

the tools to influence power can take forward. This is something the book's authors know well: conservatives do not hesitate to appropriate social movements' arguments when they find it convenient to do so. This brings us back to the idea of "unaffordable risk," which Halley denounces as a limit to feminist self-critique. We encourage reflection on why all feminists are not in a position to take the same risks, and urge all of us to acknowledge the dominant perspective from which we may be looking at "dominance" feminism.

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*Constituents before Assembly: Participation, Deliberation, and Representation in the Crafting of New Constitutions*. By Todd A. Eisenstadt, A. Carl LeVan, and Tofiq Maboudi. New York: Cambridge University Press, 2017.

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Two fears commonly coincide in this time of constitutional crises: First, that the established constitutional order will prove itself incapable of resolving the problems before it; second, that

efforts by popular movements to alter or replace the existing constitutional order risk a societal regression to something substantially worse. This duality of constitutional fears is manifest in much of the contemporary world—from European debates over the future of the EU, its members, and subnations, to American arguments over proposals for amendments and constitutional conventions in the USA, to the constitutional upheavals throughout South America and Africa. What then must democrats do?

Proponents of the democratic rule of law should seek broad popular participation in constitutional reform. This is the answer implicit in the findings of Todd Eisenstadt, Carl LeVan, and Tofiq Maboudi in *Constituents before Assembly: Participation, Deliberation, and Representation in the Crafting of New Constitutions*, a new cornerstone in a rising scholarship addressing when and how constitutional change produces democratization—as well as when it does not. Finding that “participatory constitution-making ... has a lasting and systematic effect on subsequent democratization,” Eisenstadt et al present a thorough statistical and comparative analysis of constitutional change in 190 countries in the years 1974–2014, of which 119 adopted new constitutions (3, 27). In the process, the authors have constructed the Constitutionalism and Democracy Dataset (CDD) and made it generally available (<http://doi.org/10.17606/M63W25>). Altogether, they provide a substantial empirical and theoretical framework particularly useful to scholars of legal mobilization and social movements, popular law, and constitutionalism and democracy.

In reading this book, we quickly learn that it is the process of constitutional change, not the textual content of the resulting constitution, that truly matters in producing democratization. Perhaps we already suspected as much. But what we lacked, and Eisenstadt, LeVan and Maboudi provide, are clearly articulated models of participation in constitutionalization. Beginning with Chapter 2, they present a series of regression, path, and comparative case analyses that show the power of process and that undermine the kinds of traditional content-centered explanations that the authors describe as symptomatic of “legalistic constitutionalism” (41). In this, these political scientists bring us toward a political sociological dimension of constitutionalism filled with questions about the origins of legal power and the identities of lawmakers. Not only does process matter, they show us, but popular participation matters most when it occurs earlier in the process. Recognizing that formal constitutionalization nearly always moves in three stages—from convening, to debating, and then ratification—this study rejects those approaches that have, “emphasized - even romanticized - referendums, which often take place

only in the final stages of ratification” (51). Instead, it is popular participation in constitutional convening that significantly predicts democratization. Social movements matter.

Of course, when movements matter they do so under circumstances not entirely of their own choosing. Context also matters. Chapter 3 of *Constituents before Assembly* identifies the alternative paths by which constitutions are made. The book presents the question of whether each of the “convening,” “debating,” and “ratification” stages are “popular,” “imposed” from above, or “mixed” in the context of the type of regime in place prior to constitutionalization, whether democratic, personalist, single party, military, monarchic, or mixed non-democratic. This added complexity results in the identification of multiple pathways of constitutionalization. It also reveals that popular participation occurs and is effective under diverse regime types. This revelation the authors explain through a statistical analysis in which they treat “process” as the dependent variable and regime type, political openness, executive power, and various economic and ethno-heterogeneity indicators as predictors. What contributes most to a more participatory process, they show, is the exercise of popular muscle through strike action and votes for the opposition party in the lead-up to constitutional convening.

The reader may by now have the impression that *Constituents before Assembly* is uncritical in its celebrations of popular constitutionalism. That impression would be understandable but mistaken. Beginning with Chapter 4, Eisenstadt, LeVan and Maboudi argue that while the democratizing effects of participatory constitution-making take hold across a “broad range of regimes and regions,” (87), the process of constitutionalization is always contested. Established players—whether leaders in personalist regimes, monarchs, or elites in military juntas, one party states, or democratic republics—usually attempt to use the constitutional change as a legitimation process. This works better in some contexts than others, and it works more often (though not always) where authorities are able to impose and channel the convening, debating, and ratification of constitutions. But even in cases where popular movements succeed in instigating and driving the debate, it remains a debate in which repeat players have certain structural advantages.

What this all means, the authors argue in their final chapters through discussions of a wide range of cases, is that to truly succeed, popular movements cannot at any point withdraw from the field. Instead, they must seek, “structured participation directed into specific proposals at constituent assemblies” (115). Further, such structured participation requires mediation. For the authors, this requires that, “constitution-drafting from below is not simply

about social movements; it is about prompting social movements to ally (and trust) intermediaries,” such as interest groups, political parties, and legal organizations (115). As simple “expressions of popular sentiment,” (141), social movements on their own lack the capacity to bring their sentiments into constitutional articulation.

For me, these last points raise two criticisms. The lesser criticism is that the authors have failed to engage effectively with social movement theory. They admit as much in explaining that their attempts to use social movement theories in their research proved unfruitful. Their frustration is understandable given that theories of contention (e.g. political process, and resource mobilization)—the theoretical tradition whose major works they cite—has limited utility for explaining the decisions and practices of millions of individuals who decide to seek systemic changes that alter the very rules under which contention takes place.

This leads me to my greater criticism, not of the authors, but of the field of social movement studies for failing to recognize and articulate what it has to offer. What might be useful for studying constitutional change as a social movement process, and are missing from *Constituents before Assembly*, are the two other contemporary traditions in social movement theory—those of identification (e.g. collective identity, and collective action frames) and praxis (e.g. historicity, and movement building) (Manski 2018). For movements are not simply “expressive,” they are a cognitive praxis capable of structuring their own future development (Cox and Nilsen 2014; Eyerman and Jamison 1991; Flacks 1988; Flesher-Fominaya 2010; Taylor 2000). Activists in movements may be capable of structuring (to some degree) their own future interventions in convening, debating, and ratifying constitutions, as was classically the case with the African National Congress, the Freedom Charter, and the Constitution of 1996.

These criticisms are intended to suggest some next steps in the project that Eisenstadt, LaVan, and Maboudi have contributed so much to. In building their Constitutionalism and Democracy Database (CDD), the authors began with data provided by Stephen Elkins, Tom Ginburg, and James Melton of the Comparative Constitutions Project (CCP) and added their own new measures of process and participation, as well as data from other sources. With *Constituents before Assembly*, the authors show that popular participation in the process of constitutionalization matters, and that it matters more when it happens earlier in the process; popular convening matters more than popular ratification. Yet as the authors point out, popular movements usually precede convening.

What can be learned about how movements can best prepare for the possibility of constitutional change? Social movement

theory may have something more to offer in addressing this question (Anderson 2013; Lovera-Parmo 2016; Manski 2017); so also might the emergent scholarships of human rights and constitutional change (Blau and Moncada 2006; Smith et al. 2017; Wiener et al. 2012; Iyall Smith et al. 2017), societal constitutionalism (Sciulli 1992; Teubner 2012), new constitutionalism (Arato 2016; Gill and Cutler 2014), and the sociology of constitutionalism (Angel-Cabo and Lovera-Parmo 2014; Blokker and Thornhill 2017), as well as the slightly more venerable legal mobilization tradition (McCann 1998). Perhaps as a practical matter, scholars of constitutional law and society will soon prove capable of providing a full regimen addressing the dual fears of constitutional incapacity on the one hand and regress on the other. If so, it will be in significant part due to the publication of *Constituents before Assembly*, a convincing, clearly communicated, and freshly foundational analysis of constitutional change and democratization that is sure to be of lasting scholarly and public relevance.

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