

**Constitutionalism and Democracy in Asia**  
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The link between constitutionalism and democracy in Asia is, in certain interesting ways, reminiscent of the inter-action between law and order. Law and order comprise a neatly matched term commonly associated with authoritarianism, or autocracy. It is often said – through clenched teeth – that law and order constitute the primary legacy of nineteenth-century colonialism in Asia. However, the disdain with which the term is often used contains a kernel of truth and even a faint wisp of humanity that we would do well to consider further.

Much of Asia today treads a thin line between authoritarianism and populism. The former represents the subjugation of the people to political masters who, only in the most fortunate and rare of circumstances, provide enlightened leadership. The latter spells political chaos, and typically results in metamorphosis into the most vicious sorts of authoritarianism.

If we are to avoid straying from the thin line between authoritarianism and populism – that is, if we are to have law and order without its accompanying evil of a new, home-grown, indigenous colonialism consisting of a master class ruling a subject population – we must pursue constitutionalism.

What do I mean by “constitutionalism”? I am not too humble to admit that my views on that subject derive from the political theories initially advanced by the ancient Greeks. It was Aristotle who referred to constitutionalism as “the arrangement of the offices of a State.” Based on that definition, every State, no matter how badly governed, has a constitution, written or not.

But the mere existence of a constitution does not represent constitutionalism. That is because a constitution, to be respected as viable and democratic, must fulfill certain necessary conditions.

- A constitutional government must, first and foremost, be “**representative**”. The people must decide who is to lead them, and those in office must conduct themselves as representatives of the people.
- Second, enhancement of “**individual rights or liberties**” should be a cornerstone,
- Third, a system of “**checks and balances**” is required of any constitutional government to deter against abuse of power. Constitutional governments, therefore, typically divide power between

the legislature, executive and judiciary, as well as between the center and the State, provincial or local levels of authority.

- Fourth, “**simplicity**” of form and of *modus operandi* is required so that the system can be understood by the people and not only by the professional politicians, and in order that it avoids the pitfalls and loopholes that are the bedfellows of verbosity.
- A fifth requirement is “**procedural stability**”, meaning that certain fundamental procedures of government must *not* be subject to frequent or arbitrary intervention. Citizens must know the basic rules according to which politics are conducted. Stable procedures of government provide citizens with adequate knowledge of the probable consequences of their actions.
- Sixth is “**accountability**”. Measures must be in place to ensure that those who govern consistently account for, and can be held accountable for, their actions on behalf of the governed.
- The final essential element of a constitutional government is “**transparency**”, as only through full *openness and disclosure* about the affairs of government will the people be able to make informed judgments and decisions on the future course of governance.

Written constitutions provide a firm standard by which the legitimacy of government action may be judged. In constitutional democracies, accountability can be enforced through a great variety of regular procedures, including elections, systems of promotion and discipline, fiscal accounting, recall, and referendum.

The accountability of government officials to the citizenry makes possible the citizens’ responsibility for the acts of government. The most obvious example of this process of responsibility and accountability is the electoral process.

In constitutional systems, as we have noted, powers of legislation and enforcement are divided among executive, legislative and judicial components, and the ability of any one person to continue to hold power is subject to periodic recourse through the electorate.

In contrast, totalitarianism amounts to the abdication of constitutionalism. Totalitarian regimes emerge when an organized minority seizes power by force or fraud, or through the apathy of the electorate. Opposition to the dictator is stifled by the imposition of State control over all forms of expression; the institution of clandestine police and intelligence networks; and the suppression or destruction of all opposing political parties.

Autocracy is sometimes difficult to distinguish from democratic rule. As we have often seen, autocracies try to borrow legitimacy by adopting the language of the constitutions of democratic regimes or by camouflaging themselves as “shadow” institutions.

It is common practice in modern totalitarian States to establish such shadow institutions as parliaments or national assemblies, elections and political parties, courts of justice and legal codes, and similar so-called “constitutional” bodies that differ little in appearance from the institutions of genuine constitutional democracies. Similarly, the language of constitutions promulgated by totalitarian regimes is often couched in terms of the doctrines of popular democracy.

Despite the facades, the underlying realities of totalitarian rule are invariably the concentration of power in a single centre and the mobilization of force to prevent the emergence of opposition, democratic or otherwise.

Constitutional democracy is, as its name indicates, based on (1) a constitution, or basic law, and (2) the people’s active participation.

The essence of a constitution is that it formalizes a set of fundamental norms governing the political community and determining the relations between the rulers and the people and the inter-action among the centres of power.

The “political party” is the other chief instrument of constitutional democracy. It is the agency through which the electorate is involved in both the exercise and transfer of power. The party in a constitutional democracy is at once a means of representing a mass electorate in the exercise of power and also a device for the peaceful replacement of one set of power holders with another.

In short, a constitution provides the starting point for the pursuit of democracy and the building of good governance.

Those of you who have been following developments in Thailand can see that our current economic crisis is a result of the weakness in Thailand’s political structure. We face an erosion of faith and confidence in our political institutions that needs to be urgently addressed for the continued advancement of Thai society.

The political reform process that has been initiated, provides Thailand with an opportunity to take the first step in laying the foundation for true democracy and good governance.

For the last eight months now, I have been intensively engaged in the process of drafting a new constitution for Thailand, a process that – I am happy to report – has been marked by its openness to public participation and debate.

As some of you may know, Thailand has the dubious distinction of having had 15 constitutions since the inception of its constitutional monarchy 65 years ago. Some of these constitutions have been discarded as a result of coups d’etat; some have been distorted through ill-advised amendments. The common feature of all these 15 constitutions is that they have all been drafted by those in power, and not through any process of consultation with the people.

As a result, these constitutions have not been respected, nor have they ensured good governance. We aim to change that. Taking into account the guiding principles that I have referred to earlier, the Constitution Drafting Assembly of Thailand during the course of the past eight months was engaged in an intensive process of dialogue with the people in the preparation of the draft constitution, to ensure that it addresses the concerns of our citizenry.

People's participation in the process of decision-making has been an important concept in the political reform process. We feel that it is necessary to instill a sense of ownership among the people of this important social contract between the State and the people.

There is no political system in the world that can claim legitimacy that was not in some sense based on "the will of the people." This is the first time in Thai history that the people have the right to contribute to this important process. We hope to have a government "of the people, by the people and for the people."

But I must emphasize here that the adoption of an enlightened constitution represents only an initial step to the goal of stabilizing democracy in Asia. For democracy to function effectively in Asia, we must also address the fundamental socio-economic problems prevalent in Asia.

The first is to **eradicate absolute poverty**. Every one of **Thailand's citizens deserves the opportunity to achieve an acceptable standard of living**. **Any obstacle** in the way of such opportunities, whether constitutional or extra-constitutional, must be removed. This is axiomatic in any political system that claims to call itself a democracy. It is also a pre-condition for sustainable democracy. As has been most evident in modern Thai history, poverty is an invitation to one of the easiest steps to authoritarianism: *vote-buying*. We must reduce the demand for vote-buying through reducing the level of poverty in our countries. Otherwise, vote-buying will continue to compromise the integrity of our electoral process. Asian governments thus need to pursue "*growing with equity*" and bridge the gap between rich and poor.

Secondly, we must provide our people with the **education, skills, and opportunities** to enable them to function effectively in society and secure a livelihood. Experience has shown that as peoples' income rise and their horizons broaden, they will more likely demand the right to participate in government and to enjoy full protection under the rule of law. An informed electorate that is politically aware, knowledgeable and committed to democratic principles is the key to good governance.

Thirdly, we must **develop civil society**. The Philippines has led the region in this respect and provides a valuable role model for the rest of Asia. The contribution of non-governmental organizations to national development has

been commendable. The Philippines' respect for freedom of speech and the press should be the norm for the region.

Donald Kagan, a distinguished scholar of ancient Greek history, in his book *Pericles of Athens and the Birth of Democracy*, writes that democratic governance relies on three conditions:

- The first is to have a base of well-established political institutions;
- The second is to have a body of citizens who possess a mature understanding of the principles of democracy;
- The third is to have capable and responsive leadership.

We must recognize that all this takes time – not just years, but decades and the passing of generations.

The road to democracy is long and arduous, especially for countries which have long suffered economic disadvantage. It is claimed by some in Asia that democracy is economically inefficient, and that, “enlightened authoritarianism” is a more effective means of generating economic growth. Some go so far as to say that this is a basic Asian value, to be cherished and nurtured. This to some degree may be true. I would, however, like to express a word of caution here. While a strong hand may guide a nation out of hardship, even the most compassionate authoritarian leader is likely to be vulnerable to the corrupting influence of power.

Asia today faces a moral dilemma. Constitutionalism is being questioned by powerful voices, often acting in what they believe are the best collective interests of the people. It has been implied that constitutionalism is anti-ethical to Asian values, that it is an alien intrusion carrying the seeds of chaos.

Yet, it is my contention that constitutionalism is the key to law and order in the best sense of that term. Strong and effective leadership in this region must be based on the will of the people and must respect individual freedom. Only through constitutionalism can this region hope to sustain its moral integrity, and thus its vigorous progress, into the coming millennium.

I should like to conclude this address with a modest proposal. I propose that each Asian State establish an independent body, representative of the people, to review its national constitution. That review would assess the extent to which the constitution fulfills the seven requirements of constitutionalism that I have outlined here. It would propose means whereby constitutional reforms might be pursued to ensure the full and free participation of all the people in the life of the nation. By that means Asia would come to lead the world in our continuing struggle for law, and for order.