liberal constitutions emphasize the imposition of limits upon government in the form of negative rights and procedural rights, and they envision a strong role for the judiciary in making these limitations effective.[31]

Underlying a liberal constitution is the ideological view that it is not the role of the state to articulate, much less impose, a conception of the good.[32] The more statist the constitution, the more that it emphasizes the existence and pursuit of collective goals; the more liberal the constitution, the more that it is agnostic as to the existence of collective goals. Whereas statist constitutions unapologetically proclaim collective goals, liberal constitutions are more likely to equate the pursuit of individual self-interest with the good—to the extent that they express any conception of the good at all.[33] Likewise, whereas statist constitutions embrace the state as the primary mechanism for articulating and achieving shared goals, liberal constitutions implicitly portray the state as a necessary evil from which individuals need protection.[34] A corollary of this emphasis upon the protection of private actors

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[31] *See, e.g.*, Law & Versteeg, *supra* note 11, at 1221–23 (finding as an empirical matter that certain constitutions are "libertarian" as opposed to "statist" in character, in the sense of emphasizing rights that are predominantly negative or procedural in character or involve judicial protection of the individual from the state); Hanna Lerner, *Permissive Constitutions, Democracy, and Religious Freedom in India, Indonesia, Israel, and Turkey*, 65 WORLD POL. 609, 613 (2013) (describing normative commitment to the "institutionalization of constraints on political authorities in the name of human rights" as the "key feature" of liberal constitutionalism).

[32] *See* Morton J. Horwitz, *Republicanism and Liberalism in American Constitutional Thought*, 29 WM. & MARY L. REV. 57, 64 (1987) (associating "the ideal type of liberalism with a denial of a substantive conception of the public interest").

[33] *See id.* at 66–67 ("Liberalism [stands] for a subjective theory of value, a conception of individual self-interest as the only legitimate animating force in society[, and for] a night-watchman state, denying any conception of an autonomous public interest independent of the sum of individual interests.").

[34] *See, e.g.*, *id.* at 73 ("Liberalism regard[s] law as a necessary evil and . . . the price individuals ha[ve] to pay for a reasonable degree of security.").

from public power is a lack of constitutional obligations or restrictions applicable to private actors.[35]

Whereas statist constitutions dedicate considerable effort to justifying the existence and authority of the state, liberal constitutions often take the existence and authority of the state for granted. A liberal constitution need not go to great lengths to justify "the right of the ruler to rule"[36] because its goal is instead to limit the ruler. Nowhere is this contrast between the liberal and statist archetypes more evident than in the way that preambles are written. Statist constitutions tend to seize upon the preamble as a vehicle for expounding upon the historical and political conditions that justify the regime. A liberal constitution, by contrast, is content with a formalistic or perfunctory preamble that does little more than identify the authority responsible for issuing the constitution. Moreover, the type of authority that a liberal constitution invokes is often highly traditional or illiberal, such as monarchical or religious authority. For instance, the preamble to a liberal constitution might consist of a simple statement that the constitution is adopted by the king or queen acting in the name of God.[37]

It may at first blush seem paradoxical that liberal constitutions often pay homage to illiberal forms of authority, but there is nothing inherently contradictory about this combination. For centuries, hereditary monarchs have coexisted with liberal constitutions.[38] This long coexistence has been possible because liberal constitutions are content to "presuppose[] the right of the ruler to rule"[39] but then proceed to make this rule palatable to modern sensibilities by subjecting it to constitutional constraints.[40] The resulting encasement of a traditional and illiberal form of government within the confines of a contemporary and liberal constitution combines, in some sense, the best of both worlds: it enables the state to claim

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[35] *See* Law & Versteeg, *supra* note 11, at 1124 (finding as an empirical matter that constitutions that are "libertarian" as opposed to "statist" in character, in the sense of containing a wide range of judicially enforceable negative rights, tend to impose few if any constitutional duties or obligations on private actors).

[36] Dieter Grimm, *Types of Constitutions*, *in* THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW, *supra* note 1, at 100 (noting that, prior to the late eighteenth century, fundamental laws of a constitutional nature "presupposed the right of the ruler to rule").

[37] *See, e.g.*, CONSTITUTIONAL REFORM ACT, 2005, c. 4 pmbl. (U.K.); AUSTRALIAN CONSTITUTION pmbl.

[38] *See* Grimm, *supra* note 36, at 119–20 (observing that liberal yet non-democratic constitutions were "the norm in Europe" for much of the nineteenth century).

[39] *Id.* at 100 (noting that constitutions prior to the late eighteenth century were content merely "to modify the right in this or that respect," and "only in favour of the privileged classes of society" whose support the ruler required).

[40] *See id.* at 120 (observing of the post-Napoleonic era that "many constitutions came into being that did not affect the princes' right to rule but required only some limitations on their hitherto unlimited power").

legitimacy on both traditional (monarchical-religious) and modern (constitutional-democratic) grounds.[41]

Indeed, there is a sense in which the liberal archetype thrives on being paired with undemocratic forms of authority. The weaker the democratic justification for the regime, the stronger the appeal of constitutional limits on the regime becomes. Thus, for example, it is easy to justify the imposition of constitutional constraints on a hereditary monarch or religious ruler. The converse, however, holds equally true: the more democratic legitimacy the regime enjoys, the harder it becomes to justify limits on the regime. The so-called "counter-majoritarian difficulty" that haunts judicial review is a manifestation of this dynamic: the more that government action reflects the will of the people, the harder it becomes to justify constitutional limits on government action.[42]

The judiciary plays a central role in the liberal archetype. Unlike the statist archetype, the liberal archetype reposes considerable trust, power, and responsibility in the judiciary. The liberal paradigm emphasizes the need for limits on the state, and it relies heavily on the judiciary to make those limits effective. Liberal constitutions interpose the judiciary between the state and the people as the protector of the latter from the former. Accordingly, liberal constitutions characteristically contain a variety of judicially enforceable rights and protections, especially in the areas of due process and criminal procedure.

On the whole, common law countries tend to possess liberal constitutions, while statist constitutions are more common among civil law countries.[43] However,

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[41] *See* Saïd Amir Arjomand, *Constitutions and the Struggle for Political Order: A Study in the Modernization of Political Traditions*, 33 ARCHIVES EUROPÉENES DE SOCIOLOGIE 39, 49 (1992) (describing religion as a premodern, "transcendental" base of political authority that often coexists in tension with constitutionalism).

[42] This tension sometimes goes by the name of the "counter-majoritarian difficulty:" judicial enforcement of constitutional restrictions is said to pose normative difficulties insofar as it conflicts with the will of the majority. *E.g.*, ALEXANDER M. BICKEL, THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS 16 (2d ed. 1986); David S. Law, *A Theory of Judicial Power and Judicial Review*, 97 GEO. L.J. 723, 727–30 (2009) (surveying empirical research that casts doubt on Bickel's premise that judicial review is countermajoritarian, and arguing that judicial review has been misconceptualized as "countermajoritarian and antidemocratic when, in fact, it underpins and reinforces the power of the people over their government").

[43] *See* Yash Ghai, *Constitution Making and Decolonisation*, *in* LAW, POLITICS AND GOVERNMENT IN THE PACIFIC ISLAND STATES 42–43 (Yash Ghai ed., 1988) (observing that, in the South Pacific, the bills of rights adopted by the islands under either British or U.S. control tended to "embody a liberal, almost laisser-faire philosophy, emphasising individual and property rights, with only limited recognition of the rights of the community"); Law & Versteeg, *supra* note 11, at 1226 (reporting on the basis of regression analysis that common law countries tend to possess constitutions with more liberal ideology scores than civil law countries). Of course, common law countries can and do differ from one another in their understanding of and adherence to liberalism. *See, e.g.*, Nicholas Aroney, *Democracy, Community, and Federalism in Electoral Apportionment Cases: The United States, Canada, and Australia in Comparative Perspective*, 58 U. TORONTO L.J. 421 (2008) (arguing that differences among Australia, Canada, and the United States in the area of electoral apportionment law reflect

the distinction between the liberal and statist archetypes does not precisely mirror the common law-civil law distinction. Not only are there common law countries with statist-leaning constitutions and civil law countries with liberal-leaning constitutions, but there are also numerous countries of both common law and civil law origins that adhere to a third ideological model rooted in international law–namely, the universalist archetype.[44]

II. THE STATIST ARCHETYPE

The statist archetype contemplates a broader range of both powers and responsibilities for the state. Implicitly or explicitly, a statist constitution posits or presupposes the existence of a collective will and justifies a broad conception of state power by identifying the actions of the state with that collective will.[45] Unlike a stereotypically liberal constitution, a stereotypically statist constitution does not attempt to be value-neutral or agnostic about the goals of society as a whole or the ends of the state. Instead, like a "mission statement" for the polity,[46] it proclaims a conception of the good, empowers the state to pursue that conception, and encourages or commits citizens to join in that pursuit.

Statism contrasts with universalism and liberalism in depicting the state as a coherent and distinctive community. The community in question may be defined in political, ethnic, religious, or other terms,[47] but it is a community nonetheless. As the embodiment of a genuine community, the state is uniquely capable of identifying and expressing the will of the community, and it has both the right and the obligation to act on behalf of the community. The statist model thus possesses a communitarian flavor that distinguishes it from the liberal model, which conceives of society in pluralistic terms as an agglomeration of diverse interests and groups, as

competing conceptions of citizenship and political community, with the result that Canada and Australia attach relatively greater weight to the representation of national or subnational communities, while the United States follows a more strictly liberal or "individualist" approach that emphasizes the equal representation of individuals).

[44] *See infra* Part III (discussing the universalist archetype and its relationship with international law). For example, the topic prevalence scores explained in Part V and listed in Appendix I categorize the preamble to the constitution of Zimbabwe, a common law country, as 79% universalist, 19% statist, and only 2% liberal.

[45] *See* Jean-Jacques Rousseau, *On the Social Contract*, *in* JEAN-JACQUES ROUSSEAU: THE BASIC POLITICAL WRITINGS 207-08 (Donald A. Cress trans., 1987) (arguing that the state should embody the "general will" of the citizenry as a whole, which is more than just the aggregation of the self-serving wishes of individual citizens).

[46] Jeff King, *Constitutions as Mission Statements*, *in* SOCIAL AND POLITICAL FOUNDATIONS OF CONSTITUTIONS, *supra* note 6, at 73, 81.

[47] *See* Michel Rosenfeld, *Constitution-Making, Identity Building, and Peaceful Transition to Democracy: Theoretical Reflections Inspired by the Spanish Example*, 19 CARDOZO L. REV. 1891, 1897-98 (1998) (identifying the "principal difference" between the German and French constitutional models as lying in their "contrasting conceptions of the nation," wherein the French model defines the community in political terms while the German model does so in ethnic terms).

well as from the universalist model, which subordinates community norms to supranational or universal norms.[48] In reality, the community or polity that the state purports to represent may be mythical: it may be little more than an ideological construct that the regime conjures into being as part of the project of state-building.[49] If the existence of the community is a fiction, however, then it is a necessary fiction upon which the statist narrative is predicated.

This communitarian conception of the state provides the statist approach to constitutionalism with its ideological foundation. From the liberal perspective, constitutional limitations upon the state are necessary to ensure that the state does not systematically advantage certain groups over others or aggrandize itself at the expense of its subjects. From the statist perspective, however, the constitutional imperative is not to ensure fair competition among competing groups, but rather to pursue the will of the community. The community, in turn, needs no protection from itself. Therefore, limits on the state are not essential to, and may even serve to thwart, the proper functioning of the constitutional order. The communitarian dimension of statism also places it at odds with universalism. From the universalist perspective, the embrace of supranational or international norms is the sine qua non of a state's legitimacy.[50] From the statist perspective, however, it is international norms that are of questionable legitimacy: insofar as the state speaks for a genuine community, it is the state, and not the international community or humanity writ large, that is the appropriate locus for the articulation of constitutional values and norms.[51]

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[48] *Cf.* Albert H.Y. Chen, *Constitutions, Constitutional Practice, and Constitutionalism in East Asia*, *in* ROUTLEDGE HANDBOOK OF ASIAN LAW (forthcoming 2016) (identifying a "communitarian" strain of constitutionalism, evident in countries such as Vietnam and China, "which asserts that liberal Western notions of human rights are not necessarily universally valid and applicable"). Statism is not, however, simply a synonym for communitarianism: although statism and communitarianism possess a natural affinity for each other, it is possible to arrive at a universalist version of communitarianism by stretching the concept of "community" to its limits. *See* Winfried Brugger, *Communitarianism as the Social and Legal Theory Behind the German Constitution*, 2 INT'L J. CONST. L. 431, 438–39 (2004) (positing a "universalistic-egalitarian" variant of communitarianism that treats "the very fact of being human" as "the essential element connecting people" and views other affiliations such as nationality and citizenship as secondary and "morally suspect").

[49] *See, e.g.*, BENEDICT R. ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM 4, 109–10 (rev. ed. 2006) (describing "nation-ness" as a "cultural artifact," and characterizing the "official nationalisms" that emerged in mid-nineteenth century Europe as the deliberate construction of political elites); CHAIHARK HAHM & SUNG HO KIM, MAKING WE THE PEOPLE: DEMOCRATIC CONSTITUTIONAL FOUNDING IN POSTWAR JAPAN AND SOUTH KOREA 64–65 (2015) (arguing that a constitution calls into being the polity in whose name it is made).

[50] *See infra* Part III (defining and discussing the "universalist" constitutional archetype).

[51] *See* Rosenfeld, *supra* note 47, at 1897 (arguing that the German, French, and American constitutional models all "posit the nation-state as the source and proper domain of the constitutional order [and] frame a conception of constitutional identity that singles out the nation-state as the essential and predominant constitutional unit").

The details of the manner in which the statist paradigm manifests itself can vary considerably from country to country. Statist constitutions share in common the underlying notion that the state represents or embodies a community, but they do not necessarily share common criteria for how to define the community or a common understanding of what the community's values ought to be. Consequently, statist ideological narratives can be employed by a wide variety of regimes, ranging from affluent social democracies to impoverished dictatorships. Indeed, the statist paradigm is inherently well-suited to regimes that wish to justify significant departures from the constitutional norms of other states. All other things being equal, the statist mode of constitution-writing lends itself naturally to the justification of significant deviation from the practices of other countries: insofar as the state embodies a unique and distinctive community, there is no reason for the state's constitutional practices to mirror those of other states.

Nevertheless, it is possible as an empirical matter to generalize about the content of statist constitutions. Such constitutions often include language that celebrates the history and aims of the state,[52] positive rights that obligate the state to act for the betterment of its citizens, and provisions that encourage or require citizens to behave in ways that are consistent with the goals and interests of society.[53] Paradoxically, although the statist paradigm places greater value upon the power and efficacy of the state than the liberal paradigm, the constitutional expression of statism can involve the enumeration of certain negative rights that tend not to be found in liberal constitutions. For example, statist constitutions tend to include the right to marry or establish a family, whereas liberal constitutions do not.[54]

The inclusion of such rights does not mean that statist constitutions constrain the state more heavily, however, but instead reflects the fact that the drafting of statist constitutions rests on a different set of baseline assumptions about the scope of state power. The liberal model assumes the existence of a private sphere that lies beyond the reach of the state. Therefore, certain rights (such as the right to marry and procreate) need not be enumerated because there is no need to limit state power where no such power exists in the first place.[55] By contrast, the

[52] *See infra* note 95 and accompanying text (quoting the text of China's constitutional preamble as an example of statist language); Figure 2 and accompanying text (identifying empirically the vocabulary associated with the statist archetype, and observing that "heroic struggle" is a defining theme of this vocabulary).

[53] *See* Law & Versteeg, *supra* note 11, at 1243 (observing that constitutions written in an ideologically "statist" vein "emphasize[] both the power and responsibility of government to improve society" and "impose affirmative obligations to improve social welfare in the form of positive rights against the state and citizen duties").

[54] *See id.* at 1223 (listing and contrasting the rights found in "libertarian" and "statist" constitutions).

[55] *See id.* at 1225–26 (observing that certain rights of family and procreation that "on their face, purport to limit the power of the state" presuppose or are necessitated by a broad conception of state power).

statist model does not assume the existence of a private domain beyond the power of the state. The state has power to act unless otherwise indicated, and the existence of unenumerated negative rights cannot be assumed.[56]

In this context, explicit constitutional limits upon state regulation of marriage and procreation are needed more urgently under the statist model than the liberal model, and the existence of those limits serves as acknowledgment that state power would otherwise extend into that domain. The inclusion in a constitution of the right to marry and establish a family, for example, confirms that the reach of the state extends into the realm of the family. Indeed, statist constitutionalism not only permits, but demands government regulation of the family: statist constitutions tend to combine the right to marry and procreate with children's rights that may in some cases obligate the state to protect children from their parents. This combination of potentially conflicting rights "does not carve out a domestic sphere into which the state cannot intrude" but instead confirms that the reach of the state extends into the home and "requires the state to intervene in order to strike a balance between the two sets of rights."[57] The additional negative rights found in statist constitutions thus reflect rather than contradict a broad conception of state power.

Compared to both the liberal and universalist paradigms, the statist paradigm also contemplates a relatively limited role for the judiciary. The regular judiciary does not play a unique and integral role in the constitutional scheme and, in the extreme (as in the French case) may even be the object of suspicion and distrust.[58] Unlike the liberal paradigm, the statist paradigm does not rely upon judges to act as the guardians of the people with responsibility for protecting them from an overreaching government. And unlike the universalist paradigm, the statist paradigm does not smile upon judicial participation in a global community of courts or any other global governance enterprise with the potential to compromise the state's capacity for autonomous self-determination.

Rather, in keeping with the civil law tradition with which the statist paradigm is closely associated, judges may be little more than technicians or specialized bureaucrats, and the organization and training of the judiciary may reinforce its

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[56] *See id.* at 1224–25 (describing "the emergence in the twentieth century of a new normative conception of state power and state responsibility").

[57] Law & Versteeg, *supra* note 11, at 1225.

[58] *See* Vernon Valentine Palmer, *A Descriptive and Comparative Overview*, *in* MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY 19, 44 (Vernon Valentine Palmer ed., 2d ed. 2012) (noting that French legal culture, unlike that of common law or mixed jurisdictions, harbors a "suspicion of robed power"); ALEC STONE, THE BIRTH OF JUDICIAL POLITICS IN FRANCE 39–40 (1992) (describing the "incredible impact" of Edouard Lambert's condemnation of <<*le gouvernement des juges*>>).

primary role as an instrument of state policy.[59] The statist archetype does allow the judiciary to play a role in articulating and enforcing the goals and values of the state, but this is perhaps just another way of saying that the judiciary acts as an instrument of the state (rather than as an arbiter of the relationship between individual and state, as in the liberal archetype, or as the domestic guardian of a global legal order, as in the universalist archetype).

III. THE UNIVERSALIST ARCHETYPE

Liberalism, statism, and universalism represent very different ways of generating legitimacy for the state. Whereas the liberal paradigm does so by protecting the individual from the potentially oppressive state, and the statist paradigm does so by invoking the goals and needs of the community, the universalist paradigm generates legitimacy by holding the state to norms and principles of a universal character that stand over and above the state.[60] The overarching goal of universalism is thus not one of restraining or celebrating the state, but rather of transcending the state.

Behind each paradigm are distinctive animating principles. At the core of the liberal model are the motive of distrust and the act of exchange. The liberal constitution is motivated by distrust of the state and amounts to an agreement by which citizens render their obedience to the state in exchange for the state's compliance with the limits set forth in the agreement. At the heart of the statist model are the bonds of community and the need for collective action. The legitimacy and authority of the state rest upon the state's identity as the embodiment of the community, and citizens in turn are under a normative obligation to cooperate with the state by dint of their identity as members of the community that the state embodies.

The universalist model, by contrast, is animated by a spirit of cosmopolitanism and an embrace of interdependence. Universalism is fundamentally cosmopolitan in the sense that it predicates the legitimacy and authority of the state upon compliance with norms and principles that apply broadly to all states.[61] National sovereignty is conditional upon acceptance of and respect

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[59] *Cf.* MIRJAN R. DAMAŠKA, THE FACES OF JUSTICE AND STATE AUTHORITY 88 (1986) (distinguishing between judiciaries that primarily perform a "policy-implementing function" and those that primarily perform a "conflict-solving" function).

[60] *Cf.* Rosenfeld, *supra* note 47, at 1917 (arguing that the Spanish constitutional model is distinguished from the French, German, and American models in part by its "reframing of the relationship between the nation and the state in terms of the broader perspective projected by political actors engaged in a common supra-national project").

[61] *See* KWANE ANTHONY APPIAH, COSMOPOLITANISM: ETHICS IN A WORLD OF STRANGERS xx (2006); Charles R. Beitz, *Cosmopolitan Ideals and National Sentiment*, 40 J. PHIL. 591, 591–92 (1983) (contrasting the "national ideal" with the "cosmopolitan ideal," the latter of which requires that we identify with, and give priority to, the interests and demands of humanity as a whole as opposed to a

for international norms.[62] The impetus for universalism is practical as well as normative. Globalization renders states increasingly interdependent and poses challenges that can only be addressed at the international level.[63] From the universalist perspective, it is neither the prerogative nor the burden of individual states acting alone to meet such inherently transnational challenges as ensuring security, prosperity, and respect for human rights. Instead, all states are obligated to support, and entitled to rely upon, supranational and international regimes and institutions.

Whereas the liberal paradigm is closely identified with the common law tradition and the statist paradigm is likewise associated with the civil law tradition, the universalist paradigm enjoys a symbiotic relationship with international law.[64] Universalist constitutions incorporate the norms and values of international law, and vice versa.[65] The result is that the universalist strain of constitutionalism and

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specific group of people bound together by common nationality); Jed Rubenfeld, *Unilateralism and Constitutionalism*, 79 N.Y.U. L. REV. 1971, 1997 (2004) ("[W]hat makes the new European constitutionalism cohere … is the ideology of universal or 'international human rights,' which owe their validity to no particular nation's constitution, and which possess therefore a supranational and almost supraconstitutional character . . . .").

[62] *See* Benhabib, *supra* note 26, at 113–14 (observing that "the new sovereignty regime emerging since 1948" respects the sovereignty of states "to the degree to which they can fulfil certain human rights obligations toward their populations" and "are bound by customary international law"); Rubenfeld, *supra* note 61, at 1992 (observing that, from the perspective of "international constitutionalism," constitutional principles "ought in principle to be supra-national" and "superior to claims of national sovereignty").

[63] *See, e.g.*, David Held, *Democracy: From City-states to a Cosmopolitan Order?*, *in* CONTEMPORARY POLITICAL PHILOSOPHY: AN ANTHOLOGY 78, 93 (Robert E. Goodin & Philip Pettit eds., 1997) (observing that globalization implies "an intensification of levels of interaction and interconnectedness within and among states and societies" and a concomitant need for the recasting of accountable systems of governance to cope with "those issues which escape the control of a nation-state"). *But see, e.g.*, Kenneth N. Waltz, *Globalization and Governance*, 32 POL. SCI. & POL. 693, 693 (1999) (arguing that the interdependence of states is around or below 1910 levels, depending upon how it is measured).

[64] *See, e.g.*, Armin von Bogdandy, Ius Constitutionale Commune en América Latina*: Observations on Transformative Constitutionalism*, 109 AJIL UNBOUND 109 (2015), https://www.asil.org/blogs/symposium-constitutionalization-international-law-latin-america-ius-constitutionale-commune-en (describing the emergence of a constitutional common law of Latin America, or "*Ius Constitutionale Commune en América Latina*," that has as its positive legal basis "the American Convention on Human Rights and other inter-American legal instruments, the concordant guarantees of national constitutions, [and] the constitutional clauses opening up the domestic legal order to international law as well as pertinent national and international case law").

[65] *See, e.g.*, VICKI C. JACKSON, CONSTITUTIONAL ENGAGEMENT IN A TRANSNATIONAL ERA 258–62 (2010) (observing that the relationship between constitutional law and international law is characterized by both "interlock," meaning that each body of law is formally contingent upon the existence of the other, and "overlap," meaning that the two bodies of law "address similar subjects"); Markus Böckenförde & Daniel Sabsay, *Supranational Organizations and Their Impact on National Constitutions*, *in* ROUTLEDGE HANDBOOK OF CONSTITUTIONAL LAW 469, 469–72 (Mark Tushnet et al. eds., 2013) (describing the impact of the United Nations on constitution-building

the post-Cold War international legal order reinforce one another: if one gains ground, so too does the other. This interdependence reflects the expansion of international law into territory traditionally governed by constitutional law.[66] Universalism can be understood as the product of a dialectic between constitutional law and international law that has arisen due to the growing overlap between the two bodies of law.[67]

The rise of universalism is both a cause and a consequence of the increasingly intimate relationship between constitutional law and international law.[68] Growing talk of "the constitutionalization of international law,"[69] "the

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processes in Namibia and East Timor); Visar Morina et al., *The Relationship Between International Law and National Law in the Case of Kosovo: A Constitutional Perspective*, 9 INT'L J. CONST. L. 274, 277 (2011) (discussing the supervisory role played by the international community in the drafting of Kosovo's 2008 constitution, and noting the various practical and political reasons for which the drafters "paid close attention to the core values and principles of international law"). This dynamic is evident, for example, when the international community plays a role in building or reconstructing domestic constitutional law in transitional or post-conflict settings. The constitution of Bosnia and Herzegovina, written under the oversight of the international community, is illustrative: its preamble states that it is "guided by the Purposes and Principles of the Charter of the United Nations" and "inspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities, as well as other human rights instruments." CONSTITUTION OF THE FEDERATION OF BOSNIA AND HERZEGOVINA pmbl. (1995); *see infra* Appendix I (identifying 90% of the preamble to the constitution of Bosnia and Herzegovina as universalist in content).

[66] *See, e g.*, Jeffrey L. Dunoff & Joel P. Trachtman, *A Functional Approach to International Constitutionalization*, *in* RULING THE WORLD? CONSTITUTIONALISM, INTERNATIONAL LAW, AND GLOBAL GOVERNANCE 3, 10 (Jeffrey L. Dunoff & Joel P. Trachtman eds., 2009) (describing the emergence of "international constitutional norms" that fill "gaps in domestic constitutional law that arise due to globalization"); Cassese, *supra* note 26, at 54, 60–66 (noting that pre-nineteenth century international law was underdeveloped and characterized by a sheer "paucity of legal rules regulating international intercourse," and tracing the simultaneous self-limitation of state sovereignty through international law and rise of intergovernmental organizations such as the United Nations over the course of the twentieth century); Anne-Marie Slaughter & William Burke-White, *An International Constitutional Moment*, 43 HARV. INT'L L.J. 1, 13-14 (2002) (tracing "broad and deep secular trends in international law over the past half century" toward the "individualization of international rules").

[67] *Cf.* Benhabib, *supra* note 26, at 112 (arguing that "transnational human rights and constitutional rights … should be seen as engaged in a reflexive and iterative hermeneutic" (emphasis omitted)).

[68] *See, e.g.*, Rüdiger Wolfrum, *Constitutionalism in Islamic Countries: A Survey from the Perspective of International Law*, *in* CONSTITUTIONALISM IN ISLAMIC COUNTRIES: BETWEEN UPHEAVAL AND CONTINUITY 77, 77 (Rainer Grote & Tilmann J. Röder eds., 2012) (observing that the development of both international law and constitutional law has become dependent upon "constant dialogue between national constitutional orders and international law, which leads to the internationalization of constitutional law and the constitutionalization of international law").

[69] *E.g.*, BARDO FASSBENDER, THE UNITED NATIONS CHARTER AS THE CONSTITUTION OF THE INTERNATIONAL COMMUNITY 55 (2009) (discussing the strong influence of domestic constitutional thinking on the development of international law as a scholarly field); JAN KLABBERS ET AL., THE CONSTITUTIONALIZATION OF INTERNATIONAL LAW (2011); Erika de Wet, *The Constitutionalization of*

internationalization of constitutional law,"[70] and "the international constitutional order"[71] demonstrates the proliferation of legal and institutional arrangements that possess characteristics of both constitutional law and international law. To embrace such hybrid arrangements is to endorse universalism, and vice versa. From the universalist perspective, constitutional law and international law ought to embody similar core features and values, and the distinction between constitutional law and international law should therefore be at least somewhat blurry.

The idea of universal constitutional norms has customarily been thought to rest upon some version of natural law or Kantian morality for its force.[72] The post-war iteration of constitutional universalism, however, no longer depends upon natural law for its legitimacy because it has acquired a basis in positive law. The multiplication and expansion of international lawmaking processes and institutions has occurred in fits and starts but has nevertheless reached the point where it is possible to ground universal norms upon acts of formal lawmaking rather than immanent principles of law or morality.[73] Nor is it only supranational lawmaking

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Public International Law, *in* THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW, *supra* note 1, at 1209; Christian Walter, *International Law in a Process of Constitutionalization*, *in* NEW PERSPECTIVES ON THE DIVIDE BETWEEN NATIONAL AND INTERNATIONAL LAW, *supra* note 26, at 191.

[70] *See, e.g.*, Wen-Chen Chang & Jiunn-Rong Yeh, *Internationalization of Constitutional Law*, *in* THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW, *supra* note 1, at 1165; Krzysztof Wojtyczek, *Toward a Global Constitutional Space?*, *in* PUBLIC LAW: TWENTY YEARS AFTER 285, 299–301 (Krzysztof Wojtyczek ed., 2012) (discussing the "internationalization of national constitution-making").

[71] *See, e.g.*, Erika de Wet, *The International Constitutional Order*, 55 INT'L & COMP. L.Q. 51 (2006).

[72] *See, e.g.*, Aroney, *supra* note 43, at 425 (citing Roger P. Alford, *In Search of a Theory for Constitutional Comparativism* 52 UCLA L. REV. 639, 659-73 (2005), on the affinity between the idea of universal constitutional norms and the idea of natural law); James Gordley, *The Universalist Heritage*, *in* COMPARATIVE LEGAL STUDIES: TRADITIONS AND TRANSITIONS 31, 31 (Pierre Legrand & Roderick Munday eds., 2011) (associating the quest "for principles which are universal, which underlie all legal systems" with "the natural-law schools that flourished before the rise of positivism in the nineteenth century"): Ken I. Kersch, *The New Legal Transnationalism, the Globalized Judiciary, and the Rule of Law*, 4 WASH. U. GLOBAL STUD. L. REV. 345, 353 (2005) (explaining the natural affinity of "Kantian constitutional theory" for both "moral universalism" and foreign constitutional jurisprudence); Rubenfeld, *supra* note 61, at 1975–76, 1991–92 (describing the conception of constitutionalism that underlies "international human rights discourse" and the "great new international charters and international institutions that emerged after the Second World War" as "predicated on the idea that there exists an identifiable body of universal law, everywhere binding, requiring no democratic provenance" and including "rights people have by nature, by virtue of being persons, by reason of morality, or by reason of Reason itself").

[73] *See, e.g.*, KAREN J. ALTER, THE NEW TERRAIN OF INTERNATIONAL LAW: COURTS, POLITICS, RIGHTS 159–60 (2014) (demonstrating that the growth of international adjudication has been irregular and has gained momentum in different parts of the world at different times but has nevertheless been unmistakable); SAMUEL MOYN, THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY *passim* (2010) (arguing at length that the end of World War II and the ensuing creation of international organizations such as the United Nations did not translate into the immediate ascendancy of international human rights law); Colin J. Beck et al., *World Influence on Human Rights*

processes that provide a positivist basis for international law. The growing incorporation of international legal norms into domestic constitutions places domestic constitution-making processes in the service of international law and further bolsters the positivist foundations of international law.[74]

Universalism also draws strength from the fact that countries frequently imitate each other in constitutional drafting, and from the resulting appearance of widespread normative agreement.[75] The more that countries adopt a given norm, the easier it becomes to argue that the norm is viewed as universally applicable, and the stronger the universalist argument for its adoption becomes.[76] In sum, universalist norms derive their legitimacy not only from claims of absolute moral truth, but also from the will of the international community, the existence of both supranational and domestic processes and institutions for articulating that will in the form of law, and the appearance of consensus generated by rampant imitation.

Just as universalism should not be confused with natural law, it is not synonymous with human rights discourse either. The whole point of human rights is that they attach on account of one's humanity, not one's nationality.[77] Therefore, arguments in favor of human rights tend also to be arguments in favor of universalism, and vice versa. However, universalism permeates other areas of international law as well. Generally speaking, any transnational governance regime that aims to promote global standards is fertile ground for universalist arguments. International investment law, for example, is characterized by an ideology of multilateralism that mirrors the ideology of universalism in domestic constitutional law:

Language in Constitutions: A Cross-National Study, 27 INT'L SOC. 483, 491 (2012) (suggesting that the "maturation of both the legal and discursive international human rights regime" had yet to occur as of 1975).

[74] *See* Janne Nijman & André Nollkaemper, *Beyond the Divide*, *in* NEW PERSPECTIVES ON THE DIVIDE BETWEEN NATIONAL AND INTERNATIONAL LAW, *supra* note 26, at 341, 353 (characterizing international law as a repository of "universal common values," and attributing its authority first and foremost to this fact); *supra* note 65 and accompanying text (discussing the incorporation of international law into domestic constitutions).

[75] *See supra* notes 11–12 and accompanying text (noting the extent to which countries borrow from one another in matters of constitutional drafting).

[76] Of course, the fact that a norm happens to be widely adopted as an empirical matter does not logically establish that it deserves to be widely adopted as a normative matter. The point is, instead, that the "massive confusion of is and ought" that is endemic to constitutional argument works naturally to the benefit of universalism. Martin Shapiro, *Public Law and Judicial Politics*, *in* POLITICAL SCIENCE: THE STATE OF THE DISCIPLINE II 365, 373–74 (Ada W. Finifter ed., 1993) (describing the "massive confusion of is and ought" as the "central strategy" of constitutional scholarship in the United States).

[77] *See, e.g.*, MOYN, *supra* note 73, at 1 (observing that the concept of human rights "promises to penetrate the impregnability of state borders, slowly replacing them with the authority of international law").

> Multilateralism . . . assumes the existence and legitimacy of interests of an international community beyond the interests of States. [It] order[s] inter-State relations . . . on the basis of general principles that establish a general framework for the interactions among States and their citizens. It aspires toward universal validity and application and views States as being embedded within the structure of an international community. . . . In the realm of international economic relations, the paramount example for this development is the WTO, which orders international trade based on principles of non-discrimination [in service of goals] that can no longer be clearly attributed to specific States ….[78]

Like statism and liberalism, universalism entails a conception of the proper role of the judiciary. The universalist conception of constitutional principles as inherently transnational in nature goes hand-in-hand with an understanding of judges as participants in a common enterprise of explicating a shared body of principles and ideas.[79] This conception of the judicial role may manifest itself in the form of constitutional language that gives treaties equal or superior status to domestic law or authorizes obligates the courts to take account of foreign or international law.[80] To summarize, one might say that the liberal paradigm casts the judiciary as guardian of the individual; the statist paradigm casts the judiciary as guardian of the community; and the universalist paradigm casts the judiciary as guardian of a global legal order, if not humanity writ large.

These differences in the role of the judiciary reflect not only the premises about the relationship between individual and state embedded in each paradigm, but also the normative dilemma at the core of each paradigm. Under the liberal paradigm, the individual comes before, and is entitled to protection from, the state. However, the state is also responsible for making and enforcing the rules that govern the relationship between individual and state. Consequently, a defining preoccupation of the liberal paradigm is the question of how the state can be made to restrain itself. A stock response of the liberal paradigm to this dilemma is to assign to the courts the role of arbiter between the individual and the state. The universalist paradigm avoids this dilemma because it assumes the existence of an

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[78] STEPHAN W. SCHILL, THE MULTILATERALIZATION OF INTERNATIONAL INVESTMENT LAW 362 (2009).

[79] *E.g.*, Anne-Marie Slaughter, *A Global Community of Courts*, 44 HARV. INT'L L.J. 191, 202 (2003) ("Increasing cross-fertilization of ideas and precedents among constitutional judges around the world is gradually giving rise to a visible international consensus on various issues—a consensus that, in turn, carries compelling weight."); David S. Law & Wen-Chen Chang, *The Limits of Global Judicial Dialogue*, 86 WASH. L. REV. 523, 525–26 (2011) (summarizing the emerging theory of "global judicial dialogue").

[80] The prevalence of universalist (as opposed to statist or liberal) language in a constitutional preamble is positively correlated with the presence of constitutional provisions that explicitly make treaties equal or superior to ordinary domestic legislation. This correlation approaches conventional levels of statistical significance ($p = 0.06$). By contrast, liberal preamble language is negatively correlated with the presence of provisions that accord treaties equal or superior status to domestic legislation ($p = 0.06$). Statist preamble language is uncorrelated with such provisions.

international legal order capable of policing the relationship between the state and its subjects. The universalist paradigm thus sidesteps the liberal dilemma of how the state can be made to restrain itself by introducing and embracing external intervention.

Under the statist paradigm, the state is the vehicle through which a community collectively articulates and pursues their goals. The state is not a necessary evil, but an affirmative good. Because the legitimacy of the state rests on the notion that the state speaks and acts for a community, however, the manner in which the community is defined is of critical concern. On the one hand, if the community is defined in such a way that some members fall outside the state, the state fails to satisfy its raison d'être. On the other hand, if the community is defined in such a way that some nonmembers fall within the state, the state lacks justification for exercising power over those persons. Central to the statist paradigm, therefore, is the question of how to define the membership and borders of the state in a manner that is neither overinclusive nor underinclusive.[81] To the extent that the state is not coextensive with the community that it purports to represent, the community itself is a fiction and the legitimacy of the state is threatened.

Under the universalist paradigm, by contrast, the question of how to define the boundaries of the state is of little importance. The practical significance of belonging to a particular community or inhabiting a particular state is limited by the fact that no community or state is entitled to depart from universal norms. Instead, the universalist paradigm must grapple with the dilemma of how supranational and international legal processes can be made both effective and legitimate, especially as compared to equivalent national processes. Chronic concerns over the fragmentation of international law and international adjudication[82] and the

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[81] *See* JUAN J. LINZ & ALFRED STEPAN, PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION: SOUTHERN EUROPE, SOUTH AMERICA, AND POST-COMMUNIST EUROPE 16 (1996) (observing that many nondemocratic regimes are plagued by conflict over "what should actually constitute the polity (or political community) and which demos or demoi (population or populations) should be members of that political community," and employing the term "stateness" to describe what is at stake when "[w]hen there are profound differences about the territorial boundaries of the political community's state and profound differences as to who has the right of citizenship in that state").

[82] *See, e.g.*, ERIC A. POSNER, THE PERILS OF GLOBAL LEGALISM 150–74 (2009) (arguing that the "realities of politics" have resulted in a "proliferation of international tribunals" with "[f]ragmented jurisdiction," "narrow scope," "no hierarchical structure to ensure uniformity in the law," and little or no power); Martti Koskenniemi & Päivi Leino, *Fragmentation of International Law? Postmodern Anxieties*, 15 LEIDEN J. INT'L L. 553, 561, 578 (2002) (characterizing the substantive fragmentation of international law and the proliferation of international tribunals with incomplete or overlapping jurisdiction as chronic and unavoidable consequences of ordinary politics).

propriety of foreign and international law usage by domestic courts[83] illustrate the difficulty of this dilemma.

Universalist constitutions look generic in the sense that they embrace norms and principles that are very widespread and not unique to any particular country or territory. They are not generic, however, in the sense of lacking any ideological character. Universalism is not only an ideology, but a controversial one at that. It is subject to the potent critique that fundamental legal norms should be fashioned through democratic processes, and that such processes are invariably national rather than international, in light of the democratic deficit exhibited by international organizations.[84] From the universalist perspective, by contrast, compliance with universal standards, rather than local self-determination, is the sine qua non of a legitimate constitutional order.

Nor are universalist constitutions generic in the sense of being indistinguishable from statist or liberal constitutions. Universalism is inherently antithetical to statism, relativism, nationalism, exceptionalism, and other ideological approaches that favor constitutional norms of local rather than international provenance. This is because universalism celebrates the idea of universal human rights and the primacy of individuals over nation-states: people enjoy rights that are not dependent upon their status as citizens of a particular state and do not exist at the sufferance of specific governments.[85] Departures from the universalist archetype cannot be justified by invoking the collective will of a particular community. Universalism is also unlike liberalism, in that it has no innate

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[83] *See* Law, *supra* note 13, at 653–57 (discussing the controversy in the United States surrounding judicial usage of foreign constitutional jurisprudence).

[84] *See, e.g.*, JEREMY A. RABKIN, LAW WITHOUT NATIONS?: WHY CONSTITUTIONAL GOVERNMENT REQUIRES SOVEREIGN STATES 41 (2005) (criticizing the premise of "global governance" advocates "that legislative consent is not so important to the authority of law" because "international standards, most notably in the realm of human rights," are tantamount to "inescapable moral truth"); Kenneth Anderson, *Squaring the Circle?: Reconciling Sovereignty and Global Governance Through Global Government Networks*, 118 HARV. L. REV. 1255, 1307 (2005) (arguing that "the fact that other communities might have different or better ways of approaching even the same issue is frankly irrelevant" because "the issue is not so much the content of doctrine but instead its *provenance*"); Kersch, *supra* note 72, at 346–47, 370, 385–87 (criticizing "judicial globalization" as "antithetical to democratic self-rule" ... "relatively clear and transparent lines of responsibility and authority" in the name of "cosmopolitanism"); *see also, e.g.*, ROBERT H. BORK, COERCING VIRTUE: THE WORLDWIDE RULE OF JUDGES 2–16 (rev. ed. 2003) (warning of efforts by socialist and antireligious "faux intellectuals" "to outflank American legislatures and courts by having liberal views adopted abroad and then imposed on the United States").

[85] *See* Cassese, *supra* note 26, at 67 (describing the "strong[] and indisputably durable" emergence of individuals as subjects of international law in the aftermath of World War II, driven in substantial part by the widespread adoption of the view that individuals are entitled to "challenge their own governments as well as foreign governments" for violations of fundamental rights); Rubenfeld, *supra* note 61, at 1992–93, 1997 (using the term "international constitutionalism" to describe the view that human rights have a "supranational and almost supraconstitutional character, making them close to unamendable").

bias in favor of limiting the state. Some universal norms may demand that the state observe limits on its power (as in the case of negative rights), but others may demand that the state affirmatively exercise power (as in the case of positive rights). Nothing about universalism inherently favors state inaction over state action.

IV. TEXTUAL EXAMPLES OF EACH ARCHETYPE

A constitution is, in more than one sense, a statement of the state. It simultaneously speaks *of* the state and *for* the state, in a definitive and highly public way. Given its character and function, a constitution cannot help but be permeated by ideology: even the most anodyne details of institutional design may rest on deeply buried ideological premises. The question is not whether constitutions contain some underlying ideology, but rather how far from the surface the ideology is to be found and where it is most likely to reveal itself.

Certain parts of a constitution are obvious places to look for explicit manifestations of ideology. One such part is the bill of rights, or rights catalog, that virtually all constitutions now contain.[86] It is hard to see how any constitution-maker could even purport to set forth the rules and principles that govern the rights and obligations of individual and state without at least implicitly expressing some philosophy of the state. Indeed, the very notion of setting forth a list of rights is itself an ideological act and was not always widely accepted.[87] The fact that rights catalogs have become so routine, however, tends to obscure their ideological character. Likewise, a growing number of rights have become so widespread that their ideological origins and significance have faded from view. Rights such as freedom of expression and freedom of religion are now so generic that the most striking thing about them is how easily their inclusion can be taken for granted. Neither the routine inclusion of rights catalogs nor the existence of generic rights, however, should be mistaken for a lack of ideological variation in the way that bills of rights are assembled.

Not only do bills of rights exhibit strongly ideological patterns of variation, but these patterns also correspond to the three archetypes described above. Previous empirical work suggests that ninety percent of the variation in rights catalogs can be explained as a function of two underlying traits possessed to varying

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[86] *See, e.g.*, Law & Versteeg, *supra* note 11, at 1194 (noting that it has become "standard practice for constitutions to include explicit rights provisions, typically in the form of a bill of rights"); George Williams, *Human Rights and Judicial Review in a Nation Without a Bill of Rights: The Australian Experience*, *in* CONSTITUTIONALISM IN THE CHARTER ERA 306, 306 (Grant Huscroft & Ian Brodie eds., 2004) (identifying Australia as "the only western nation without any form of Bill of Rights at any level of government").

[87] *See, e.g.*, THE FEDERALIST NO. 84 (Alexander Hamilton) (arguing for the ratification of the Constitution without the inclusion of a bill of rights); Law & Versteeg, *supra* note 11, at 1194–98 (tracing the increase since World War II in the average number of rights found in constitutions).

degrees by all constitutions.[88] The first trait is the extent to which a constitution leans in a liberal or statist direction.[89] The second trait is the extent to which a constitution includes only the most common or generic rights, or also encompasses relatively rare or esoteric rights.[90] The distinction between liberal and statist constitutions mirrors the distinction between the liberal and statist archetypes, while the tendency of a constitution to contain only generic rights or also rare rights reflects its affinity for the universalist archetype. The comprehensiveness and innovativeness of a constitution's rights-related content can be interpreted as an indicator of whether the constitution is at the leading or lagging edge of universalism: some constitutions position themselves as pioneers of universalism by being among the first to incorporate rights that might one day become canonical, while others include only the bare minimum and contribute little or nothing to the articulation and establishment of new universal norms.

The other obvious place in a constitution to look for explicit ideological content is the preamble. Perhaps no part of a constitution lends itself more obviously or naturally to the expression of ideological values than the preamble.[91] Because their typically nonbinding nature liberates constitutional drafters from considerations of practicality and enforceability,[92] preambles provide an ideal

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[88] *See* Law & Versteeg, *supra* note 11, at 1205 (employing a nonparametric form of ideal-point estimation devised by Professors Poole and Rosenthal known as optimal classification that was originally developed to estimate the preferences of legislators from their voting records).

[89] *See id.* at 1221-23 (using the inclusion or omission of various rights to calculate two-dimensional ideal points for each constitution, and characterizing the scores on one of the two dimensions as a measure of "constitutional ideology" that captures the underlying "libertarian" or "statist" tilt of the constitution).

[90] *See id.* at 1217-18 (characterizing the scores on the other dimension of the two-dimensional ideal points estimated for each constitution as a measure of "constitutional comprehensiveness" that captures a constitution's tendency to contain "esoteric" in addition to "generic" rights).

[91] *See supra* note 27.

[92] *See* Ginsburg et al., *supra* note 27, at 308 (noting that preambles "are not typically included in the legally operative part of the constitutional text"); Sanford Levinson, *Do Constitutions Have a Point? Reflections on "Parchment Barriers" and Preambles*, *in* WHAT SHOULD CONSTITUTIONS DO? 150, 157 (Ellen Frankel Paul et al. eds., 2011) (noting the "very different *legal* status of a preamble from the rest of the constitution"). In some cases, however, the preamble is not merely legally consequential, but crucial to the practice of judicial review. *See, e.g.*, FROSINI, *supra* note 24, at 127–30 (discussing the Colombian Constitutional Court's incorporation of the preamble into the "bloque de constitucionalidad" or "set of parameter[s] that can be used in carrying out constitutional review," and observing that the preamble "has played a truly central role" in Colombia); Orgad, *supra* note 27, at 726–31 (arguing that preambles play an "increasing role in constitutional interpretation," and offering examples of courts that treat the preamble as a source of substantive rights and obligations). A prominent example is France, where judicial interpretation of the preamble has transformed the constitutional order. In the hands of the *Conseil constitutionnel*, the preamble to the 1958 constitution became the vehicle for the incorporation of the 1789 Declaration of the Rights of Man the preamble to the 1946 constitution, and the 2004 Charter for the Environment, into the "bloc de constitutionalité" or corpus of substantive material that is applicable on judicial review. *See* FROSINI,

opportunity for the creative expression of unique ideas, values, narratives, and identities. Three actual preambles drawn from the same region of the world serve to illustrate both the extent to which preambles vary from each other, and the range of ways in which the ideological archetypes can manifest themselves in textual form.

Australia's constitutional preamble[93] exemplifies the liberal archetype. The authority of the sovereign is taken as a given: it has deep roots in tradition, it preexists the constitution, and it consequently requires no justification or explanation. The preamble contains no uplifting narrative about the state; nor does it contain any declaration or affirmation of values that transcend the state. Rather than hail the creation of a new political order or celebrate progress toward the realization of national or international goals, it does little more than invoke existing political authority before proceeding to delineate the scope of its own application.

> Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:
> And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:
> Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:–
> ...
> This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth. . . .
> The Constitution of the Commonwealth shall be as follows:[94]

The preamble to the constitution of the People's Republic of China, by contrast, epitomizes the statist archetype. At roughly three pages in length, it is too long to reproduce here in its entirety, but its sheer length is itself indicative of its

supra, at 67–74 (discussing the consequences of the *Conseil constitutionnel*'s attribution of "constitutional value" to the 1958 preamble).

[93] The Australian Constitution was technically enacted by the United Kingdom. Commonwealth of Australia Act, 1900 (Imp), 63 & 64 Victoria, c. 12, § 9 (U.K.). The preamble and introductory sections to the enacting legislation are treated collectively as the preamble to the Australian Constitution, *id*. pmbl., §§ 1–8, consistent with the approach taken by the Australian Parliament's official website. *See* PARLIAMENT OF AUSTRALIA, COMMONWEALTH OF AUSTRALIA ACT, http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution/preamble (last visited Feb. 19, 2016) (grouping together the preamble and first eight sections of the enacting legislation as the Australian Constitution's "Preamble").

[94] Commonwealth of Australia Act, 1900 (Imp), 63 & 64 Victoria, c. 12, pmbl., §§ 1, 5, 9 (U.K.).

character as an ideological manifesto. It offers nothing less than a social, political, and economic history of the Chinese people, much of which amounts to their glorious struggle under the tutelage of great leaders against a parade of maladies and injustices. Unlike the Australian preamble, which is content to assume a gaping chasm between the ruler and the ruled, the Chinese preamble also takes care to equate the Chinese people with the Chinese state. The following excerpts are representative:

> China is one of the countries with the longest histories in the world. The people of all nationalities in China have jointly created a splendid culture and have a glorious revolutionary tradition. ...
> After waging hard, protracted and tortuous struggles, armed and otherwise, the Chinese people of all nationalities led by the Communist Party of China with Chairman Mao Zedong as its leader ultimately, in 1949, overthrew the rule of imperialism, feudalism and bureaucratic capitalism, won the great victory of the new-democratic revolution and founded the People's Republic of China. Thereupon, the Chinese people took state power into their own hands and became masters of the country.
> After the founding of the People's Republic, the transition of Chinese society from a new-democratic to a socialist society was effected step by step. ... The Chinese people and the Chinese People's Liberation Army have thwarted aggression, sabotage and armed provocations by imperialists and hegemonists, safeguarded China's national independence and security and strengthened its national defense. ...
> Both the victory of China's new-democratic revolution and the successes of its socialist cause have been achieved by the Chinese people of all nationalities under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, and by upholding truth, correcting errors and overcoming numerous difficulties and hardships. China will stay in the primary stage of socialism for a long period of time. The basic task of the nation is to concentrate its efforts on socialist modernization along the road of Chinese-style socialism. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important Theory of "Three Represents," the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship, follow the socialist road, persist in reform and opening-up, steadily improve socialist institutions, develop a socialist market economy, advance socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defense and science and technology step by step, promote the coordinated development of the material, political and spiritual civilizations to turn China into a powerful and prosperous socialist country with a high level of culture and democracy.[95]

Compared to the Australian and Chinese preambles, the third example is noticeably bland and generic. In other words, it is universalist. Describing precisely

[95] ZHONGUA RENMIN GONGHEGUO XIANFA [XIANFA] Mar. 14, 2004, pmbl. (China), *translated at* https://www.constituteproject.org/constitution/China_2004.

what makes it universalist is a challenge akin to describing what is distinctive about plain vanilla: its flavor is defined by its lack of flavor, and the absence of flavor is less obvious than the presence of flavor. One way to capture its flavorless quality, however, is to demonstrate how easily its actual place of origin can be concealed. Once the names of specific groups and the country itself are redacted, what remains is a preamble that is difficult to attribute to any particular country because it expresses values and employs language typical of both public international law and domestic constitutions generally.

> WE, THE PEOPLE OF [insert name of country],
> RECOGNISING the [insert name of indigenous group] their ownership of [insert name again] lands, their unique culture, customs, traditions and language;
> RECOGNISING the [insert name of another indigenous group] their ownership of [insert name again] lands, their unique culture, customs, traditions and language;
> RECOGNISING the [insert name of historically disadvantaged group], their culture, customs, traditions and language; and
> RECOGNISING the descendants of the settlers and immigrants to [insert name of country], their culture, customs, traditions and language;
> DECLARE that we are all [insert name of citizenry] united by common and equal citizenry;
> RECOGNISE the Constitution as the supreme law of our country that provides the framework for the conduct of Government and all [insert name of citizenry];
> COMMIT ourselves to the recognition and protection of human rights, and respect for human dignity;
> DECLARE our commitment to justice, national sovereignty and security, social and economic wellbeing, and safeguarding our environment,
> HEREBY ESTABLISH THIS CONSTITUTION FOR [insert name of country].[96]

The text reveals a multicultural and multilingual country with some history of immigration, but little else. On the one hand, unlike the (liberal) Australian preamble, it does not read like a royal edict; indeed, it does not even purport to invoke preexisting political authority. On the other hand, unlike the (statist) Chinese preamble, it offers no teleological history of the state. There is no effort to equate the state with some kind of *Volk*, no repudiation of the ancien regime, no bragging about collective achievements, and no vision for the future of the nation. Instead, the preamble consists of an approving nod in the direction of diversity (the embrace of all peoples, rather than a particular *Volk*, itself being a universalist move) before proceeding immediately to platitudes about human rights, justice, and other highly generic values and goals that could easily have been cribbed from a United Nations newsletter. (The country in question, incidentally, is Fiji.)

V. AN EMPIRICAL ANALYSIS OF CONSTITUTIONAL PREAMBLES

[96] CONSTITUTION OF THE REPUBLIC OF FIJI Sept. 6, 2013, pmbl.

A. *Why Analyze Constitutional Preambles?*

Preambles have become a standard part of constitution-writing: roughly eighty-five percent of the world's constitutions now contain a preamble of some form.[97] Nevertheless, relatively little has been written about them to date.[98] The fact that they are increasingly ubiquitous yet widely overlooked by scholars is reason enough to focus on them. Constitutional preambles happen to be especially suitable, however, for testing the hypothesis that liberalism, statism, and universalism are immanent in the world's constitutions. On the one hand, they are rich in ideological content, as the examples above illustrate. If there is any part of a constitution where one might expect to find explicit expression of ideological values, it is surely the preamble. Indeed, given that preambles typically lack legal effect, it is difficult to think of what function they might be intended to serve other than an expressive one.[99]

On the other hand, because they are so diverse, preambles pose a demanding test of the thesis that constitution-making boils down to a small number of competing models or ideal types. Of all the parts of a constitution, preambles enjoy a reputation for being the most varied and idiosyncratic.[100] They are thus unlikely places to find evidence of a simple underlying pattern to the world's constitutions. If it turns out, however, that even preambles reflect the influence of a few competing models, that would be all the more reason to suspect that constitutions as a whole can be grouped into a small number of families or genres.

The literature to date offers little reason to think that preambles follow ideological templates or divide naturally into a handful of competing genres.[101] Recent work has documented the increasing inclusion of certain memes such as "we the people" and "rule of law,"[102] not to mention the rising popularity of the

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[97] *See* Ginsburg et al., *supra* note 27, at 313–14 (noting that "over eighty percent of all historical constitutions" contain preambles, and that "[o]nly one national constitution produced after 2003—that of the Maldives adopted in 2008—failed to include a preamble").

[98] *See* FROSINI, *supra* note 24, at 21 & n.7 (noting that "few studies," and "very few American scholars" in particular, have focused on constitutional preambles); *id.* at 47 (describing two typologies of preambles developed by European scholars); Levinson, *supra* note 92, at 155 (describing constitutional preambles as "extremely interesting, but relatively underanalyzed").

[99] *See* BRESLIN, *supra* note 27, at 50 (observing that preambles are where "where constitutional framers proclaim their principal intentions, where they communicate their deepest aspirations for the newly created polity"); Levinson, *supra* note 92, at 157 (noting that it is difficult to come up with a "functionalist account of preambles" on account of both their tendency toward "glittering generalities" and their usual lack of legally binding effect); *supra* note 92 and accompanying text (noting that preambles are usually not viewed as legally binding).

[100] *See supra* note 27 and accompanying text.

[101] *See, e.g.*, BRESLIN, *supra* note 27, at 53 (suggesting instead that "many of the world's constitutions have taken on a decidedly similar tone"); Ginsburg, *supra* note 27, at 325 (documenting the ubiquity of "globalized" constitutional language that highlights the "interdependence among constitutions").

[102] Ginsburg et al., *supra* note 27, at 323.

preamble itself.[103] These findings do not purport to establish, however, that preambles are essentially formulaic or driven by a handful of competing ideological models. Nor do these findings address the question of whether the memes in question are truly characteristic of all preambles or instead associated with distinctive genres of constitution-writing.

The heterogeneity of constitutional preambles also renders them difficult to analyze empirically using conventional quantitative techniques. Consider, for example, how much easier it is to analyze rights catalogs than preambles. The universe of rights that one might encounter in a constitution is finite and relatively well-defined. As a result, the catalog of rights found in most constitutions can be inventoried in the form of a checklist of binary questions: does a constitution contain a guarantee of freedom of religion or not? Does it contain a prohibition against age discrimination or not? The reduction of a rights catalog to binary data involves a degree of simplification and reduction, but it is not an inherently impossible exercise. Because they can generally be reduced to binary form, rights catalogs can be analyzed using a host of empirical methods, such as those applied by political scientists to voting behavior.[104] By contrast, it is unclear how one might assemble the equivalent of a checklist of all the elements one might encounter in a preamble. If preambles cannot be coded as quantitative data, then the kinds of empirical methods used to study rights catalogs become unavailable.

As the examples in Part IV illustrate, constitutional preambles are characterized by striking variation in content, organization, and tone. Although the three examples hail from roughly the same region of the globe, they are nevertheless highly dissimilar because they embody different archetypes. Their sheer dissimilarity along every obvious dimension makes it difficult to imagine a satisfactory scheme for coding nearly two hundred preambles into numeric data. Accordingly, it might seem that the scholar who wishes to study them has little choice but to pursue the highly traditional approach of forming impressions based on old-fashioned reading.

It is difficult, however, for humans to perform systematic, thorough, and unbiased analysis of a large text corpus, much less to identify the scope and prevalence of deep patterns from evidence scattered across hundreds of documents. Even the most scrupulous and experienced of human readers must rely on subjective impressions and is vulnerable to unconscious bias in the selection and presentation of evidence. Would it not be a great blessing, therefore, if there were

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[103] *See supra* note 97 and accompanying text.

[104] *See generally* Law & Versteeg, *supra* note 11, at 1190–1223 (distilling a 237-variable data set down to a 60-part "rights index" that includes a representative sampling of the kinds of rights-related provisions found in constitutions, then calculating constitutional ideology and comprehensiveness scores by applying ideal-point estimation techniques to the "rights index" for each constitution).

some way to search systematically for patterns in large numbers of documents with the help of a computer?

B. *Automated Content Analysis and Topic Modeling: An Explanation of the Empirical Methodology*

Enter automated content analysis. Techniques of this variety hold a wide range of potential applications for the study of legal documents and, crucially, do not require the reduction of documents into binary or numerical form. A form of automated content analysis that ought to be of particular interest to legal scholars is topic modeling, which utilizes patterns of word occurrence to break a corpus of text into its component topics, measure the proportion of the corpus that concerns each topic, and identify the vocabulary associated with each topic.

Consider the simple example of a conversation in which the participants discuss both current events in the Middle East and the latest animated film. Some words, such as "Yemen" and "Shi'ite," are likely to arise with considerable frequency when the topic is the Middle East but very unlikely to appear when the topic is animated films; other words, such as "Disney" and "blockbuster," are more likely to arise when the conversation turns to animated films than to the Middle East. Each distinctive verbal pattern corresponds to a substantive theme or topic of conversation. A computer need not understand the meaning of the words used in order to identify the number of topics, the proportion of the conversation dedicated to each topic, or the words associated with each topic. All that the computer needs to do is ascertain which words tend to go together with which other words, and with what degree of frequency. Such patterns of word co-occurrence can be identified with ease by a computer. Once the computer identifies the distinctive cluster of co-occurring words that is the hallmark of each topic of conversation, it is straightforward to determine how much of the conversation concerned each topic, or what words are most characteristic or representative of each topic.[105]

This is the logic behind topic modeling. Any given corpus of texts can be modeled as consisting of discussion of some number of topics, and each topic is characterized by the use of certain vocabulary. Some words are highly likely to appear whenever a particular topic arises, while others are less likely. On the basis of these differences in probability, topic modeling associates words with topics and categorizes text as belonging to particular topics. A slightly more technical (but still simplified) explanation would be that a topic consists of a set of probabilities corresponding to a set of words (a probability distribution), such as a 0.6 probability of the word "people," a 0.3 probability of the word "socialist," and a 0.1 probability of the word "liberation". The computer estimates the probability distributions for any given number of topics by analyzing the text corpus for patterns of word usage.

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[105] *See* Young, *supra* note 30, at 2018 ("A 'topic' is just a cluster that groups together words that are more likely to appear with one another across the corpus.").

Topic modeling techniques simultaneously yield estimates of both *topic prevalence*, meaning the mix of topics within a document, and *topic content*, meaning the words that tend to be used in connection with a particular topic. For example, measures of topic prevalence might reveal that two interlocutors spend eighty percent of their time talking about recently released films and twenty percent talking about politics in the Middle East, while measures of topic content might reveal that the word "Disney" is associated with discussion of recent films whereas "Yemen" is associated with discussion of Middle Eastern politics. Once topic prevalence has been estimated, it becomes straightforward to measure the extent to which different topics are correlated or co-occur with each other. For example, analysis of a large number of conversations over a wide range of topics might show that the topics of European monetary union and Middle Eastern politics are more likely to arise in the same conversation than the topics of European monetary union and the latest film releases.

In the simple example of a single discussion that covers two very dissimilar topics, automated content analysis holds little obvious advantage over old-fashioned reading. Not only can unassisted human reading identify the relevant topics with relative ease, but human reading also has the crucial advantage (at least for now) of being able to identify the substance of each topic. If there are hundreds or thousands of documents that cover an unknown number of topics, however, the difficulty of digesting and classifying such a large corpus of text in a systematic and unbiased way can quickly become prohibitive.[106] The limits of human cognitive capacity render it advantageous for the researcher to perform an initial breakdown of the text into categories or topics using automated techniques, and to focus his or her attention and judgment on the most crucial part of the analysis, which cannot be automated–namely, the substantive interpretation and explanation of the patterns identified by the computer.

In other words, automated content analysis is no substitute for human interpretation and judgment, but it does extend human capabilities dramatically. If unassisted human analysis of a massive corpus of text is akin to searching for an unknown number of needles in a haystack, then using automated content analysis is akin to having a computer locate all objects in the haystack and being left with just the crucial but tractable task of determining what those objects happen to be.

The sheer unfamiliarity of these techniques may give some readers pause. So too might the focus on actual constitutions rather than case law.[107] Comparative constitutional scholarship has historically favored qualitative over quantitative

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[106] *See* Kevin M. Quinn et al., *How to Analyze Political Attention with Minimal Assumptions and Costs*, 54 AM. J. POL. SCI. 209, 212 (2010) (discussing the "nontrivial costs" associated with "human reading of texts," "especially when one attempts to read large, politically relevant texts").

[107] *See* Ming-Sung Kuo, *A Dubious Montesquieuian Moment in Constitutional Scholarship: Reading the Empirical Turn in Comparative Constitutional Law in the Light of William Twining and His Hero*, 4 TRANSNAT'L LEGAL THEORY 487, 494–501 (2015) (raising a variety of objections to the genre of empirical constitutional research conducted by Law and Versteeg and others).

methods,[108] the analysis of constitutional jurisprudence over the analysis of constitutional texts,[109] and the examination of a few jurisdictions in depth over the examination of many jurisdictions from a bird's eye perspective.[110] For those accustomed to the usual methods, techniques such as automated content analysis of constitutions might seem too lacking in context or nuance to be of much value. Yet the customary approach of poring over prominent judicial decisions from a small and unrepresentative sampling of countries has its own drawbacks.[111] In the abstract, neither approach is strictly superior to the other without regard to the question at hand.

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[108] *See, e.g.*, RAN HIRSCHL, COMPARATIVE MATTERS 244 (2014) (noting that "systematic examination of a small number of cases (small-N) . . . . is the most prevalent type of inquiry employed by social science scholars of comparative public law"); SIEMS, *supra* note 25, at 146 (noting that comparative legal scholars have been "relatively late" to adopt quantitative approaches); David S. Law, *Constitutions*, *in* THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH 376, 378–79 (Peter Cane & Herbert Kritzer eds., 2010) (observing that the quantitative empirical study of constitutions remains a "young field" of research); Geoffrey Samuel, *Comparative Law and Its Methodology*, *in* RESEARCH METHODS IN LAW 100, 102 (Dawn Watkins & Mandy Burton eds., 2013) (opining that methodology in comparative law has been moving "progressively" away from a "natural" or "scientific" approach that treats the social sciences as "no different than the natural sciences" toward a "cultural" approach that emphasizes that a legal phenomenon is "the product uniquely of its cultural context").

[109] *See, e.g.*, BRESLIN, *supra* note 27, at 2–3 (lamenting that constitutional scholars tend to "miss the forest for the trees" by focusing on "all things judicial" rather than "the constitutions themselves"); HIRSCHL, *supra* note 108, at 153–54 (describing the "narrowing down of comparative constitutionalism to court-centric analyses"); Ran Hirschl, *On the Blurred Methodological Matrix of Comparative Constitutional Law*, *in* THE MIGRATION OF CONSTITUTIONAL IDEAS 39, 65 (Sujit Choudhry ed., 2006) (observing that "legal academics studying constitutional law tend to draw upon a court-centric case law approach").

[110] *See, e.g.*, HIRSCHL, *supra* note 108, at 226 (observing that "[t]he majority of social scientists who study comparative law" employ a qualitative or "small–N" research design); Tom Ginsburg et al., *Does the Process of Constitution-Making Matter?*, 25 ANN. REV. L. & SOC. SCI. 201, 203, 219 (2009) (noting both the prevalence of single-country case studies in the literature on constitution-making processes, and the extent to which "large-*n* work has been hindered by a lack of data"); Law, *supra* note 108, at 389 (observing that "case studies have thus far dominated the fields of comparative constitutional law and politics").

[111] *See* HIRSCHL, *supra* note 108, at 4 (noting that efforts at comparativism often focus on a handful of "overanalyzed, 'usual suspect'" settings); *id.* at 163 ("Two dozen court rulings from South Africa, Germany, Canada, and the European Court of Human Rights–alongside a more traditional set of landmark rulings from the United States and Britain and an occasional tribute to India or Australia–now form an unofficial canon of 'global constitutionalism' that informs comparative constitutional law syllabi throughout much of the English-speaking world."); *id.* at 40–41 (hinting at the emergence of an "international canon" consisting of "landmark cases from Germany, Canada, South Africa, the European Court of Human Rights, and to a lesser degree India, Australia, and occasionally several other smaller jurisdictions"); Monica Claes, *Constitutional Law*, *in* ELGAR ENCYCLOPEDIA OF COMPARATIVE LAW 223, 224 (Jan M. Smits ed., 2d ed. 2012) ("[The] English literature in the field of comparative constitutional law typically uses American, Canadian, South African and British constitutional law as its case studies, with excursions, sometimes, to … Australia, India, Israel and Germany.").

Every research methodology has its advantages and disadvantages and is better suited to certain questions than to others.[112] What the study of constitutionalism therefore requires is the practice of methodological pluralism: scholars should employ a diversity of methodological approaches that complement each other and lend themselves to different types of questions.[113] If the goal is to understand how constitutions are applied in practice, for example, then hermeneutic analysis of judicial decisions may be the superior approach. If, however, the objective is instead to identify underlying themes in constitutional drafting at the global level–as in the present case–then it becomes eminently sensible to employ automated techniques capable of detecting and measuring verbal patterns across documents with a degree of accuracy and reliability that no human reader can hope to match. At least when it comes to the study of constitutional drafting patterns, unconventional techniques such as automated content analysis and topic modeling have much to offer.

C. *How Many Archetypes Are Found in Preambles?*

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[112] *See, e.g.*, ALEXANDER L. GEORGE & ANDREW BENNETT, CASE STUDIES AND THEORY DEVELOPMENT IN THE SOCIAL SCIENCES 31 (2004) ("Greater explanatory richness within a type of case usually leads to less explanatory power across other types of cases."); GARY KING ET AL., DESIGNING SOCIAL INQUIRY: SCIENTIFIC INFERENCE IN QUALITATIVE RESEARCH 128 (1994) (noting that random selection of observations is "not generally appropriate" in qualitative research, yet "abandoning randomness opens the door to many sources of bias" in the selection of cases or observations for analysis); Law, *supra* note 16, at 944, 949 (considering, and rejecting, both qualitative and quantitative approaches to the study of judicial comparativism that rely on the analysis of judicial opinions because "many courts do not disclose in their opinions the extent of their foreign legal research," and settling instead on a case selection and data collection strategy that relies primarily on interviews with judges from a variety of courts)..

[113] *See, e.g.*, GEORGE & BENNETT, *supra* note 112, at 19–35 (reviewing the relative strengths and weaknesses of qualitative case study methods and quantitative statistical methods, and noting the "increasingly evident complementarity of case studies, statistical methods, and formal models"); HIRSCHL, *supra* note 108, at 280–81 (emphasizing the value of methodological pluralism in the study of comparative constitutional law); Henry E. Brady et al., *Refocusing the Discussion of Methodology*, *in* RETHINKING SOCIAL INQUIRY: DIVERSE TOOLS, SHARED STANDARDS 5–7 (Henry E. Brady & David Collier eds., 1st ed. 2004) (noting the risk that "quantitative, large-N" methods "may push scholars toward an untenable level of generality and a loss of contextual knowledge," and concluding that "a meaningful discussion of methodology must be grounded in the premise that strengths *and* weaknesses are to be found in both the qualitative and quantitative approaches"); James D. Fearon & David D. Laitin, *Integrating Qualitative and Quantitative Methods*, *in* THE OXFORD HANDBOOK OF POLITICAL METHODOLOGY 756, 756–57 (Janet M. Box-Steffensmeier et al. eds., 2008) (discussing the competing strengths of quantitative approaches and case studies, and noting that quantitative approaches excel at identifying empirical patterns, but case studies can be "extremely useful" when it comes time to explain those patterns); Law, *supra* note 108, at 389–90 (explaining why "a combination of approaches—quantitative and qualitative, established and innovative—will be necessary if scholars are to gain traction on the many difficult empirical questions surrounding constitutions … and constitutionalism").

To identify patterns in the lexicon of contemporary preambles, I used the structural topic model (STM) software package for R to estimate a topic prevalence model for all 171 constitutional preambles in force as of 2012.[114] STM is a relatively recent implementation of topic modeling that hails from political science.[115] In intuitive terms, it estimates the prevalence of each topic in a given text by comparing the words in the text to the probability distribution of words associated with each topic. For example, if 35% of the text matches the word distribution associated with the topic of Disney films more closely than the word distribution for any other topic, then the estimated prevalence of the Disney topic, measured as a proportion of the entire text, will be 0.35. The basic approach is thus similar to that of earlier implementations of topic modeling such as latent Dirichlet allocation (LDA),[116] but STM possesses the key advantage of incorporating the use of covariates.[117] Covariates serve roughly the same function as independent variables

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[114] *See* MOLLY ROBERTS ET AL., STM: AN R PACKAGE FOR THE STRUCTURAL TOPIC MODEL, http://structuraltopicmodel.com (last visited July 10, 2015). Tom Ginsburg kindly shared the archive of constitutional preambles that he had analyzed in an earlier article. *See* Ginsburg et al., *supra* note 27. With minor modifications, his archive of preambles was used for the analysis. In some cases, a country's constitution encompasses multiple documents and, consequently, multiple preambles. For example, the constitution of the United Kingdom is generally understood as encompassing a multitude of enactments over many centuries that are widely understood to possess constitutional status. *See* THE CONSTITUTIONS OF EUROPE (E.A. Goerner ed., 1967) (observing that the British constitution "comprises a great number of things, written and unwritten," including but not limited to the Magna Carta, the Petition of Right, the Act of Settlement, and various Parliament Acts). Consistent with the approach taken by Law & Versteeg, cited above in note 11, at 1188, all of the preambles to all of the documents that are treated by the Constitute website as part of the constitution of the United Kingdom were combined into a single aggregate preamble for purposes of analysis. *See* CONSTITUTE, *United Kingdom 1215 (rev. 2013)*, https://www.constituteproject.org/constitution/United_Kingdom_2013 (last visited June 7, 2016) (including such documents as the Magna Carta, the Habeas Corpus Act 1679, the Bill of Rights 1689, the Act of Settlement 1701, the European Communities Act 1972, and the Human Rights Act 1998).

[115] *See* Margaret E. Roberts et al., *Structural Topic Models for Open-Ended Survey Responses*, 58 AM J. POL. SCI 1064, 1067 (2014); ROBERTS ET AL., *supra* note 114.

[116] *See* Justin Grimmer & Brandon M. Stewart, *Text as Data: The Promise and Pitfalls of Automatic Content Analysis Methods for Political Texts*, 21 POL. ANALYSIS 267, 284–85 (2013); Young, *supra* note 30, at 2018–20 (employing "hierarchical latent Dirichlet allocation" to analyze thousands of newspaper articles published circa the adoption of the Fourteenth Amendment for evidence of a period of heightened popular salience of constitutional issues consistent with Bruce Ackerman's cyclic theory of constitutional change).

[117] *See* Christopher Lucas et al., *Computer-Assisted Text Analysis for Comparative Politics*, 23 POL. ANALYSIS 254, 262–63 (2015) (explaining how "STM differs from other topic-modeling techniques like LDA in allowing document-level covariates to be included in the model as a method for pooling information"); Roberts, *supra* note 115, at 1071 (offering evidence that "STM provides more accurate estimation of quantities of interest when compared to using LDA with covariates in a two-stage process").

do in a regression: one can test whether the prevalence or content of a topic is correlated with some variable of interest by including the variable as a covariate.[118]

A preliminary step to estimating the model is to specify the number of topics that the model will contain.[119] In this case, identification of the appropriate number of topics is not just a preparatory step made necessary by the methodology, but rather a matter of intrinsic substantive interest. The notion that preambles reflect the influence of three competing archetypes or templates, as opposed to some smaller or larger number, must be tested rather than assumed. Depending upon their criteria for what constitutes a topic, however, different people may arrive at different conclusions as to the number of topics covered in a given conversation. Likewise, different techniques for identifying the number of topics in a text corpus can yield different conclusions as to the number of topics.

The STM package includes several different goodness-of-fit measures that embody different criteria for identifying the appropriate number of topics.[120] Most of these tests suggest that a three-topic model fits the data reasonably well, whereas a model containing ten or more topics performs noticeably worse.[121] The diagnostic measure that most strongly favors a three-topic model, and arguably the most important diagnostic of all, is that of held-out likelihood.[122] The intuition behind the held-out likelihood measure is that one estimates the mix of topics in a portion of the document then evaluates the quality of those estimates by determining how well they predict the mix of topics in the remainder of the document. Held-out

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[118] *See, e.g.*, Roberts, *supra* note 115, at 1073–75 (using party identification as a covariate to evaluate whether and how Republicans and Democrats differ in their responses to arguments about immigration); Lucas et al., *supra* note 117, at 268–74 (using language as a covariate to test whether Arabic-speaking and Chinese-speaking social media users reacted differently to Edward Snowden's revelations about U.S. surveillance programs).

[119] *See* Quinn, *supra* note 106, at 210 (noting that topic-modeling automatically identifies "the division of topics and keywords that identify each topic" and "does not require a researcher to know the underlying taxonomy of categories with certainty" but does require the researcher to specify "the total number of categories into which texts should be grouped").

[120] The four diagnostic tests included in STM are measures of held-out likelihood, semantic coherence, residuals, and lower bound.

[121] For purposes of selecting the most appropriate number of topics, the four diagnostic tests listed above in note 120 were run on models containing two, three, four, five, six, seven, eight, nine, ten, twelve, fifteen, and twenty topics. The held-out likelihood test favors three topics ($K = 3$). The semantic coherence test suggests that a ten-topic model may offer a slightly better fit than a three-topic model, but also that anything more than ten topics is much worse than three topics ($3 \le K \le 10$). Similarly, the test based on residuals slightly favors ten topics over three topics but, like the semantic coherence measures, worsens for more than ten topics, to the point that a model with twelve or more topics is worse than a model with only three topics ($3 \le K \le 12$). Only the lower-bound test favors twenty or more topics ($K \ge 20$).

[122] The four-topic model scores nearly as high as the three-topic model on the measure of held-out likelihood and outscores the three-topic model on the measures of residuals and semantic coherence. From a substantive perspective, however, the results of the four-topic model do not differ noticeably from those of the three-topic model because the third and fourth topics strongly resemble each other. *See infra* note 126.

likelihood is an especially valuable tool for evaluating how well a model fits the data because, of all the diagnostics, it rests on the simplest definition of, and the fewest assumptions about, what counts as a good model. It makes raw predictive power the sole test of a model: it simply measures the ability of a model to predict the characteristics of unobserved text based on the model's assessment of observed text.

It is unusual for a model that contains only three topics to outperform much more complicated models on this metric. Generally speaking, the more topics that a model contains, the more parameters that are available to explain the data, and the better the model ought to fit the data as a result. The fact that a very simple three-topic model nevertheless outperforms more complicated models is thus rather revealing of the underlying structure of the data: it strongly suggests that constitutional preambles are inherently composed of a combination of three varieties of discourse.

Another relevant diagnostic is that of *semantic coherence*, which captures the extent to which words that supposedly belong to the same topic actually appear in conjunction with each other. For example, if the words "apple," "carrot," "boy," and "girl" are associated with the same topic, but "apple" and "carrot" rarely appear in the same document as "boy" and "girl," then the topic in question is said to lack semantic coherence.[123] Unlike the other goodness-of-fit measures, semantic coherence corresponds to a meaningful aspect of what we are trying to measure–namely, underlying themes that appear in a variety of constitutions and manifest themselves in the form of a coherent and consistent vocabulary. The topics generated by a ten-topic model exhibit slightly greater semantic coherence than those generated by a three-topic model. Increasing the number of topics beyond ten, however, causes semantic coherence to decline drastically. Indeed, only one of the four diagnostics included with STM suggests that a complicated model with more than ten topics does a better job of explaining the data than a simple model with only three topics.[124]

Most important, however, is the substantive quality of the model, and it is here that the simple three-topic model truly shines. The software cannot evaluate the substantive meaning or significance of the topics that it identifies; such determinations require human interpretation and judgment. Ultimately, there is no better way to ensure that a topic model has produced meaningful results than to

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[123] *See* David Mimno et al., *Optimizing Semantic Coherence in Topic Models*, *in* PROCEEDINGS OF THE CONFERENCE ON EMPIRICAL METHODS IN NATURAL LANGUAGE PROCESSING 262, 265 (2011); *see also* Roberts et al., STRUCTURAL TOPIC MODELS FOR OPEN ENDED SURVEY RESPONSES ONLINE APPENDIX § 1.2.7 at 18, http://scholar.harvard.edu/files/dtingley/files/ajpsappendix.pdf (defining "semantic coherence" as a measure of "the frequency with which high probability topic words tend to co-occur in documents").

[124] *See supra* note 121 (noting that the residuals test yields similar results to the semantic coherence test, and that only the lower-bound test favors a model with more than ten topics).

examine the topics themselves.[125] In this case, the topics generated by more complicated models are difficult to differentiate and lack obvious meaning.[126] By contrast, not only are the topics identified by the three-topic model semantically coherent, but they also possess highly recognizable and familiar political, legal, and ideological overtones, as explained below in section V.D. The distinctive lexicon that the model associates with each topic reads like a distillation of the kind of rhetoric one would expect to find in a constitution written in a specific ideological vein. Each topic is, in effect, a quantifiable proxy for one of the three ideological archetypes.

D. The Vocabulary Associated with Each Archetype

Consistent with expectations, the results of the three-topic model suggest that constitutional preambles contain varying mixtures of liberal, statist, and universalist ideological content. Appendix I reports the ideological mix of every constitutional preamble as of 2012, as well as the preambles to a number of leading international and regional human rights instruments–namely, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the European Convention on Human Rights (ECHR), the American Declaration of the Rights and Duties of Man, and the African Charter on Human and Peoples' Rights.

The three word clouds below depict in graphical form the vocabulary underlying each of the three topics identified by the model. Each word cloud consists of the keywords that appear most frequently in connection with discussion of the corresponding topic. The text processing software included in the STM package performs a function known as stemming, in which variants of the same word are reduced to their common stem.[127] Thus, for example, the words "constitution" and "constitutional" are both stemmed to "constitut." Stemming is helpful from a methodological perspective because it reduces the complexity of the model to be estimated, but it also has the substantive benefit of ensuring that

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[125] *See* Quinn, *supra* note 106, at 213 (advocating a two-stage approach to topic modeling characterized by "very little" investment of "time or substantive knowledge" in the "initial preanalysis stage," followed by "more time and effort" in the "postanalysis phase").

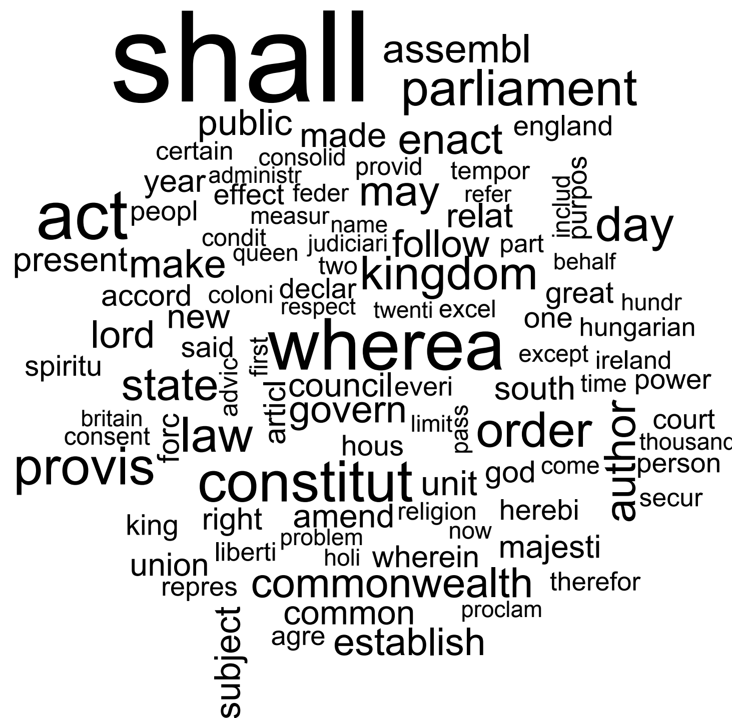
[126] For example, although a four-topic model performs well on certain diagnostic measures, *see supra* note 122, the fourth topic appears to be duplicative and to lack any substantive significance or character of its own. Two of the topics generated by the four-topic model mirror two of the topics from the three-topic model (namely, the liberal and statist topics, *see infra* Part V.D). The third and fourth topics, meanwhile, are difficult to distinguish from each other, and both in turn strongly resemble the third topic from the three-topic model (namely, the universalist topic, *see id.*): they employ similar vocabulary and possess similar substantive characteristics and overtones.

[127] *See* Grimmer & Stewart, *supra* note 116, at 272–73 (describing the steps involved in "preprocessing" text for automated content analysis); Young, *supra* note 30, at 2017 (discussing the processing algorithm used to "turn text into data" that is ready for topic modeling techniques).

variations of the same word are not misidentified and overcounted as entirely different words.

Within each word cloud, the size of a word reflects the frequency with which that word appears in discussions of the topic. It does not capture the extent to which the word is unique to a particular topic. Thus, the largest keywords are often basic words that arise frequently regardless of the topic. For example, the words "constitution," "nation," and "country" (and variants thereof) feature prominently across multiple topics. Notwithstanding this limit to what the word clouds convey, however, it is clear from even a cursory examination that each cloud possesses an ideological and rhetorical flavor that distinguishes it sharply from the others. Especially telling are the smaller keywords that appear with some frequency yet are also relatively or highly exclusive to a specific topic.

Figure 1: The liberal archetype of constitutional preambles

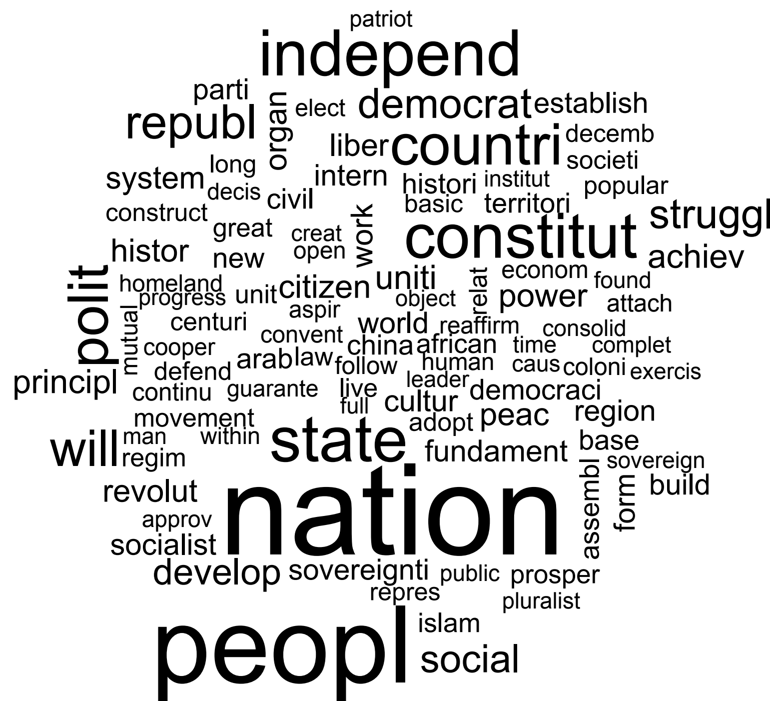


It does not take an especially keen eye to ascertain the underlying character of the constitutional genre depicted by the first word cloud. It reeks of a liberal, if not specifically common law, approach to constitution-writing. No imagination is required to perceive the roots of this genre in the common law world. Keywords that appear with high frequency in this genre but not the others include "shall," "whereas," and "order," while words that are both relatively frequent and relatively exclusive to this genre include "act," "parliament," "kingdom," "Commonwealth,"

"lord," and "majesty." If the words "parliament" and "Commonwealth" were not enough of a telltale sign, Britain and Ireland also appear by name. At the same time, however, it is not only common law countries that employ constitutional language in this vein, as demonstrated by the appearance of the word "Hungarian."

The overall impression is of a constitution that is far from revolutionary and does not establish a new polity or political order but is instead conferred by a strong extant authority ("whereas," "shall," "order," "act," "enact," "declare") of a decidedly traditional nature ("kingdom," "king," "queen," "lord," "majesty," "God," "spiritual," "holy") upon its subjects both near and far ("colony," "colonial"). Consistent with the significance of the role that the judiciary plays in the liberal paradigm, the words "court" and "judiciary" appear only in this word cloud and not the others.

Figure 2: The statist archetype of constitutional preambles



The statist flavor of the constitutional genre captured by the second word cloud is equally difficult to miss. The keywords identified by the software as most characteristic of this particular genre include "socialist," "China," "movement," and "regime." Other words associated with this genre are equally evocative: "revolution," "patriot," "repression," "history," "homeland," "Arab," and "Islam" all appear in this word cloud and not the others. The statist archetype calls for an ideological narrative that justifies and glorifies the state as the incarnation of a

community and elevates the pursuit of collective goals, and the vocabulary associated with this type of preamble is tailor-made for these functions. Terms such as "Arab" and "Islam," for example, fit the statist archetype perfectly because they are indicative of both an emphasis on communal bonds and a commitment to goals and principles shared by citizen and state alike.[128]

Heroic struggle tends to be a defining feature of the narrative, along with repudiation of the past and progress toward a better future. A typical narrative might invoke the "history" of a particular "nation" or "people" that endured a long "struggle" or even "revolution" against "colonialism" or some other kind of "repression."[129] The narrative of struggle is naturally accompanied by an element of hero worship: "independence" is won, and "progress" and "achievement" are made, with the guidance of visionary "leaders" and the sacrifice of countless "patriots" enshrined as heroes in the constitution.[130] The embrace of collective goals

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[128] *See* Mohammad Hashim Kamali, *Constitutionalism in Islamic Countries: A Contemporary Perspective of Islamic Law*, *in* CONSTITUTIONALISM IN ISLAMIC COUNTRIES: BETWEEN UPHEAVAL AND CONTINUITY, *supra* note 68, at 19, 21 (noting that, unlike "constitutionalism in the Western tradition," which is "grounded in the view that the coercive power of the state is potentially a menace to the rights and liberties of the individual," Islam is "oriented toward an essential unity of basic interests between the individual and the state"); Wolfrum, *supra* note 68, at 82 (observing that in Islamic states, "individual duties trump individual rights," "communalism prevails over individualism," and "the relationship between the individual and the state is not seen as an adversarial one as it is at the root of the Western human rights concept").

[129] *See, e.g.*, CONST. OF THE PEOPLE'S REPUBLIC OF BANGLADESH 2011, pmbl. ("[T]he high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in, the national liberation struggle, shall be the fundamental principles of the Constitution."); CONSTITUCIÓN POLÍTICA DEL ESTADO [CONSTITUTION] 2009, pmbl. (Bol.), *translated at* https://www.constituteproject.org/constitution/Bolivia_2009 ("We, the Bolivian people, of plural composition, from the depths of history, inspired by the struggles of the past, by the anti-colonial indigenous uprising, and in independence, by the popular struggles of liberation, by the indigenous, social and labor marches, by the water and October wars, by the struggles for land and territory, construct a new State in memory of our martyrs."); CONSTITUÇÃO DA REPÚBLICA [CONSTITUTION] 2004, pmbl. (Mozam.), *translated at* https://www.constituteproject.org/constitution/Mozambique_2007 (invoking "the age-old desires of our people, the armed struggle for national liberation, whose purpose was to liberate the land and Man").

[130] *See, e.g.*, CONSTITUCIÓN DE LA REPÚBLICA DE CUBA [CONSTITUTION] 2002, pmbl. (Cuba), *translated at* https://www.constituteproject.org/constitution/Cuba_2002 ("*Guided* by the ideology of José Martí, and the sociopolitical ideas of Marx, Engels, and Lenin . . . *And having decided* to carry forward the triumphant Revolution of the Moncada and the Granma, of the Sierra and of Girón under the leadership of Fidel Castro . . . ."); CONST. OF THE CO-OPERATIVE REPUBLIC OF GUYANA 1980, pmbl. ("*Acclaiming* those immortal leaders who in the vanguard of battle kept aloft the banner of freedom by the example of their courage, their fortitude and their martyrdom, whose names and deeds being forever enshrined in our hearts we forever respect, honour and revere"); JOSEON MINJUJUUI INMIN GONGHWAGUK SAHOEJUUI HEONBEOP [HEONBEOP] 1998, pmbl. (N. Kor.), *translated at* https://www.constituteproject.org/constitution/Peoples_Republic_of_Korea_1998 ("The Democratic People's Republic of Korea is a socialist fatherland of Juche which embodies the idea of

is also evident in the recurring themes of "movement," "progress," and "achievement."

Figure 3: The universalist archetype of constitutional preambles

The third and last word cloud presents a puzzle. The question of what is distinctive about its content is difficult to answer because it is a trick question. The distinctive and defining characteristic of this genre of preamble is that, at first glance, there is virtually nothing distinctive about it. Whereas keywords like "parliament," "Commonwealth," "socialist," and "revolution" loudly advertise their ideological provenance, the kind of vocabulary that characterizes this genre could be cut and pasted into virtually any constitution in the world, with about as much impact on the underlying flavor of the constitution as a tablespoon of water. Even the keywords that are supposedly somewhat exclusive to this genre–"men," "acknowledge," "individual," "recognition," "inherent," "pledge"–are supremely generic. Nor is the genre obviously associated with any particular geographical region: although the word "African" appears, it also makes an appearance in the preceding word cloud.

Paradoxically, the sheer difficulty of identifying this genre makes it easy to identify. It is stamped through and through with the unmistakable anonymity of

and guidance by the great leader Comrade Kim II Sung. The great leader Comrade Kim II Sung is the founder of the DPRK and the socialist Korea.").

universalism. This genre of preamble has the feel of the constitutional equivalent of a Hallmark greeting card: it is calculated to enjoy acceptance and inspire positive feelings, and it often does so, even though it is composed of mass-market platitudes and sentiments so generic as to border on the banal.

To say that this genre uses generic language does not, however, mean that it is free of identifying substantive or normative characteristics. Closer examination reveals the distinctive ideological and legal characteristics of the universalist archetype–namely, a commingling of constitutional law and international law, a commitment to the international legal order, and an acceptance of universal norms as the basis for the legitimacy of the state. First, this constitutional genre bears the linguistic imprint of international law. The lexicon associated with this constitutional genre mirrors the lexicon of leading international human rights instruments: the preambles to the ICCPR and ICESCR share over 90% of their verbal content with this genre.[131] Moreover, the fact that the ICCPR and ICESCR predate the majority of the constitutions in the data means it is much more likely that the vocabulary of the treaty preambles has inspired the language of the constitutional preambles than vice versa.[132]

Second, the use of generic language is inherently indicative of a universalist approach to constitution-writing. The verbal patterns associated with this genre makes up over half of the average preamble.[133] This level of repetition and similarity across constitutions is too high to be mere coincidence. It is also difficult to explain on purely functional grounds. The functional explanation would be that it is difficult to write a constitution without using certain vocabulary in certain ways, and that fact is what accounts for the frequency of certain verbal patterns. The existence of preambles that lack such language proves, however, that resort to the universalist vocabulary is not a functional necessity. [134]

The more natural explanation for this level of linguistic similarity across constitutions is mimesis or imitation, and it is difficult to engage in constitutional mimesis without also embracing universalism to some degree. The evidence is overwhelming that constitution-writers are heavily influenced by foreign, regional,

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[131] *See infra* Table 7 and accompanying text (reporting the proportion of the preambles to the ICCPR and ICESCR that is universalist in content, and identifying both preambles as being among the ten most universalist preambles in the world).

[132] Only thirty-seven of the nearly two hundred constitutions in force as of 2012 were adopted prior to 1966, the year in which the ICCPR and ICESCR were adopted. These figures are based on analysis of the systyear variable in version 2.0 of the Comparative Constitutions Project's Characteristics of National Constitutions dataset, available at http://comparativeconstitutionsproject.org/download-data.

[133] The mean universalism score (meaning the proportion of a preamble that is universalist) is 0.56, while the mean universalism score is over 0.6. *See infra* Table 10.

[134] *See infra* Table 3 (listing various preambles that consist almost exclusively of liberal content, to the exclusion of universalist content); *infra* Table 5 (listing various preambles that consist almost exclusively of statist content, to the exclusion of universalist content).

and international examples.[135] Borrowing from other constitutions implies acceptance of the universalist view that at least some constitutional elements can and should be common to multiple countries. But the borrowing of generic verbal patterns found in a majority of constitutions, in particular, implies an especially strong commitment to universalism. To adopt the most popular constitutional language is to value constitutional language for its universality, and to equate what is widespread among constitutions with what is appropriate for constitutions. Far from being devoid of ideological significance, the deliberate use of generic constitutional language amounts to the practice of universalism: it both reflects and promotes an normative understanding of constitutionalism as a common global enterprise.

Third, the language of this genre explicitly references international law and international institutions in a variety of ways, not all of which may be immediately obvious from examination of the raw vocabulary alone. Consider, for example, the association of the word "charter" with this particular constitutional genre. By itself, "charter" is an ambiguous word that can refer to either a domestic or international legal instrument. Therefore, the mere fact that a constitution contains the word "charter" does not imply commitment to international or universal norms. However, not only are preambles with high universalism scores much more likely to contain the word "charter," but they are also much more likely to use the word "charter" in reference to supranational law than to domestic law, as shown below in Table 1.

Analysis of other potentially ambiguous words confirms the affinity of this constitutional genre for international norms and international organizations. The word "African" can be used in a variety of ways and is consequently associated with more than one genre, but preambles with above-average universalism scores invariably use the word as part of the name of a supranational legal or political regime, such as the African Charter on Human and Peoples' Rights or the African Union.[136] By comparison, not a single preamble with a below-average universalism score uses the word "African" in this manner.[137] "Convention" is another

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[135] *See* sources cited *supra* note 12.

[136] The Democratic Republic of the Congo offers the only example of a constitutional preamble with an above-average universalist score that uses either "Africa" or "African" to refer to anything other than a regional legal or political regime or the actual name of a country. *See* CONSTITUTON DE LA REPUBLIQUE DEMOCRATIQUE DU CONGO [CONSTITUTION] 2005, pmbl. (Dem. Rep. Congo), *translated at* https://www.constituteproject.org/constitution/Democratic_Republic_of_the_Congo_2011 (invoking a "common will to build in the heart of Africa a State of Law and a powerful and prosperous Nation, founded on a real political, economic, social, and cultural democracy").

[137] *See, e.g.*, CONSTITUIÇÃO DA REPÚBLICA DE ANGOLA [CONSTITUTION] 2010, pmbl. (Angl.), *translated at* https://www.constituteproject.org/constitution/Angola_2010 ("Inspired by the best lessons in African tradition …"); AMENDED CONST. OF THE ARAB REPUBLIC OF EGYPT Jan. 18, 2014, pmbl. ("Egypt affirmed its Arab allegiance, opened up to its African continent and Muslim world . . . ."); INTERIM NATIONAL CONST. OF THE REPUBLIC OF SUDAN 2005, pmbl. ("Grateful to

ambiguous word that appears with some frequency in the constitutional lexicon: depending upon the context, it could refer either to a domestic constitution-making convention or to an international human rights convention. Like the word "charter," however, "convention" is most likely to appear in highly universalist preambles, and when it does so, it almost always refers to an supranational human rights convention of some kind.[138] Conversely, on the relatively rare occasions that the word "convention" appears in preambles with below-average universalism scores, it is more likely to refer to a domestic body than an international human rights convention.[139]

Table 1: Differences in use of the word "charter," by universalism score

	UN Charter or other international charter	*African Charter or Charter of Organisation of African Unity*	*Other regional charter*	*Domestic charter*	*TOTAL*
Preambles with above-average universalism scores	19 (41%)	19 (41%)	2 (4%)	6 (13%)	46 (92%)
Preambles with	1 (25%)	0	0	3 (75%)	4 (8%)

Almighty God who has bestowed upon us the wisdom and will to reach a Comprehensive Peace Agreement that has definitively put an end to the longest running conflict in Africa . . . ."); CONSTITUIÇÃO DA REPÚBLICA DEMOCRÁTICA DE SÃO TOMÉ E PRÍNCIPE [CONSTITUTION] 1990, pmbl. (São Tomé & Príncipe), *translated at* https://www.constituteproject.org/constitution/Sao_Tome_and_Principe_1990 (speaking of the struggle of the Sao Tomean people for "the restoration of their usurped rights and for the reaffirmation of their human dignity and African character").

[138] The only exception is Paraguay. *See* CONSTITUCIÓN DE LA REPUBLICA DEL PARAGUAY [CONSTITUTION] 1992, pmbl., *translated at* https://www.constituteproject.org/constitution/Paraguay_2011 ("The Paraguayan People through their legitimate representatives meeting in Constituent National Convention . . . .").

[139] As of 2012, only three preambles with below-average universalism scores contain any mention of the word "convention." The constitution of Myanmar references a "National Convention," CONST. OF THE REPUBLIC OF THE UNION OF MYANMAR May 29, 2008, pmbl., while that of Samoa mentions a "Constitutional Convention." CONST. OF THE INDEPENDENT STATE OF SAMOA 1962, pmbl. The third case is the United Kingdom: the Human Rights Act 1998, which is included in the data as part of the country's constitution, directs British courts to apply the European Convention of Human Rights, and its preamble unsurprisingly contains an explicit reference to the Convention. *See* Human Rights Act, 1998, c. 42 (Eng.) ("An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights.").

below-average universalism scores					
TOTAL	20	19	2	9	50

Because the word clouds alone do not convey the extent to which words are exclusive to each topic, it is also useful to report for each topic the words with the highest *frequency-exclusivity* ("FREX") scores. Frequency refers to the frequency with which a word appears in a particular topic (which the word clouds capture), while exclusivity refers to the extent to which a word appears only in that topic and not in others (which the word clouds do not reflect). From a methodological perspective, it would be ideal for a text corpus to consist of words that are both high-frequency and high-exclusivity. In reality, however, this is very unlikely to be the case, and there is a natural tradeoff between the two criteria. It is possible to construct a topic solely on the basis of word frequency, but the highest-frequency words are less likely to be exclusive to any given topic and often shed little light on what is being discussed.[140] For example, some of the highest-frequency words in any conversation are likely to be pronouns such as "you," "I," "it," and "they," simply because it is difficult to talk about anything without using pronouns. Likewise, it is difficult for a constitution to address any topic without using basic vocabulary such as "constitution," "state," "power," and so forth. However, generic words of this kind fail to capture what is distinctive about each topic, no matter how frequently they appear. Rather, the words that capture what is most typical and most distinctive about each topic are those that combine frequency and exclusivity. This is precisely what FREX scores do: they simply average frequency and exclusivity.[141]

The words with the highest FREX scores for each topic are set forth below in Table 2. For purposes of comparison, the words with the highest raw frequency (or probability) are also listed for each topic. Exclamation marks are used as wild-card characters to denote words truncated by the stemming process.

Table 2: The most typical and distinctive words for each topic

	Words with the highest FREX score	*Words with the highest raw probability of appearing*
Topic 1 (liberal)	act, parliament!, kingdom, commonwealth,	shall, whereas, act, constitut!, provis!,

[140] *See* Geis, *supra* note 29, at 473 (observing that the most uncommon or "unexpected" words in a body of text tend also to be the words that "denote the most meaning").

[141] *See* Roberts et al., *supra* note 123, § 1.1.4 at 4 (defining "FREX" as "the geometric average of frequency and exclusivity").

	lord, amend!, majesty	parliament!, order
Topic 2 (statist)	socialist, China, movement, regime, construct, continue, cause	nation, people!, independ!, state, constitut!, countr!, polit!
Topic 3 (universalist)	men, acknowledg!, individu!, recognit!, recognis!, inher!, pledge!	right, peopl!, freedom, human, nation, constitut!, justic!

E. National and Constitutional Characteristics Associated with Each Archetype

Analysis of the scores for each preamble reveals that certain types of countries favor particular archetypes. The estimated ideological breakdown of each preamble in the world as of 2012 is reported in Appendix I, while the tables below list the most extreme examples of each constitutional archetype in preamble form. Each numerical score is the proportion of the preamble in question that is statist, liberal, or universalist. Accordingly, the scores range between a minimum of 0 and a maximum of 1.

Consistent with expectations, countries that share the same constitutional archetype also tend to share other characteristics in common. Unsurprisingly, seven of the ten most liberal preambles belong to common law jurisdictions.[142] Only two of the ten most liberal preambles–those of Jordan and Brunei–belong to authoritarian regimes. Their inclusion on the list reflects the fact that they employ the same idiom as other common law jurisdictions: their preambles contain appeals to monarchical and religious authority, and little else. Conversely, the ten most statist preambles exhibit the opposite legal and political slant. The majority belong to authoritarian regimes, and all but one belong to civil law jurisdictions. The only common law jurisdiction in the group, Myanmar, happens to be highly authoritarian.

The most universalist preambles belong to a combination of smaller or newer states, poorer states,[143] post-communist states, African countries,[144] and

[142] The exceptions are Jordan, Liechtenstein, and Thailand. The score for Liechtenstein's preamble, in turn, ought not to be considered an especially reliable indicator of the constitution's underlying ideological character, as it is based on very limited data (in the form of a one-sentence preamble).

[143] The finding that smaller and poorer countries are more prone to universalism is based on a linear regression with logged population and GDP per capita as the independent variables and the proportion of the constitutional preamble that is universalist as the dependent variable. Both independent variables are statistically significant predictors of the proportion of universalist preamble content at the $p < 0.005$ level.

[144] Partly because of the tendency of African constitutions to invoke regional and international commitments and principles, automated text analysis of constitutional preambles associates the word "Africa" with universalism. The preamble to the Rwandan constitution, for example, affirms adherence to a laundry list of international human rights instruments. Not surprisingly, the structural topic model estimates its preamble as being roughly two-thirds universalist and one-third

international human rights instruments. The inclusion on the list of the ICCPR and ICESCR requires little explanation: both were devised by the United Nations and billed as expressions of universal norms.[145] Yet the universalist bent of the remaining cases is not difficult to explain either. Smaller and newer states are inherently more susceptible to international influences.[146] On the one hand, they are more vulnerable to the forces of globalization and thus more susceptible to, and dependent upon, the international community, and their vulnerability incentivizes them to curry favor with the international community by adopting its norms.[147] On the other hand, a lack of homegrown materials may drive them to seek help and inspiration from outsiders.[148] It should come as no surprise if reliance upon the international community manifests itself in the form of constitutional and ideological commitment to international norms and institutions.[149]

These factors and others help to explain the universalist tendencies of many post-colonial African constitutions. A newly independent state keen on jettisoning the legacy of colonial times must find something to fill the void. Universalism is likely to be attractive in such cases not only for its value as an ideological critique of colonialism,[150] but also for reasons of practical and political convenience. Wholesale

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statist in composition. *See infra* Appendix I. Other examples of African constitutional preambles that contain a heavy dose of universalist language include those of Senegal and Togo. *See id.*

[145] The preambles to the two covenants are also virtually identical. *Compare* International Covenant on Civil & Political Rights. pmbl., Dec. 19, 1966, 6 I.L.M. 368, 999 U.N.T.S. 171, *with* International Covenant on Economic, Social & Cultural Rights pmbl., Jan. 3, 1976, 6 I.L.M. 360, 993 U.N.T.S. 3.

[146] *See* Beck et al., *supra* note 73, at 493–96 (deeming "emergent nation-states" and small countries "most susceptible" to "global influences" and "the influence of world society"); *id.* at 497 (observing that "changing world fashions strike more forcefully at the countries most susceptible to influence, and most recently influenced").

[147] *See* Boyle & Meyer, *supra* note 14, at 74–75 ("States maintain their legitimacy through their responsiveness to perceived universal principles . . . . The more a nation-state is linked to the international system, the more its rules will follow these basic ideas."); Law & Versteeg, *supra* note 11, at 1181–83 (explaining why a "deliberate strategy of constitutional conformity" may be especially attractive to "marginal states, or states that struggle for whatever reason to obtain, maintain, or consolidate the recognition and approval of world society").

[148] *Cf.* Law, *supra* note 16, at 998–99 (observing that "a relatively new court, a court confronted with regime change (such as democratization) that fundamentally alters its own role and calls for reexamination of its existing jurisprudence, or a court faced with a relatively new constitution" may look abroad to fill the "void left by a lack of homegrown jurisprudence").

[149] *See* Beck et al., *supra* note 73, at 484, 490, 493, 495 (finding as an empirical matter that "emergent and peripheral states most exposed to the world order" adopt constitutions that "reflect[] the global human rights environment at the time of constitutional adoption," whereas "[c]ore nations with strong national political traditions and identities formed in an earlier period" and "[o]lder regimes," are less likely to incorporate human rights language into their constitutions).

[150] *See* Akira Iriye & Petra Goedde, *Introduction: Human Rights as History*, *in* THE HUMAN RIGHTS REVOLUTION: AN INTERNATIONAL HISTORY 3, 10 (Akira Iriye et al. eds., 2012) (observing that, for Africans, rejection of colonialism "went hand in hand" with rejection of "human rights relativism").

borrowing from another country may be unattractive to a new nation seeking to assert its independence and establish its own identity.[151] At the same time, however, a new state may be hard-pressed to develop unique alternatives of its own. The obvious solution is the universalist archetype: it is contemporary, convenient, acceptable, and generic.

A similar story could be told of the post-communist constitutions of Russia and Bulgaria, which contain highly universalist preambles. At the time of their adoption at the close of the Cold War, the repudiation of communism had created an ideological vacuum, and statism was tainted by its association with the old regime. In post-communist Eastern Europe as in post-colonial Africa, universalism presented itself as an innocuous and increasingly popular alternative.[152]

Table 3: The most liberal preambles

constitution	*proportion of liberal content*
United Kingdom[153]	0.9959
Australia	0.9912
Tonga	0.9705
Brunei	0.9227
New Zealand	0.8891
Jordan	0.8741
Canada	0.8324
Liechtenstein	0.8242

[151] *See* Mariana Pargendler, *The Rise and Decline of Legal Families*, 60 AM. J. COMP. L. 1043, 1071 (2012) (observing that "anti-colonialist sentiment" prevalent in many newly independent nations led to the rejection of the colonial legal tradition, and that "wholesale legal transplants from one legal system seemed more dangerous to one's identity and autonomy than a combination of numerous foreign sources").

[152] *See* Anne Peters, *The Globalization of State Constitutions*, *in* NEW PERSPECTIVES ON THE DIVIDE BETWEEN NATIONAL AND INTERNATIONAL LAW, *supra* note 26, at 251, 295 (observing that it is "typical of polities with a totalitarian past" and, in particular, former Communist Bloc states "to pledge fidelity to international law" in their constitutions as part of an effort to transform themselves).

[153] For purposes of the present analysis, the preamble of the United Kingdom's constitution is a combination of the preambles of a multitude of documents that are widely understood as enjoying constitutional status. *See supra* note 114 (discussing how the constitution was identified for purposes of those countries that lack a formal, codified, single-document constitution, such as the United Kingdom).

Thailand	0.6441
Samoa	0.5561

Table 4: The least liberal preambles

constitution	*proportion of liberal content*
North Korea	0.0013
China	0.0015
Vietnam	0.0021
Nicaragua	0.0029
Serbia	0.0038
Congo, Dem. Rep.	0.0040
Timor-Leste	0.0041
Togo	0.0044
Chad	0.0048
Niger	0.0051

Table 5: The most statist preambles

constitution	*proportion of statist content*
China	0.9897
North Korea	0.9870
Vietnam	0.9774
Cuba	0.9039
Iran	0.8802
Laos	0.8752
Myanmar	0.8592

Cape Verde	0.8314
Timor-Leste	0.8062
Sao Tome and Principe	0.8017

Table 6: The least statist preambles

constitution	*proportion of statist content*
United Kingdom	0.0018
Australia	0.0024
Tonga	0.0079
Brunei	0.0093
Canada	0.0098
Dominica	0.0126
St. Lucia	0.0133
Trinidad and Tobago	0.0143
Antigua and Barbuda	0.0147
St. Vincent and the Grenadines	0.0154

Table 7: The most universalist preambles

constitution	*proportion of universalist content*
Fiji	0.9545
Grenada	0.9422
Russian Federation	0.9311
Bulgaria	0.9293
ICCPR	0.9269
Czech Republic	0.9256

Trinidad and Tobago	0.9219
ICESCR	0.9186
Marshall Islands	0.9162
Kenya	0.9141

Table 8: The least universalist preambles

constitution	*proportion of universalist content*
United Kingdom	0.0023
Australia	0.0065
China	0.0088
North Korea	0.0118
Vietnam	0.0205
Tonga	0.0216
Thailand	0.0414
Myanmar	0.0641
Brunei	0.0680
New Zealand	0.0796

As the heterogeneous mix of countries found in some of the tables suggests, countries that are quite dissimilar in reality can nevertheless share the same constitutional archetype on paper. Portugal and North Korea have radically different forms of government, for example, but share in common highly statist preambles.[154] The linguistic similarity of their preambles serves as a valuable reminder that countries do not always live up to the language in their constitutions, and that constitutional rhetoric is bound to be an imperfect proxy for the actual character of a regime.[155]

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[154] *See infra* Appendix I (reporting that the constitutional preambles of Portugal, Syria, and North Korea, among others, are characterized by a high proportion of statist content).

[155] *See supra* note 7 and accompanying text (referencing the phenomenon of "sham constitutions").

Dissimilar countries can be expected to employ similar constitutional rhetoric because low-legitimacy states have an incentive to mimic high-legitimacy states.[156] The greater the prestige and legitimacy of the countries that employ a particular archetype, and the more easily that the archetype can be repurposed (or hijacked) for other uses, the more useful that the archetype becomes to countries in need of prestige and legitimacy. The fact that a well-regarded European social democracy like Portugal employs a statist narrative improves the respectability of this kind of narrative and makes it more attractive to pariah states like North Korea and Syria. A despotic regime is in even greater need of a palatable narrative than a democratic regime, and it is likely to find a statist narrative inherently more plausible and easier to fashion than a liberal narrative. The result, however, is that the same constitutional archetype can make for strange bedfellows.

A complete empirical exploration of the relationship between preamble ideology and other legal and political variables is beyond the scope of the present Article. Initial analysis not only corroborates the impressions left by the tables, however, but also reveals other characteristics associated with each archetype. Table 9 identifies several variables that are correlated with the topic prevalence scores in a statistically significant way. As expected, common law countries tend to have more liberal preambles, while civil law countries tend to have more statist preambles.[157] Countries with highly universalist preambles, meanwhile, tend to be less wealthy and less populous.[158] The tendency of smaller and poorer countries to favor the universalist archetype supports the argument from the sociology literature that smaller and poorer countries are both more susceptible to the influence of globalization and more dependent upon the approval of the international community.[159]

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[156] *See* Law & Versteeg, *supra* note 7, at 919 (observing that despotic regimes may deliberately adopt the constitutional language of democratic countries "as a strategy for winning recognition and acceptance from the international community" and "preventing ostracism from 'world society'").

[157] Binary indicators of whether a country's legal system is of English or French origins were used as proxies for a country's possession of a common law or civil law system, respectively. The English legal origins variable is positively correlated with the liberalism scores and negatively correlated with the statism scores, while the opposite is true of the French legal origins variable. Both variables–along with most of the predictor variables employed in the regression analyses–were obtained from the publicly available Quality of Governance dataset. *See* QUALITY OF GOVERNMENT INSTITUTE, QOG STANDARD DATA, http://qog.pol.gu.se/data/datadownloads/qogstandarddata (last visited June 14, 2016) (aggregating into a single file "approximately 2500 variables from more than 100 data sources"). Credit for the original creation of the legal origins variables belongs to Rafael La Porta et al., *The Quality of Government*, 15 J. L. ECON. & ORG. 222 (1999).

[158] GDP per capita and the natural log of population (both measured as of 2012) were used as the predictor variables in a linear regression with the universalism scores as the dependent variable. The GDP and population variables were taken from the Quality of Governance dataset, cited above in note 157.

[159] *See* Beck et al., *supra* note 3, at 495 (analyzing the use of human rights language in constitutions, and finding that "emergent and peripheral countries are more susceptible to world influences"); Boyle & Meyer, *supra* note 14, at 73 ("The more closely an organization is tied to the

The ideological tilt of a constitution's preamble also holds clues as to what can be found elsewhere in the same constitution. Initial analysis suggests that constitutions are characterized by a degree of internal ideological and substantive coherence. In particular, the ideology of the preamble tends to align with the ideology of the bill of rights.[160] The more liberal a constitution's preamble, the more strongly that the constitution's catalog of rights tends to tilt in a liberal direction. Conversely, the more statist the preamble, the more statist the rights catalog tends to be. Constitutions in which the preamble and the catalog of rights conflict with each other ideologically are the exception rather than the rule.[161]

Constitutions that contain highly universalist preambles, meanwhile, manifest their commitment to universalism in multiple ways. First, they tend to contain a wider range of rights, including relatively rare rights that lack a strongly liberal or statist character, such as consumer rights and rights for the elderly.[162] This

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global and putatively universalistic system, the more its rule system will participate in the diffusion and expansion of universal principles through … the adoption of laws and legal discourse consistent with international cultural accounts ….").

[160] This correlation was identified by estimating a structural topic model that included as covariates the constitutional ideology and comprehensiveness scores reported by Law and Versteeg, cited above in note 11, who calculate these scores for all constitutions as of 2012 based on the variation in the rights-related provisions that they contain. The ideology scores capture the extent to which a constitution's rights catalog tilts in a liberal or statist direction. *See id.* at 1204–26 (describing the estimation of two-dimensional ideal points that capture the underlying "ideology" and "comprehensiveness" of a constitution's rights catalog); *supra* notes 88–90 and accompanying text (discussing the constitutional ideology and comprehensiveness scores). Covariates are analogous to the predictor variables in a regression, while topic prevalence or topic content is the equivalent of the dependent variable. *See supra* notes 117–118 and accompanying text (explaining the role of covariates in a structural topic model).

[161] An illustrative example of an internally contradictory constitution would be Hong Kong's Basic Law, which for unique reasons pairs a statist preamble with a liberal bill of rights. The Basic Law is technically a law adopted by China's central government but functionally the equivalent of a constitution for Hong Kong, a "Special Administrative Region" of China that enjoys a high degree of autonomy pursuant to a treaty between China and the United Kingdom. *See* Law, *supra* note **16**, at 991. The Basic Law contains a variety of provisions that entrench the legal system put in place during British colonial times. *See id.* The result is that the Basic Law combines a strongly statist preamble written from the Chinese perspective with a liberal catalog of rights and an institutional framework for the judiciary that reflect the legacy of British rule. *See id.* at 994 (noting the Hong Kong Court of Final Appeal's systematic and constitutionally sanctioned reliance upon judges and lawyers from common law countries); *infra* Appendix I (reporting a high statism score for the preamble to Hong Kong's Basic Law).

[162] This correlation was identified by estimating a structural topic model that included as covariates the constitutional ideology and comprehensiveness scores reported by Law and Versteeg, who calculate these scores for all constitutions as of 2012 based on the variation in the rights-related provisions that they contain. A preamble's universalism score is positively correlated at the $p < 0.01$ level with what Law and Versteeg describe as a constitution's "comprehensiveness," where a "comprehensive" constitution is defined as one that tends to encompass relatively rare or "esoteric" rights, such as consumer rights and rights for the elderly, in addition to the most common or "generic" rights such as freedom of expression or freedom of religion. *See* Law & Versteeg, *supra*

tendency can be understood as a manifestation of universalism's central commitment to upholding and strengthening a transnational normative order: the most universalist constitutions contain relatively obscure rights because they aim not merely to recognize and uphold norms that are already viewed as universal, but also to expand the repertoire of universal norms by pioneering new rights. Second, universalism's intimate relationship with international law is both highlighted and confirmed by the tendency of constitutions with highly universalist preambles to include provisions that explicitly make treaties equal or superior to ordinary domestic legislation.[163]

Table 9: Characteristics associated with each archetype

Correlated with liberal preambles	*Correlated with statist preambles*	*Correlated with universalist preambles*
- Common law countries** - Liberal bill of rights (negative, civil/political, judicial protections) **	- Civil law countries** - Statist bill of rights (positive, social/econ, citizen duties and obligations) **	- Less populous countries ** - Poorer countries** - Constitutional provisions that give privileged treatment to treaties and/or international law* - Bill of rights that encompasses relatively novel or rare rights **

** denotes statistical significance at the $p < 0.01$ level.
* denotes statistical significance at the $p < 0.10$ level.

The extent to which constitutions exhibit internal coherence of a substantive or ideological variety is an open empirical question that calls for thorough exploration. The preliminary analyses summarized in Table 9 only scratch the surface. It would appear, however, that the verbal patterns found in a constitution's preamble are revealing of deeper tendencies that run throughout the rest of the constitution. Though tentative, the results suggest that a preamble forms part of a

note xx, at 1217–18 (describing the first of two dimensions along which constitutional rights catalogs vary as a measure of constitutional "comprehensiveness," and reporting that constitutions that score high on this dimension tend to contain additional rights that are not associated with a constitution's score on the liberal-versus-statist ideological dimension). A preamble's liberalism score, by contrast, is associated (again at the $p < 0.01$ level) with a lack of rare or esoteric rights, meaning a low comprehensiveness score.

[163] The measure of whether a constitution contains provisions that give treaties some form of supremacy is a binary version of the "treatst" variable found in the Characteristics of National Constitutions dataset. *See* Comparative Constitutions Project, *supra* note 132. Constitutions containing liberal preambles, by contrast, are less likely to contain treaty-related provisions, while statist preambles are uncorrelated with such provisions. These correlations approach conventional levels of statistical significance ($p = 0.06$).

coherent whole with the rest of the constitution, and that ideology manifests itself in a multitude of ways throughout a constitution.

F. The Frequency and Distribution of the Archetypes

Most preambles lean noticeably in the direction of a particular archetype. The overall mean and median scores for each of the three ideological topics are summarized in Table 10. Based solely on the mean scores, one might conclude that the average preamble is 56% universalist, 31% statist, and 12% liberal in content. The mean and median scores are somewhat misleading, however, because few preambles have average scores. More revealing is Figure 4, a triangular plot that depicts the ideological breakdown of every preamble. Each point represents a specific preamble, and its position within the triangle reflects the amount of each topic that the preamble in question contains. Preambles at the lower-left vertice are wholly universalist, while those at the lower-right vertice are entirely statist and those at the top vertice are entirely liberal. Those at the center of the triangle contain equal amounts of all three topics. A disproportionate number of preambles are clustered toward the vertices and edges of the plot, which reflects the fact that preambles tend to be lopsided in ideological content.

At the same time, most preambles incorporate language associated with more than one ideological genre. Although pure specimens of each archetype do exist, they are relatively rare. Around 10% of all preambles might be characterized as ideologically pure, in the sense of drawing more than 90% of their verbal content from a single archetype. The majority of the extreme specimens belong to the universalist archetype: of the 171 preambles analyzed, fourteen are more than 90% universalist,[164] while only four preambles are more than 90% liberal in content[165] and another four are more than 90% statist.[166] Further details can be found in Figures 5, 6, and 7, which are histograms that show the distribution of liberalism, statism, and universalism scores, respectively. Within each histogram, the number atop each vertical bar indicates the percentage of all constitutions that scored within a particular range.

The most prevalent of the three ideological strains is universalism. The universalist lexicon makes up a significant proportion of the majority of preambles: the mean universalism score for all preambles as of 2012 is 0.56 and the median score is 0.60, meaning that half of all preambles contain at least 60% universalist content. Only 8% of preambles contain less than 10% universalist content. Statist content, by comparison, appears in fewer preambles and accounts for significantly less of the average preamble than universalist content but is still more widespread

[164] *See infra* Table 7 (listing the ten most universalist preambles, all of which score over 0.9); Appendix I (listing the universalism scores for all preambles).

[165] *See supra* Table 3 (listing the ten most liberal preambles, only four of which score over 0.9).

[166] *See supra* Table 5 (listing the ten most statist preambles, only four of which score over 0.9).

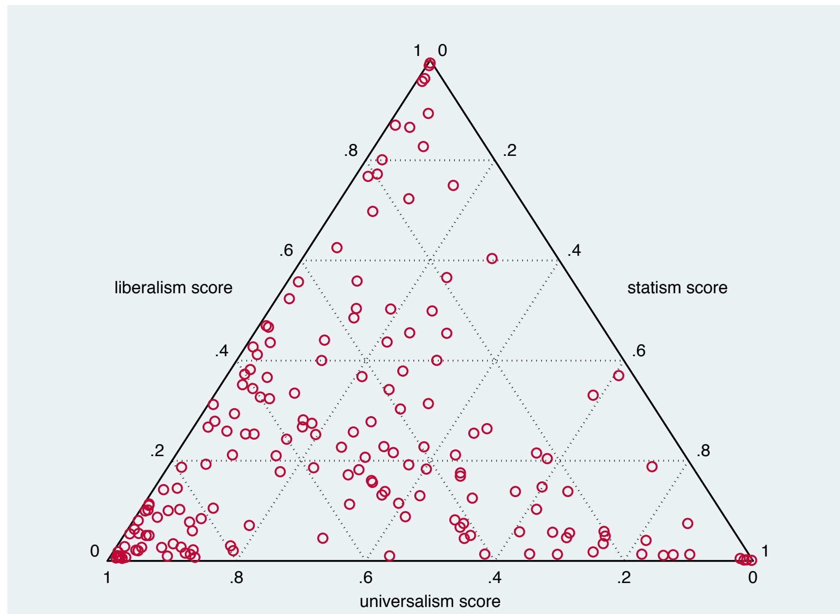
than liberal content. As Figure 6 shows, a majority of preambles contain at least 25% statist content, but over a quarter of preambles contain less than 10% statist content.

The least prevalent of the three, the liberal lexicon, is disproportionately concentrated in a minority of preambles. Over two-thirds of preambles contain less than 10% liberal content; over half contain less than 5%. The mean proportion of liberal content is 0.12, while the median proportion is a mere 0.04. The gap between the mean and the median reflects the existence of a small handful of extremely liberal preambles that skew the mean upward.[167] Even among the ten most liberal preambles, the proportion of liberal content drops off precipitously: only four preambles have liberalism scores greater than 0.9, while the tenth most liberal preamble in the world, that of Samoa, scores only 0.55.[168]

Table 10: Average topic prevalence scores

	Mean score	*Median score*
Topic 1 (liberal)	0.1238	0.0416
Topic 2 (statist)	0.3119	0.2657
Topic 3 (universalist)	0.5643	0.6045

Figure 4: Plot of topic prevalence scores



[167] Three preambles—those of the United Kingdom, Australia, and Tonga—receive liberalism scores over 0.95. *See supra* Table 3.

[168] *See supra* Table 3.

Figure 5: Distribution of liberalism scores, 2012

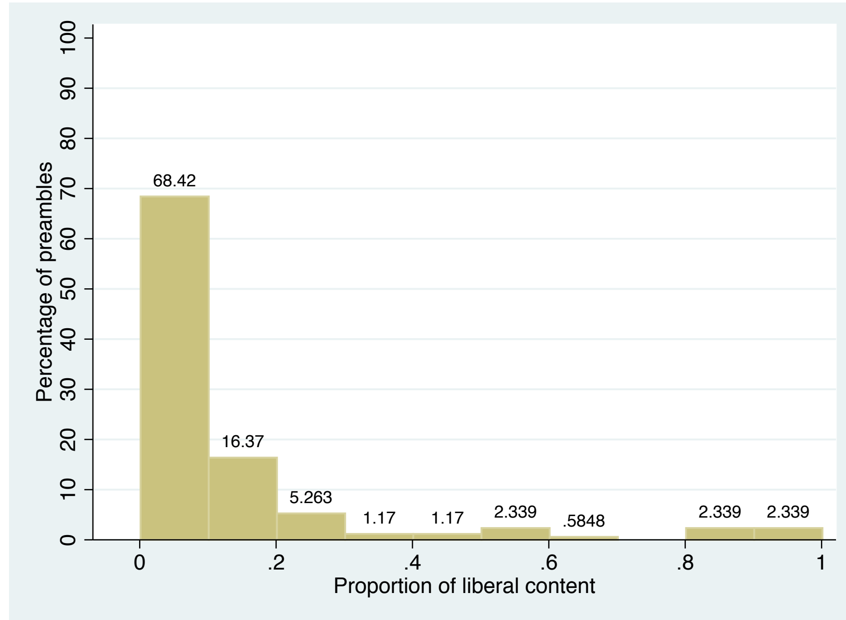


Figure 6: Distribution of statism scores, 2012

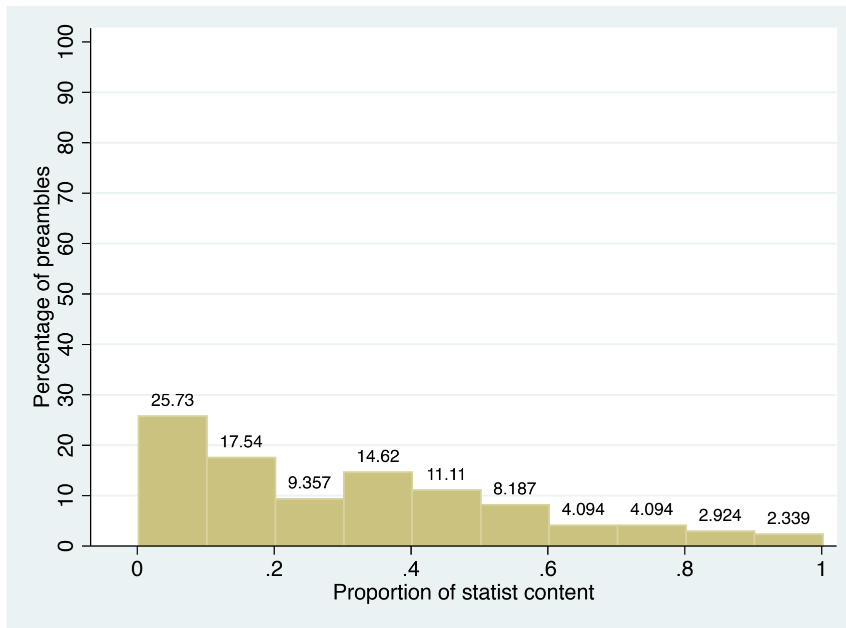
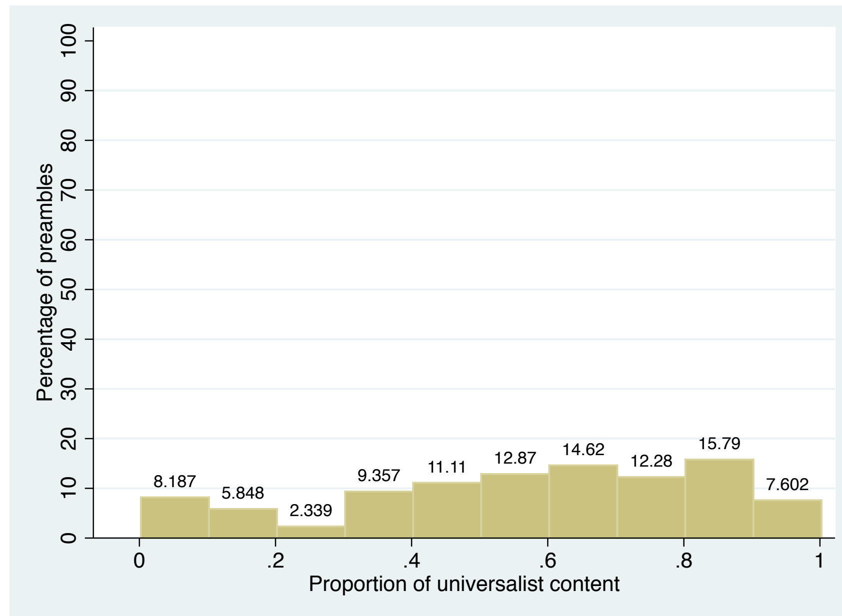


Figure 7: Distribution of universalism scores, 2012



The high prevalence of universalism invites a host of explanations. As illustrated by some of the findings in Part V.D,[169] the collective vocabulary of constitution-makers reflects the gravitational pull of a post-war international legal order that combines a growing array of regional and international institutions for articulating and promoting supranational norms with an overarching ideological commitment to the supremacy and universality of those norms.[170] Other universalizing influences include the various phenomena that fall under the rubric of globalization.[171] Global competition for trade and capital flows generates economic incentives for the adoption of common constitutional rules,[172] for example, while enhanced opportunities for international interaction may encourage

[169] *See supra* note 131 and accompanying text (noting the strong similarity of the universalist lexicon to the language used in the preambles to the ICCPR and ICESCR).

[170] *See, e.g.*, David S. Law, *Globalization and the Future of Constitutional Rights*, 102 NW. U. L. REV. 1277, 1309–11 (2008) (discussing how international lenders and trading partners deliberately encourage the protection of property rights); *id.* at 1318–19 (discussing the conditioning of financial assistance and trade relations upon compliance with human rights norms); Mark Tushnet, *The Inevitable Globalization of Constitutional Law*, 49 VA. J. INT'L L. 985, 989 (2009) (noting the deliberate efforts of transnational NGOs to advance a "universalist understanding of human rights" in domestic settings); sources cited *supra* note 26.

[171] *See* Law, *supra* note 170, at 1299–1301 (summarizing the factors and measurements that make up the "multifaceted phenomenon" of globalization).

[172] *See, e.g.*, SCHILL, *supra* note 78, at 369–72 (describing the ways in which bilateral investment treaties promote a common global level of protection for the rights of investors); Law, *supra* note 170, at 1321–23 (arguing that network effects from the adoption of common legal standards and competition for human and financial capital, among other factors, incentivize countries to offer similar bundles of negative rights that are attractive to investors and skilled workers).

a belief on the part of constitutional policymakers that they are engaged in a common global enterprise.[173] From a functional perspective, the nebulous and anodyne nature of much universalist content also facilitates its inclusion in a wide variety of constitutions. Core universalist concepts and values like "justice," "freedom," "rights," and "democracy" command broad assent and international approval in part because they are so abstract and ill-defined: because they are capable of meaning virtually all things to all people, they can find a home in virtually any constitution. Moreover, the popularity of such terminology feeds on itself: the more popular it becomes, the more anodyne and easily adopted it becomes.

Some ideological combinations are more common than others. In particular, liberalism and universalism appear more often in conjunction with each other than with statism. All three archetypes are negatively correlated with one another: the more that a preamble draws from one of the three archetypes, the less that it tends to draw from both of the others.[174] The most strongly negative correlations, however, are between statism and the other two ideologies.[175] Liberal and universalist content appear to a greater extent in conjunction with each other than with statist content.

These empirical findings make sense given the inherent compatibilities of the three ideologies. Liberalism and universalism overlap in ways that statism does not. The liberal and universalist archetypes share in common a favorable predisposition toward limitations upon state sovereignty: both universalism's insistence upon mandatory norms that apply to all states and liberalism's distrust of the state can be employed to justify constitutional limits on state power. By contrast, the statist archetype's depiction of the state as the embodiment of a distinctive political community offers less ideological support for the constitutionalization of universal norms (which by definition do not stem from the community) or negative rights (which by definition restrict the will of the community).

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[173] *See* Slaughter, *supra* note 79, at 192–93 (arguing that expanded opportunities for international interaction leads constitutional court judges "to recognize each other as participants in a common judicial enterprise"). *But see* Law, *supra* note 16, at 1024–26 (arguing on the basis of empirical evidence from East Asia that transnational judicial interaction is not genuinely global or universal in nature but instead balkanized into competing and "somewhat insular" "jurisprudential networks").

[174] Because the prevalence of each topic is measured as a proportion of the document, the prevalence of the three topics must always sum to one. It is therefore impossible for all three topics to be positively correlated with each other: increased prevalence of two topics at the same time can only occur at the expense of the third topic. It is possible, however, for two topics to be positively correlated with each other as long as they are both negatively correlated with the third topic.

[175] Topic correlations were calculated using the topicCorr command in STM 1.1.0. The correlation coefficients are -0.359 for the liberal and universalist topics, -0.534 for the liberal and statist topics, and -0.597 for the statist and universalist topics.

G. The Rise of the Universalist Archetype Over Time

If universalism does indeed reflect the transformation and expansion of the post-war international legal order as argued in Part III, then the universalist archetype should have become more popular in recent decades. Analysis of historical preambles over the course of the last century confirms that this is precisely the case.

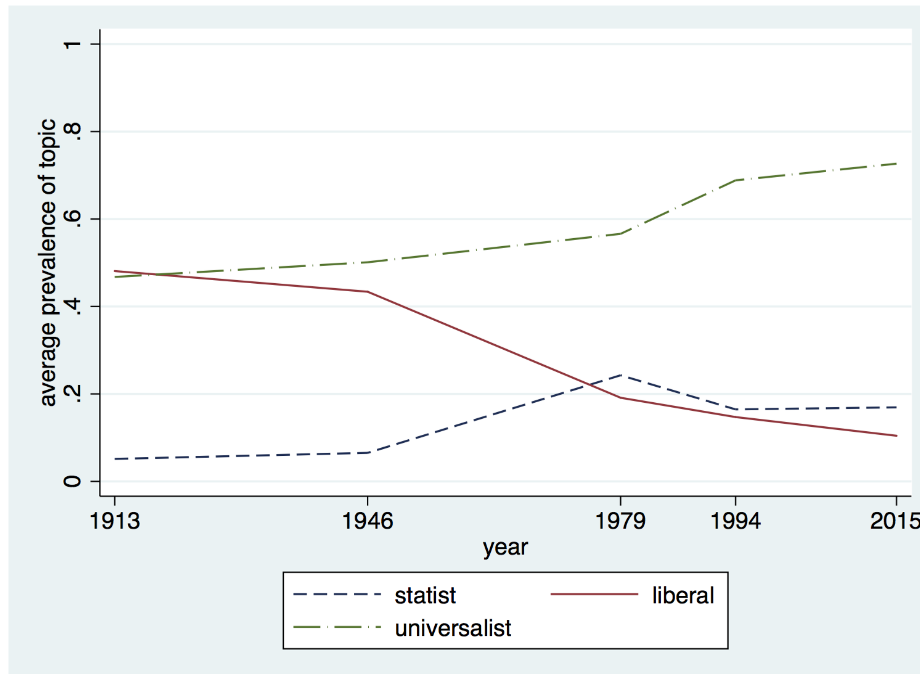
To capture changes in the popularity of each archetype over time, I analyzed the full text of all constitutional preambles in force as of the years 1913, 1946, 1979, 1994, and 2015. The sampled years and intervals capture various eras of particular relevance to constitution-making over the course of the last century. The years 1913 and 1946 mark the outbreak of World War I and the end of World War II respectively. Constitution-making circa 1979 reflects the twin influences of the Cold War, which bred deep divisions in global thinking about human rights,[176] and the decolonization of Africa and Asia, which resulted in the creation of numerous new states and constitutions.[177] The end of the Cold War and the collapse of the Soviet Union spawned a wave of constitution-making that came to fruition by 1994,[178] and 2015, the most recent year for which data is available, brings us to the present. The resulting population of 528 preambles was analyzed using the same methodology described above in Part V.C. Estimation of a three-topic model in STM using the time-series data yields essentially the same three topics as those estimated from the 2012-only data and described above in Part V.D. Figure 8 depicts the average level of each archetype across all preambles in force as of each of the key years mentioned above.

Figure 8: Average prevalence of each archetype, 1913-2015

[176] *See* PAUL GORDON LAUREN, THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS: VISIONS SEEN 239–40 (3d ed. 2011) (observing that the political divisions of the Cold War manifested themselves in the substantive divide between the negative civil and political rights found in the ICCPR and the positive social and economic rights found in the ICESCR).

[177] *See id.* at 235–38 (describing the extent to which Asia and Africa remained under colonial rule at the end of World War II, and the subsequent push for recognition of the right to self-determination at the United Nations); W. DAVID MCINTYRE, WINDING UP THE BRITISH EMPIRE IN THE PACIFIC ISLANDS 7 (2014) ("Of the 192 member countries in the United Nations by the first decade of the twenty-first century, 143 (roughly three-quarters) were former European colonies, of which 70 were once under some form of British rule.").

[178] Constitution-making activity spiked in the years 1991 through 1993: a total of 14, 19, and 10 new constitutions were adopted in 1991, 1992, and 1993 respectively, versus 7 in 1990 and 7 in 1994. *See* Comparative Constitutions Project, *supra* note 132 (containing a variable "evnttype" that captures whether a given country adopted a new constitution in any given year); *see also* ELKINS ET AL., *supra* note 1, at 112, 113 fig.5.2 (observing that "constitutions tend to be written in waves, typically following the end of great conflicts like World War II and the Cold War," and noting a spike in "the probability of a new constitution" in the early 1990s).



As Figure 8 shows, the three ideological archetypes are distinguished by different periods of peak popularity. At the dawn of World War I, liberalism was the most prevalent of the three, followed very closely by universalism, while statism barely existed as a genre. Whereas the interwar period was a time of gentle decline for the liberal archetype, this decline accelerated following World War II. The average level of liberal content has declined from roughly fifty percent a century ago to less than ten percent now, and the liberal content that does remain is heavily concentrated in a small number of preambles, as seen in Figure 5. Moreover, the absolute number of highly liberal preambles has declined only slightly over time, which suggests that liberalism's decline is attributable more to the adoption of new, nonliberal preambles than to the revision of existing, highly liberal preambles.

From World War II through the late 1970s, both universalism and statist language grew in popularity at the expense of universalist language. This era saw statism hit its peak: it not only gained ground on universalism, but also supplanted liberalism as the chief competitor to universalism. The fact that statism's peak popularity coincided with the decolonization of Africa and Asia supports the view that post-independence, post-colonial constitutions exhibited a leftist or revolutionary streak and rejected ideological vestiges of monarchy and imperial rule. The statist archetype subsequently fell back in prevalence by the end of the Cold War, which could be explained by the repudiation of communism and the concomitant embrace of universalism as the most obvious and convenient replacement for statism among newly independent post-Soviet states.

Over the last two decades, however, not only has the statist archetype stabilized in popularity, but it has even shown signs of minor revival. Both the

average level of statist content and the absolute number of statist preambles have rebounded slightly since 1994. One possible explanation is that constitutional ideology may reflect and express concerns generated by the simultaneous successes and shortcomings of political and economic liberalization. In societies that have achieved civil and political freedom but now experience growing economic inequality as a consequence of liberalization, conditions are ripe for talk of economic security and positive rights to join the language of limited government and negative rights in the constitutional lexicon. It may also be the case that, as the ideological divisions of the Cold War and the stigma of Soviet-era constitutionalism continue to fade into memory, resistance to statism has faded as well.

The clear victor of the twentieth century was universalism, which increased in prevalence from slightly less than half of the average preamble circa 1913 to nearly three-quarters of the average preamble as of the present. The rise of universalism may be acting as a barometer for such factors as the strength of the international legal order and the homogenizing influence of globalization. The popularity of universalism's generic constitutional vocabulary, however, does not appear to be evidence of constitutional convergence. Statism may be a minority taste, but it shows no signs of impending extinction.

This seemingly incongruous combination of increasingly popular generic constitutional language, on the one hand, and persistent and profound ideological differences among constitutions, on the other hand, cannot be reduced to a pattern as simple as either convergence or divergence. It does, however, echo Law and Versteeg's earlier finding of "constitutional polarization."[179] Using ideal-point estimation techniques to identify patterns in constitutional bills of rights, they find that constitutions contain a combination of generic provisions that are common to most constitutions and ideologically divisive elements that sharply differentiate statist from liberal constitutions.[180] The fact that analysis of constitutional preambles using radically different empirical techniques paints a similar picture suggests that the earlier finding of constitutional polarization was neither a fluke nor specific to bills of rights.

A constitution is a product not just of a particular place, but also of a particular time. There are fashions and trends in constitution-making as in any other human activity: a constitution written in 1787 will read in predictably different ways from one written in 1987.[181] It should come as no surprise if constitutions bear

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[179] *See* Law & Versteeg, *supra* note 11, at 1239 (suggesting that the ideological patterns exhibited by the rights-related provisions of the world's constitutions reflect "not a straightforward dynamic of constitutional convergence, but rather a process of constitutional polarization that encompasses elements of both convergence and divergence").

[180] *See id.* at 1239–43.

[181] *See* Mila Versteeg & Emily Zackin, *Constitutions Un-Entrenched: Toward an Alternative Theory of Constitutional Design*, __ AM. POL. SCI. REV. __ (forthcoming) (reporting that, among continental European countries, older constitutions tend to be shorter in length and more highly entrenched than newer constitutions).

the marks of such momentous events as the transformation of the international legal order, the decolonization of Africa and Asia, and the collapse of the Soviet Union. Much as the rings of a tree convey the conditions of its life,[182] the constitutions of the world encode the international political and ideological climate at the time of their adoption. Historical developments of sufficient magnitude can be expected to induce ideological shifts in constitution-writing at the global level. The findings presented here hold out the possibility that these shifts can be measured empirically and even quantified, given the right set of tools.

H. Why Translation Error Is Unlikely to Undermine the Findings

The fact that the preceding analysis relies on documents that have been translated from a wide range of languages into English raises the question of whether and to what extent the imprecisions or idiosyncrasies of particular translations might be expected to distort the findings. The answer is that translation error is unlikely to affect the type of analysis used in this Article unless it is relatively severe and pervasive.

To understand why topic modeling is inherently robust against all but the most egregious translation errors, it is helpful to distinguish between types of translation error. Some translation errors are relatively subtle in the sense that the original and translated words refer to different but related concepts (for example, "dignity" and "privacy"). In such cases, even though the translation is inaccurate, both the original and the translated word are likely to appear in conjunction with similar vocabulary: the words that tend to neighbor "dignity" are likely to be similar to those that tend to neighbor "privacy." Other translation errors are more severe in the sense that the original and translated words refer to unrelated concepts (for example, "president" and "precedent"). Because the original and the translation have such different meanings, they tend to be used in very different contexts: the words surrounding "president" are likely to be quite different from those surrounding "precedent."

A logical distinction can also be drawn between the mistranslation of different concepts into the same word (which we might call lumping error), and the mistranslation of one concept into one or more different concepts (splitting error). Translation of both "dignity" and "privacy" into "dignity" would be an example of lumping error, while translation of "dignity" into "privacy" and "autonomy" in addition to, or in lieu of, "dignity" would be an example of splitting error.

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[182] The number of rings reveals the age of the tree, while the thickness of each ring reveals the climatic conditions that the tree faced in the corresponding year of its life. *See* W.J. Robinson, *Dendrochronology in Western North America: The Early Years*, *in* METHODS OF DENDROCHRONOLOGY: APPLICATIONS IN THE ENVIRONMENTAL SCIENCES 1, 1–7 (E.R. Cook & L.A. Kairukstis eds., 2013) (discussing early use of tree rings as historical indicators of climate).

Combining the distinctions between subtle and gross error, and between lumping and splitting error, yields the typology of translation errors set forth in Table 11.

Topic modeling copes well with subtle translation error for the same reason that it copes well with synonyms. Because a topic consists of a set of words that appear in conjunction with each other, any words that share similar neighboring words in common will tend to be sorted into the same topic. Thus, it makes little difference if the same word is translated in a multitude of ways (splitting error): as long as both the original and the translated word are used in similar verbal contexts, they will be (correctly) sorted into the same topic. Likewise, no harm is done if different concepts are mistranslated into the same word (lumping error), as long as the original words are used in sufficiently similar verbal contexts that they would have been sorted into the same topic anyway.

It is also worth noting that estimates of topic *prevalence*, which are central to the findings of this Article, are inherently less sensitive to the mistranslation of individual words than estimates of topic *content*, which play only a supporting role in the context of this Article. Whereas estimation of topic content involves the association of specific words with specific topics, estimation of topic prevalence merely involves measurement of the relative proportion of each document dedicated to each topic. As a result, it is possible for topic prevalence to be largely correct even if topic content is incorrect due to translation error. For example, if "dignity" is always mistranslated as "privacy," then a topic content model cannot associate "dignity" with a topic because the word simply does not appear in the data. However, it is still possible to estimate the prevalence of a topic that encompasses both words because "privacy" serves as a proxy for "dignity."

Moreover, translation error that is egregious enough to distort the results of the topic model will often be easy to detect. Specifically, to the extent that gross translation error is frequent enough to result in the false association of a word with a topic, those false associations will be highly conspicuous and inherently prone to detection without need for resort to diagnostic tests. A word that bears no relation to the rest of the vocabulary associated with a topic is, by definition, an outlier that should be should be fairly evident from examination of the vocabulary. For instance, in a topic dominated by words such as "court," "judge," "appeal," "jurisdiction," and "precedent," the presence of the word "president" would stand out. In effect, topic content estimates serve as a diagnostic tool for identifying systemic translation errors that might affect topic prevalence.[183]

Table 11: Types of translation error and their consequences for topic modeling

[183] *See* Lucas et al., *supra* note 117, at 270–71 (using the results of a topic content model to pinpoint a mistranslation of "Edward Snowden" that appears frequently in Chinese social media but never in Arabic social media).

	Lumping error (different concepts are treated as synonyms)	*Splitting error (a concept is translated into one or more dissimilar concepts)*
Subtle error (confusion of related concepts)	*Example*: "dignity" and "privacy" are both translated as "privacy." *Consequence*: the word will likely be assigned to the correct topic, as long as the topics are not very narrowly defined.	*Example*: "dignity" is translated as "privacy" in addition to, or in lieu of, "dignity." *Consequence*: both words will likely be correctly assigned to the same topic, as long as the topics are not very narrowly defined.
Gross error (confusion of unrelated concepts)	*Example*: "president" and "precedent" are both translated as "president." *Consequence*: Accuracy of topic content may be affected if the error is frequent enough. Specifically, the same word may appear to be associated with multiple topics. However, measures of topic prevalence are unlikely to be affected unless the error occurs frequently and in conjunction with other gross translation errors.	*Example*: "precedent" is sometimes translated as "president" rather than "precedent." *Consequence*: Accuracy of topic content may be affected if the error is frequent enough. However, the erroneous inclusion of an unassociated word in a topic will ordinarily be apparent from inspection of topic content. Measures of topic prevalence are unlikely to be affected unless the error occurs very frequently and in conjunction with other gross translation errors.

CONCLUSION

Every nation desires a creation myth; every constitution seeks to justify and rationalize the state. These aspirations are familiar, and so too are the ways in which constitutions strive to fulfill them. The liberal, statist, and universalist strains of constitutional rhetoric are so familiar and pervasive that they can fairly be described as archetypal. The places, names, and dates change from one constitution to the next, but the underlying ideological narratives are easily recognizable and highly derivative. Yet constitution-making continues to enjoy an air of romance. Political revolutionaries dream of writing new constitutions, while constitutional preambles in particular are said to be an ideal vehicle for the expression of unique national identity and values. The irony is that the language of revolution, nation-building, and self-expression has become standardized, conventional, and generic. When a constitution recounts the story of the nation, repudiates the past, and

declares bold aspirations for the future, it does so using well-worn verbal and ideological tropes that conform to familiar patterns.

The existence of competing constitutional models or archetypes holds out the possibility of a narrowing of the longstanding divide between comparative private law and comparative public law.[184] Central to the field of comparative private law is the notion that the laws of different countries can be grouped into a small number of legal families or traditions, such as the common law and civil law families.[185] There is an equally strong tradition in the field, however, of assuming that constitutions cannot be studied in the same fashion. Comparative legal scholars dating back at least as far as Montesquieu[186] have argued that constitutional law, unlike private law, is too country-specific to permit the discussion of constitutional groupings or families.[187] This blanket rejection of

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[184] *See, e.g.*, Claes, *supra* note 111, at 223 ("While the discipline of constitutional comparison is old and can be traced back to Aristotle's *Politeia*, legal comparative scholarship has for a long time favoured the field of private law."); Cheryl Saunders, *Towards a Global Constitutional Gene Pool*, 4 NAT'L TAIWAN U. L. REV., no. 3, 2009, at 1, 8 (noting "the exclusion of public law from much comparative law discourse"); Jacques Ziller, *Public Law*, *in* ELGAR ENCYCLOPEDIA OF COMPARATIVE LAW, *supra* note 111, at 744, 745 (observing that "comparative law is still often considered a matter for private law," and that "[m]ost general handbooks of comparative law or foreign legal systems" rarely focus on "matters of public law").

[185] This taxonomic enterprise is the subject of perennial criticism but remains a defining preoccupation of the literature. *See, e.g.*, MARY ANN GLENDON ET AL., COMPARATIVE LEGAL TRADITIONS IN A NUTSHELL 64–65 (4th ed. 2015) (noting that, notwithstanding an increasing tendency to "blur the distinction" between the civil and common law traditions, "significant differences remain"); H. PATRICK GLENN, LEGAL TRADITIONS OF THE WORLD (4th ed. 2010) (acknowledging the influence of the civil law-common law dichotomy while rejecting it as descriptively inadequate); Ziller, *supra* note 184, at 744, 746 (observing that "comparatists focusing on private law continue to use the civil law/common law divide as a major taxonomy for legal families even though the number of writings challenging its relevance are increasing"); Pargendler, *supra* note 151, at 1043 ("While comparativists have over time become increasingly sophisticated about the limitations of legal family categories . . . many, if not most, comparative law books and treatises continue to be organized around this framework."); Rudolf B. Schlesinger, *The Past and Future of Comparative Law*, 43 AM. J. COMP. L. 477, 480–81 (1995) (arguing that, although "it has become fashionable . . . to downplay the traditional differences between civil law and common law," the common law and civil law traditions continue to be characterized by deep substantive and cognitive differences that create obstacles to integration of the two traditions).

[186] *See, e.g.*, HIRSCHL, *supra* note 108, at 129 (quoting Montesquieu); Kahn-Freund, *supra* note 1, at 7 (quoting Montesquieu's *De l'esprit des lois*) ("Les lois politiques et civiles de chaque nation … doivent être tellement propres au peuple pour lequel elles sont faites, que c'est un grand hazard si celles d'une nation peuvent convenir à une autre."); Vlad Perju, *Constitutional Transplants, Borrowing, and Migrations*, *in* THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW 1304, 1309 (Michel Rosenfeld & Andras Sajó eds., 2012) (identifying Montesquieu, Hegel, and Savigny with the "mirror theory of law" that views a legal system as the reflection of "the spirit of the community"); Tushnet, *supra* note 1, at 1265 (observing that Montesquieu "comes close to an express statement that one constitutional system cannot learn from another").

[187] *See, e.g.*, BLAUSTEIN, *supra* note 11, at viii (deeming it a "basic rule that a constitution must be autochthonous, that it must spring from the soil, that it must be custom-made to meet the specific

taxonomy as inapplicable to constitutional law has contributed to the exclusion of comparative public law from the mainstream of comparative law scholarship.[188] The classification of constitutions into ideological genres, however, opens the door to a rapprochement between comparative public law and comparative private law by incorporating taxonomy into the comparative study of constitutional law and thus introducing constitutional scholars to the epistemological debates at the heart of comparative law.

The fact that constitutional taxonomy is intellectually viable does not mean, however, that the existing concepts and typologies of comparative private law can be imported wholesale into the study of twenty-first-century constitutionalism. A plausible typology of constitutional systems cannot merely replicate the traditional categories of comparative private law but must also contend with factors of particular significance for constitutional law, such as the centrality of ideology to constitution-making and the expansion of international law into the constitutional domain. Neither the customary dichotomy between common law and civil law systems nor the various refinements thereof[189] can adequately account for constitutional variation because they neither accord a central role to ideology nor address the mounting influence of supranational and international law on domestic

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needs, wants and aspirations of the people for whom it is written"); HEINZ KLUG, CONSTITUTING DEMOCRACY: LAW, GLOBALISM AND SOUTH AFRICA'S POLITICAL RECONSTRUCTION 67 (2000) (noting "the tendency in comparative discussions of constitutions and constitution-making to emphasize the historical uniqueness of individual national constitutions and the futility of the imposition of 'foreign' constitutional formulations"); Zaid Al-Ali & Arun K. Thiruvengadam, *The Competing Effect of National Uniqueness and Comparative Influences on Constitutional Practice*, *in* ROUTLEDGE HANDBOOK OF CONSTITUTIONAL LAW, *supra* note 65, at 427, 427–28 (summarizing the conventional view held by numerous prominent scholars that public law does not travel as well as private law); Claes, *supra* note 111, at 223 (observing that comparative legal scholars have "ascribed to public law a particularism and responsiveness to local values, while private law was seen as embodying common and universal features"); Jacques DeLisle, *Lex Americana: United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond*, 20 U. PA. J. INT'L ECON. L. 179, 289 (1999) (same); Kahn-Freund, *supra* note 1, at 17 ("All rules which organise constitutional, legislative, administrative or judicial institutions and procedures, … are the ones most resistant to transplantation.").

[188] *See* Saunders, *supra* note 184, at 8 (attributing "the exclusion of public law from much comparative law discourse" to a widely held "view that comparative public law—of which constitutional law is, for this purpose, the most challenging subset—is more difficult, to the point of making comparison 'misleading and futile'"); Ziller, *supra* note 78, at 746 (observing that stark constitutional heterogeneity among common law countries makes it impossible to construct a "general taxonom[y] of legal families" around the "civil law/common law divide" that is the focus of comparative private law).

[189] *See, e.g.*, Rafael La Porta et al., *Legal Determinants of External Finance*, 52 J. FIN. 1131, 1131 (1997) (subdividing the civil law tradition into French, German, and Scandinavian variants, and finding that countries of English, French, German, and Scandinavian legal origins exhibit statistically significant differences in the degree to which they protect investors and promote capital markets).

constitutionalism.[190] The Eurocentricity of the traditional typologies also limits their relevance to the practice of constitutionalism in much of the world.[191] But the introduction of constitutional archetypes, and of the universalist archetype in particular, meets these concerns. Universalism is the ideological expression of twenty-first century constitutionalism's transnational tendencies, and categories that are defined in ideological rather than historical or geographical terms can be readily applied to countries that lack historical ties to old Europe.

Both the methodology and the findings of this Article suggest numerous possibilities for future research. From a methodological perspective, topic modeling and other automated content analysis techniques are ripe for experimentation by legal scholars. Although these methods are still in their infancy, the promise that they hold for legal scholarship seems especially great, given the centrality of textual analysis to the study and practice of law.[192] The analysis of constitutional preambles reported here does not begin to exhaust what topic modeling can do with constitutions, let alone other legal texts. Today's automated content analysis techniques cannot replace the interpretation or judgment of an experienced lawyer, but they can and should be used to augment our capacity for analyzing text far beyond what would otherwise be possible. There is probably no field of legal scholarship that could not benefit in some way from the ability to instantly discern complex verbal patterns with perfect reliability in vast bodies of text.

Several of the findings presented here raise questions that cannot yet be answered in full. The initial evidence suggests that the influence of ideology on constitutional drafting is by no means limited to the language found in preambles, and that constitutions exhibit internal ideological coherence.[193] A natural follow-up question is whether constitutions that subscribe to the same ideological model exhibit nonideological similarities as well. In other words, do constitutions conform to a limited number of models only with respect to content that is clearly ideological in nature? Or are ideological archetypes merely the tip of the iceberg, meaning the most visible portion of a mass of similarities that remain largely hidden from view?

In theory, there are a number of reasons to suspect that constitutional ideology and other aspects of constitutional design go hand in hand. One possibility

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[190] *Cf.* Saunders, *supra* note 184, at 9–10 (identifying various reasons why the typologies of comparative private law may be ill-suited to the study of comparative constitutional law, including the "symbolic" and "expressivist" functions of constitutions and the especially close relationship between constitutional law and politics).

[191] *See, e.g.*, UNIVERSITY OF OTTAWA, *supra* note 44 (classifying much of the globe as neither "civil law" nor "common law").

[192] *See supra* note 30.

[193] Analysis of preambles and bills of rights using entirely different methodologies yields measures of constitutional ideology that reinforce rather than contradict each other. *See supra* Table 9 and text accompanying notes 160-161 (discussing the correlation between the ideology scores calculated from the analysis of bills of rights and the ideology scores calculated from automated content analysis).

is that constitutional ideology and constitutional design are so interwoven and interdependent that the choice of one tends as a practical matter to determine the choice of the other. If, for example, a particular ideological narrative is clearly best suited to justifying or rationalizing a particular way of structuring the state, then constitutional design should drive constitutional ideology. Conversely, constitutional ideology might drive constitutional design. Perhaps ideology pervades constitution-making in so many ways, both direct and indirect, that it is difficult to commit to a particular ideological archetype without also committing to a variety of design choices.

Considerations of compatibility, coherence, and convenience may also encourage the wholesale adoption of comprehensive constitutional models over the piecemeal adoption of ideological narratives. Constitution-makers who are drawn to the ideological aspects of a particular constitutional model may find it more convenient and effective to borrow the nonideological components of the model as well. Adhering to a single, coherent model, as opposed to mixing and matching from multiple models, not only economizes on drafting costs, but also reduces concerns about the mutual compatibility of the borrowed elements.[194]

Another possibility is that different influences on constitution-making hold sway over different aspects of a constitution. Ideology might shape preambles and bills of rights, for example, while geography or history might have a greater effect on the choice between presidentialism and parliamentarism. Even if different influences tend to affect different aspects of a constitution, however, these influences may add up to a comprehensive constitutional model. Many of the biggest influences on constitutional design complement and reinforce each other: countries formerly colonized by the same imperial power, for example, tend to share other characteristics such as language, religion, legal tradition, and constitutional ideology.[195] This combination of interrelated and mutually

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[194] This is not to suggest that constitution-makers lack any basis for consciously adopting ideologically incompatible elements. Ideological inconsistency or incoherence within a constitution can, for example, reflect a deliberate strategy of compromise for managing profound ideological disagreement. *See* Lerner, *supra* note 31, at 616 (observing that drafting "strategies of indecisiveness, ambiguity, and vagueness" are a common response to conditions of severe religious factionalization, and that the "liberal constitutional paradigm" in particular may be difficult to sustain in the face of a "clash . . . between competing factions that wish to impose their religious views on the state as a whole").

[195] *See, e.g.*, JEAN-BENOÎT NADEAU & JULIE BARLOW, THE STORY OF FRENCH 192–204 (2006) (discussing the spread of the French language via colonialism); PALMER, *supra* note 58, at 25–37 (discussing how "intercolonial transfer" of overseas possessions from civil law colonizers to common law colonizers produced "mixed jurisdictions" characterized by a combination of private law from the civil law world and public law from the common law world); Terence Ranger, *The Invention of Tradition in Colonial Africa*, *in* THE INVENTION OF TRADITION 211, 211–54 (Eric Hobsbawm & Terence Ranger eds., 1983) (describing the imposition and sometimes enthusiastic adoption of "European neo-traditions" of religion, language, social organization, ideology, and law in colonial Africa); *supra* note 43 and accompanying text (citing scholarship on the correlation among

reinforcing influences ought to yield a constitutional model that is broader in scope and harder to resist than any model that ideology alone could generate.

Preliminary empirical analysis supports the view that constitutional ideology is indeed a tightly integrated part of constitutional drafting. Quantitative measures of constitutional ideology are statistically significant predictors of a wide variety of constitutional features, ranging from provisions that specify the national flag and capital to limitations on future amendment and the choice of presidentialism over parliamentarism.[196] The relationship between constitutional ideology and other aspects of constitutional design remains to be explored in future work. It is clear, however, that the ideological dimensions of a constitution are not confined to a few fanciful sentences of an inconsequential preamble. If ideology is not the soul of a constitution, it is at least a window on the soul.

APPENDIX I:
TOPIC PREVALENCE SCORES FOR THE PREAMBLES OF ALL CONSTITUTIONS AND SELECTED TREATIES AS OF 2012

constitution or treaty	*preamble adopted*[197]	*preamble last amended*	*proportion of preamble content*		
			liberal	*statist*	*universalist*
Afghanistan	2004	--	0.0829858	0.4679658	0.4490483
African Charter	1986	--	0.0475673	0.3817149	0.5707178
Albania	1998	--	0.007113	0.1205282	0.8723587
Algeria	1989	--	0.0215817	0.5401491	0.4382692
American Declaration	1948	--	0.034803	0.1173382	0.8478589
Angola	1993	--	0.0274329	0.488555	0.4840121
Antigua and Barbuda	1981	--	0.1426789	0.0147215	0.8425996
Argentina	1853	--	0.0068275	0.3108905	0.682282
Armenia	1995	2005	0.0072555	0.0988465	0.893898

colonialism, legal system, and constitutional ideology, and noting, inter alia, the statistically significant tendency of common law countries to possess liberal constitutions).

[196] Ordered logit regression analyses were performed in Stata 13 using the constitutional ideology scores reported by Law and Versteeg, cited above in note 11, as predictor variables, and the presence or absence of various constitutional provisions as the dependent variables. Data on the dependent variables was obtained from Version 2.0 of the Comparative Constitutions Project's data on Characteristics of National Constitutions, *supra* note 132. Results were statistically significant at the $p \leq 0.05$ level.

[197] On rare occasions, constitutions are adopted, replaced, then reinstated at a later date. An example is the reinstatement in 1983 of the Argentinian constitution that was originally adopted in 1853. In such cases, the date on which the constitution was originally adopted, rather than the date on which it was reinstated, is treated as the date of preamble adoption.

Australia	1901	--	0.9911741	0.0023747	0.0064512
Austria	--	--	--	--	--
Azerbaijan	1995	--	0.048605	0.24892	0.7024751
Bahamas	1973	--	0.2777147	0.0232397	0.6990456
Bahrain	2002	--	0.1150965	0.5434953	0.3414082
Bangladesh	1972	1979	0.1351334	0.3595298	0.5053369
Barbados	1966	--	0.3905071	0.0212474	0.5882456
Belarus	1994	--	0.0511843	0.1403846	0.8084311
Belgium	--	--	--	--	--
Belize	1981	--	0.0698917	0.0188672	0.9112411
Benin	1990	--	0.0591212	0.4859109	0.4549679
Bhutan	2008	--	0.5118573	0.0432326	0.4449101
Bolivia	2009	--	0.0270884	0.469798	0.5031136
Bosnia and Herzegovina	1995	--	0.0415503	0.2656828	0.6927669
Botswana	--	--	--	--	--
Brazil	1988	--	0.0085296	0.1598731	0.8315973
Brunei	1959	--	0.9226754	0.0092843	0.0680403
Bulgaria	1991	2007	0.0067196	0.0639824	0.929298
Burkina Faso	1991	2012	0.00728	0.2212234	0.7714966
Burundi	2005	--	0.0135872	0.3856937	0.6007191
Cambodia	1993		0.0356927	0.6144903	0.349817
Cameroon	1972	1996	0.4317509	0.0232016	0.5450476
Canada	1867	1982	0.832357	0.0097953	0.1578477
Cape Verde	1992	--	0.0379497	0.8315536	0.1304967
Caribbean Charter	2001	--	0.032691	0.3803227	0.5869863
Central African Republic	2004	--	0.1015859	0.4877145	0.4106995
Chad	1996	--	0.0048064	0.5728636	0.42233
Chile	2005	--	0.1079205	0.6375702	0.2545093
China	1982	2004	0.0015423	0.9896949	0.0087628
Colombia	1991	--	0.0415839	0.1304137	0.8280024
Comoros	2001	2009	0.2818861	0.0742042	0.6439098
Congo, Dem. Rep.	2005	--	0.0040434	0.635892	0.3600646
Congo, Rep.	2002	--	0.0168002	0.3386661	0.6445338
Costa Rica	1949	--	0.0228486	0.3023215	0.6748298
Cote d'Ivoire	2000	--	0.0068454	0.213694	0.7794606
Croatia	1991	--	0.1622249	0.6411229	0.1966522
Cuba	1976	--	0.0069206	0.9039497	0.0891297
Cyprus	--	--	--	--	--
Czech Republic	1993	2002	0.0088913	0.0654599	0.9256488

Denmark	--	--	--	--	--
Djibouti	2010	--	0.027332	0.2065287	0.7661394
Dominica	1978	--	0.1100988	0.0125778	0.8773234
Dominican Republic	2010	--	0.0121451	0.186754	0.8011008
ECHR	1953	--	0.2192227	0.0555746	0.7252027
Ecuador	2008	--	0.0074109	0.267187	0.7254021
Egypt	2012	--	0.0805264	0.5595481	0.3599255
El Salvador	--	--	--	--	--
Equatorial Guinea	1991	--	0.0211776	0.4262466	0.5525758
Eritrea	1997	--	0.0148345	0.466267	0.5188986
Estonia	1992	--	0.1014479	0.2993218	0.5992303
Ethiopia	1994	--	0.0131939	0.4087684	0.5780377
Fiji	1997	--	0.012168	0.0333087	0.9545234
Finland	--	--	--	--	--
France	1958	2005	0.0258586	0.3433326	0.6308088
Gabon	1991	--	0.0059099	0.1898538	0.8042363
Gambia	1996	--	0.0222458	0.3721428	0.6056114
Georgia	1995	--	0.0551359	0.3104947	0.6343695
Germany	1949	1992	0.0198353	0.1419411	0.8382236
Ghana	1992	--	0.0531845	0.0353041	0.9115113
Greece	1975	--	0.5327482	0.086736	0.3805158
Grenada	1992	--	0.0414407	0.0163624	0.9421969
Guatemala	1985	--	0.0621565	0.3128057	0.6250377
Guinea	2010	--	0.0416408	0.5972594	0.3610998
Guinea-Bissau	1984	1991	0.0534845	0.7769086	0.1696068
Guyana	1980	--	0.0095943	0.4789839	0.5114218
Haiti	1987	2012	0.0308693	0.3509111	0.6182196
Honduras	1982	--	0.0106973	0.3472676	0.6420351
Hong Kong (China)	1997	--	0.150134	0.7689269	0.0809392
Hungary	2011	--	0.1574192	0.3264343	0.5161465
ICCPR	1966	--	0.0481999	0.0249317	0.9268684
Iceland	--	--	--	--	--
ICESCR	1966	--	0.0459683	0.0354698	0.9185619
India	1949	1976	0.1689056	0.109201	0.7218934
Indonesia	1959	--	0.1338672	0.4196309	0.4465019
Iran	1979	1989	0.02952	0.8802034	0.0902766
Iraq	2005	--	0.0673172	0.2548659	0.6778169
Ireland	1937	--	0.2817778	0.181382	0.5368402

Israel[198]	1948	--	0.1136296	0.3352928	0.5510776
Italy	--	--	--	--	--
Jamaica	--	--	--	--	--
Japan	1946	--	0.0592214	0.0693303	0.8714483
Jordan	1952	1984	0.8740893	0.036433	0.0894777
Kazakhstan	1995	--	0.0234485	0.0928957	0.8836558
Kenya	2010	--	0.0356937	0.0502246	0.9140817
Kiribati	1979	--	0.2006904	0.1241438	0.6751658
Korea, North	1998	--	0.0012802	0.9869554	0.0117644
Korea, South	1948	1987	0.1675361	0.3961603	0.4363035
Kosovo	2008	--	0.0078014	0.5066187	0.4855799
Kuwait	1962	--	0.0778208	0.5688575	0.3533217
Kyrgyz Republic	2010	--	0.0320807	0.1381538	0.8297655
Laos	1991	--	0.0076934	0.8752437	0.1170629
Latvia	1922	--	0.0322513	0.3135077	0.654241
Lebanon	1990	--	0.0544642	0.3333372	0.6121986
Lesotho	--	--	--	--	--
Liberia	1986	--	0.0185548	0.1554931	0.8259522
Libya	1969	--	0.0121425	0.6692418	0.3186157
Liechtenstein	1921	--	0.824212	0.0425221	0.1332659
Lithuania	1992	--	0.0090394	0.3317443	0.6592162
Luxembourg	--	--	--	--	--
Macedonia	2001	--	0.0180695	0.605551	0.3763795
Madagascar	2010	--	0.0203988	0.2482797	0.7313214
Malawi	1994	--	0.0252533	0.1293856	0.8453611
Malaysia	1957	--	--	--	--
Maldives	2008	--	--	--	--
Mali	1992	--	0.0053945	0.3901075	0.604498
Malta	1964	--	--	--	--
Marshall Islands	1979	1990	0.0227088	0.0610651	0.916226
Mauritania	1991	--	0.0198549	0.3879026	0.5922425
Mauritius	--	--	--	--	--

[198] For purposes of calculating the 2012 topic prevalence scores, the text of the 1948 Declaration of the Establishment of the State of Israel was treated as Israel's constitutional preamble. *See* Orgad, *supra* note 27, at 733 (observing that Israeli courts have used the 1948 Declaration of Independence as a "quasi preamble"). The Israeli constitution consists not of a single document but instead a series of enactments styled "Basic Laws," two of which explicitly reference "the principles set forth in the Declaration of the Establishment of the State of Israel." Basic Law: Human Dignity and Liberty, § 1 (1992) (Isr.); Basic Law: Freedom of Occupation § 1 (1994) (Isr.); *id.* § 11 (amending § 1 of the Basic Law: Human Dignity and Liberty to include a reference to the Declaration).

Mexico	--	--	--	--	--
Micronesia, Fed. Sts.	1978	--	0.0727379	0.0214067	0.9058553
Moldova	1994	2006	0.0713421	0.2501031	0.6785548
Mongolia	1992	--	0.032049	0.2961618	0.6717892
Montenegro	2007	--	0.0289734	0.2167197	0.7543069
Morocco	2011	--	0.1042515	0.5321402	0.3636083
Mozambique	2004	--	0.0073721	0.5210843	0.4715436
Myanmar	2008	--	0.0767139	0.8592078	0.0640782
Namibia	1990	--	0.1150993	0.1387218	0.7461788
Nepal	2006	2010	0.1738696	0.4670846	0.3590458
Netherlands	--	--	--	--	--
New Zealand	1908	1993	0.8891482	0.0312827	0.079569
Nicaragua	1987	--	0.0029134	0.7516208	0.2454657
Niger	2010	--	0.0051058	0.4597367	0.5351575
Nigeria	1999	--	0.1338996	0.0770145	0.7890859
Norway	--	--	--	--	--
Oman	1996	--	0.2669833	0.5618746	0.1711421
Pakistan	1973	--	0.439359	0.2017291	0.3589119
Palau	1981	--	0.0207855	0.1231334	0.8560811
Panama	1994	--	0.009582	0.1595639	0.8308541
Papua New Guinea	1975	--	0.1825638	0.2292733	0.5881629
Paraguay	1992	--	0.0070347	0.4535223	0.539443
Peru	1993	--	0.0590082	0.1290018	0.81199
Philippines	1987	--	0.0436924	0.1375756	0.818732
Poland	1997	--	0.0254833	0.1213159	0.8532008
Portugal	1986	1992	0.0083858	0.7768509	0.2147633
Qatar	--	--	--	--	--
Romania	--	--	--	--	--
Russian Federation	1993	--	0.0092096	0.0596888	0.9311015
Rwanda	2003	2008	0.0106363	0.3680879	0.6212757
Samoa	1962	--	0.5560915	0.0771064	0.3668021
Sao Tome and Principe	1990	--	0.0815278	0.8017477	0.1167245
Saudi Arabia	--	--	--	--	--
Senegal	2001	--	0.0103135	0.4493438	0.5403427
Serbia	2006	--	0.0037739	0.680625	0.3156011
Seychelles	1993	--	0.0158056	0.0820285	0.9021659
Sierra Leone	--	--	--	--	--
Singapore	--	--	--	--	--
Slovak Republic	1992	--	0.058982	0.4095157	0.5315023

Slovenia	1991	--	0.0107665	0.5331914	0.4560421
Solomon Islands	1978	--	0.2418877	0.0377761	0.7203362
Somalia[199]	1990	--	0.0117489	0.7590738	0.2291773
South Africa	1996	--	0.1238537	0.2684143	0.607732
South Sudan	2011	--	0.1577184	0.1993187	0.6429629
Spain	1978	--	0.015377	0.2354149	0.7492081
Sri Lanka	1978	--	0.373992	0.1861411	0.4398669
St. Kitts and Nevis	1983	--	0.1475777	0.0579137	0.7945086
St. Lucia	1978	--	0.1126154	0.013348	0.8740366
St. Vincent & Grenadines	1979	--	0.21308	0.0154408	0.7714791
Sudan	2005	--	0.0498835	0.1757516	0.7743649
Suriname	1987	--	0.0113853	0.3423899	0.6462247
Swaziland	2005	--	0.2994378	0.3363605	0.3642017
Sweden	--	--	--	--	--
Switzerland	1999	--	0.0451776	0.1666905	0.7881319
Syria	2012	--	0.0096141	0.7928197	0.1975663
Taiwan	1947	--	0.0791622	0.4768934	0.4439443
Tajikistan	1994	--	0.0110344	0.1025291	0.8864365
Tanzania	1977	--	0.2421596	0.1100069	0.6478336
Thailand	2007	--	0.6441265	0.3145115	0.041362
Timor-Leste	2002	--	0.0041388	0.8061966	0.1896646
Togo	1992	--	0.0043554	0.505998	0.4896466
Tonga	1875	1988	0.9704684	0.0079026	0.021629
Trinidad and Tobago	1976	--	0.0637764	0.0143106	0.921913
Tunisia	2011	--	0.0061867	0.5785794	0.4152339
Turkey	1982	--	0.117171	0.4337255	0.4491034
Turkmenistan	2008	--	0.0085695	0.145625	0.8458055
UDHR	1948	--	0.1529389	0.0328696	0.8141916
Uganda	1995	--	0.1391275	0.4374224	0.4234502
Ukraine	1996	--	0.0431697	0.4273267	0.5295036
United Arab Emirates	1971	--	0.0783518	0.5832823	0.3383659
United Kingdom[200]	1215	2011	0.9958871	0.0018287	0.0022842
United States	1789	--	0.5039802	0.079724	0.4162957
Uruguay	--	--	--	--	--

[199] The topic prevalence scores for Somalia are calculated using the preamble to the 1990 constitution that was proposed shortly before the onset of civil war but never ratified. The provisional constitution adopted in mid-2012 lacks a preamble. *See* DASTUURKA JAMHUURIYADDA FEDERAALKA SOOMAALIYA [CONSTITUTION] 2012 (Som.).

[200] For an explanation of what counted as the preamble to the constitution of the United Kingdom, see note 114 above.

Uzbekistan	1992	--	0.0067323	0.2116352	0.7816325
Vanuatu	1980	--	0.0437051	0.0971145	0.8591804
Venezuela	1999	--	0.0075588	0.1990191	0.793422
Vietnam	1992	--	0.0021034	0.977399	0.0204976
Yemen	--	--	--	--	--
Zambia	1991	--	0.1548158	0.0422643	0.8029199
Zimbabwe	1979	--	0.0173654	0.194384	0.7882506