

The Constitution as a Social Contract: A Sociological Study of Constitutional Formation, Identity, and Legitimacy in Nation-States

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Abstract

Constitutions are not merely legal documents; they are sociological artifacts that encode the values, power structures, and collective identities of the societies that produce them. This paper undertakes a comprehensive sociological analysis of constitutions in nation-states, examining the processes through which constitutional texts are produced, legitimized, contested, and transformed. Drawing on classical sociological theory—including Durkheim's collective conscience, Weber's legitimacy frameworks, and Bourdieu's field theory—as well as contemporary constitutional sociology, this study investigates how constitutions function as instruments of social integration, sites of ideological struggle, and mechanisms of political identity formation. The paper further explores comparative constitutional sociology across postcolonial states, liberal democracies, and authoritarian regimes, interrogating the relationship between social structure, popular sovereignty, and constitutional durability. Findings suggest that constitutional legitimacy is fundamentally a sociological phenomenon, dependent not on legal formalism alone but on the degree to which constitutional norms are internalized within the social fabric of a nation. The paper concludes by proposing a sociological model of constitutional vitality that accounts for democratic participation, cultural resonance, and institutional trust.

Keywords: Constitutional sociology, social contract, legitimacy, collective identity, postcolonial constitutionalism, democratic theory, Bourdieu, Weber

1. Introduction

The constitution of a nation occupies a paradoxical position in social life. It is, at once, a foundational legal text and a living social document—simultaneously a product of particular historical moments and a claim to timeless, universal principles. Political scientists have long studied constitutions as frameworks of governance; legal scholars have analyzed them as systems of rights and powers. Yet the sociological dimensions of constitutionalism—the ways in which constitutional orders are embedded in, shaped by, and in turn shape social relations—remain comparatively underexplored in the literature (Lerner, 2011; Thornhill, 2011).

Sociology brings to constitutional analysis a distinctive set of questions. How are constitutions produced, and whose voices, interests, and cultural frameworks are inscribed within them? How do constitutional orders achieve or fail to achieve legitimacy within diverse and often fractured

social bodies? In what ways do constitutions construct national identities, define the boundaries of citizenship, and regulate social difference? And how do constitutional texts interact with informal social norms, cultural practices, and structures of power that lie beneath and beyond the legal order?

These questions are particularly urgent in the contemporary moment. Across the globe, constitutional orders are under stress. In established democracies, populist movements challenge the authority of constitutional courts and the legitimacy of liberal constitutional frameworks (Levitsky & Ziblatt, 2018). In postcolonial states, the tension between inherited constitutional forms and indigenous social structures continues to generate conflict and instability (Okoth-Ogendo, 1993). In authoritarian and hybrid regimes, constitutions serve as instruments of legitimation rather than limitation, encoding the dominance of ruling elites under the guise of popular sovereignty (Ginsburg & Simpser, 2014).

This paper proceeds in six sections. Following this introduction, Section 2 reviews the theoretical foundations of constitutional sociology, drawing on classical and contemporary frameworks. Section 3 examines the social processes of constitutional formation and the politics of constituent power. Section 4 analyzes constitutional legitimacy as a sociological phenomenon. Section 5 undertakes a comparative analysis of constitutional sociology across different regime types and historical contexts. Section 6 explores the relationship between constitutional identity and social pluralism. The paper concludes with a synthetic model of constitutional vitality and directions for future sociological research.

2. Theoretical Foundations: Sociology Meets Constitutional Theory

2.1 Durkheim and the Constitutional Conscience Collective

Émile Durkheim's concept of the *conscience collective*—the shared beliefs, ideas, and moral attitudes that operate as a unifying force within a society—offers a compelling starting point for constitutional sociology (Durkheim, 1893/1984). For Durkheim, social solidarity is not merely the product of formal institutional arrangements but of deeper normative integration. Law, in Durkheim's framework, is the visible expression of social solidarity; it reflects the moral unity of a society and changes as that solidarity evolves from mechanical to organic forms.

Applied to constitutionalism, Durkheim's framework suggests that constitutional norms function not only as legal rules but as expressions of a society's shared moral commitments. A constitution that resonates with the *conscience collective* will command deep legitimacy; one that is imposed from without or drafted by elites without genuine popular participation will remain a formal shell, lacking the normative depth that sustains institutional compliance over time (Alexander, 1992). This Durkheimian insight has been developed by scholars of constitutional culture, who emphasize that constitutional durability depends on the degree to which constitutional values are embedded in the everyday normative life of a society (Blokker, 2010).

2.2 Weber's Legitimacy and Constitutional Authority

Max Weber's sociology of domination provides a second critical theoretical resource. Weber (1922/1978) distinguished three pure types of legitimate authority: traditional, charismatic, and rational-legal. Modern constitutional orders paradigmatically embody rational-legal authority: they claim legitimacy by reference to formally enacted rules, procedural correctness, and the impersonal operation of law. The legitimacy of a constitutional order, in Weber's account, rests on the belief of its subjects that the rules by which they are governed are properly enacted, consistently applied, and rationally coherent.

Yet Weber was acutely aware of the fragility of rational-legal legitimacy. Constitutional orders can be destabilized by the eruption of charismatic authority—the rise of leaders who claim a direct, personal mandate from the people that supersedes the formal rules of the constitutional order (Weber, 1922/1978). Contemporary populism, with its characteristic appeal to unmediated popular will against constitutional "elites" and "establishments," represents precisely this dynamic (Müller, 2016). Moreover, Weber's analysis of bureaucratic rationalization suggests that the formalization of constitutional norms can, paradoxically, hollow out their substantive content, producing what he termed the "iron cage" of legal formalism—a constitutional order that is procedurally correct but morally evacuated (Weber, 1922/1978).

2.3 Bourdieu's Field Theory and Constitutional Capital

Pierre Bourdieu's field theory offers a third, more explicitly sociological framework. Bourdieu (1987) analyzed law as a social field—a structured space of positions and position-takings in which actors compete for the authority to define and interpret legal norms. Legal capital—the specific form of cultural capital operative within the juridical field—is unequally distributed, concentrating the power to shape legal interpretation among credentialed legal professionals and excluding lay actors.

Applied to constitutionalism, Bourdieu's framework illuminates the ways in which constitutional meaning is not simply "there" in the text but is actively produced through competition within the juridical field. Constitutional interpretation is a site of struggle, in which different social groups—lawyers, judges, politicians, civil society organizations, and citizens—contest the meaning of constitutional provisions and their application to concrete social conflicts (Madsen & Dezalay, 2002). This perspective challenges the formalist conceit that constitutional meaning is determined by the text alone, revealing instead the social processes through which constitutional norms are produced and reproduced.

2.4 Social Contract Theory and Its Sociological Critiques

The dominant tradition in constitutional theory draws on social contract theory—from Hobbes and Locke to Rousseau and Rawls—which frames the constitution as the foundational agreement by which individuals constitute political society (Rawls, 1971). Yet social contract theory has been subjected to sustained sociological critique. Critics have argued that the contractarian framework presupposes a fictive equality among contracting parties that systematically obscures relations of power, exclusion, and domination (Pateman, 1988; Mills, 1997).

Carole Pateman's *The Sexual Contract* (1988) demonstrated that the classical social contract was premised on the exclusion of women from the public sphere of contractual relations. Charles Mills's *The Racial Contract* (1997) showed that modern constitutional orders were constructed on the foundation of racial hierarchy, with full constitutional personhood confined to white male property-owners. These critiques have profound implications for constitutional sociology: they reveal that the founding moments of constitutional orders are not moments of universal inclusion but of structured exclusion, and that the constitutional order carries within it the traces of these founding exclusions.

3. Constitutional Formation: The Social Politics of Constituent Power

3.1 Constituent Power and Its Social Bases

The concept of constituent power—the authority to establish and give form to a constitutional order—is central to constitutional theory and deeply sociological in its implications. Following Emmanuel Sieyès's foundational distinction between constituent power (the power to make the constitution) and constituted powers (the institutions created by the constitution), constitutional theorists have debated the social basis and democratic credentials of constituent authority (Sieyès, 1789/1963; Kalyvas, 2005).

Sociologically, the exercise of constituent power is never a purely popular act. Constitutional moments—the founding episodes in which new constitutional orders are established—are invariably shaped by the structural position of the actors involved, the historical context of their action, and the international environment within which they operate (Ackerman, 1991). The American Constitutional Convention of 1787, the drafting of the Indian Constitution between 1947 and 1950, the post-apartheid constitutional negotiations in South Africa, and the "color revolutions" in Eastern Europe all illustrate the ways in which constitutional founding is a complex social process involving the interplay of elite leadership, popular mobilization, external pressure, and historical contingency.

3.2 Elite Dominance and Constitutional Design

A substantial body of comparative constitutional scholarship demonstrates that constitutional design is primarily an elite enterprise. Elster (1995) showed that constitutional assemblies are typically composed of educated, professional, predominantly male elites whose social position shapes the content of the documents they produce. Hirschl (2004) coined the term "hegemonic preservation" to describe the process by which legal and economic elites support judicial review and rights entrenchment as a strategy for insulating their preferred policy outcomes from democratic revision.

This elite bias in constitutional design has profound consequences for constitutional legitimacy and social integration. When a constitution is experienced by large segments of the population as an imposition of alien norms—whether colonial, neo-liberal, or otherwise foreign to their lived experience—it is likely to generate persistent legitimacy deficits and resistance (Okoth-Ogendo, 1993). The history of postcolonial constitutional orders in Africa and Asia is replete with examples of constitutions that, however formally sophisticated, failed to achieve genuine social

embeddedness because they were drafted by narrow elites or inherited from colonial powers without meaningful popular participation (Ndulo, 2010).

3.3 Popular Participation and Constitutional Legitimacy

Conversely, processes of constitutional formation that incorporate genuine popular participation—through constituent assemblies, public consultations, referenda, and civil society engagement—tend to produce constitutions with stronger legitimacy foundations. The South African constitutional process of the 1990s is widely regarded as a model of participatory constitution-making: the Constitutional Assembly received over two million written submissions from ordinary citizens, and civil society organizations were actively involved in deliberations (Ebrahim, 1998). The resulting constitution achieved remarkable social legitimacy across South Africa's deeply divided society, at least in its formative decades.

Similarly, the Icelandic "crowdsourced" constitutional process of 2010–2011, though ultimately unsuccessful in producing a ratified constitution, demonstrated the potential for digital technologies to enable new forms of popular engagement in constitutional design (Landemore, 2015). These examples suggest that the social processes of constitutional formation are not merely procedurally important but substantively consequential for the durability and legitimacy of the resulting constitutional orders.

4. Constitutional Legitimacy as a Sociological Phenomenon

4.1 Beyond Legal Formalism: The Social Foundations of Constitutional Validity

Legal formalism holds that the validity of a constitution is determined by its compliance with formal procedures of enactment: a constitution is valid if it was properly enacted according to the rules governing constitutional change. Yet from a sociological perspective, formal validity is insufficient to explain constitutional durability or compliance. Constitutions that are formally valid but lack social legitimacy—the disposition of the relevant social actors to regard the constitutional order as morally binding and worthy of compliance—are fragile and prone to breakdown (Beetham, 1991).

David Beetham's (1991) analytical framework for the sociological study of political legitimacy distinguishes three dimensions of legitimation: conformity with established rules, justifiability of those rules by reference to shared beliefs, and evidence of consent from subordinates. Applied to constitutionalism, this framework suggests that constitutional legitimacy is multi-dimensional: it requires not only procedural correctness (conformity with rules) but also normative resonance with the values of the relevant social body (justifiability) and active endorsement or at least tacit acceptance by the citizenry (consent).

4.2 Constitutional Culture and Socialization

Constitutional legitimacy is sustained and reproduced through processes of constitutional culture and socialization. Constitutional culture refers to the ensemble of beliefs, attitudes, practices, and institutions through which constitutional norms are transmitted, interpreted, and applied across

time and social contexts (Häberle, 1998). Constitutional socialization—the processes through which individuals acquire constitutional knowledge, values, and commitments—occurs through multiple channels: formal education, media, civil society organizations, family and peer networks, and direct engagement with constitutional institutions.

Research in political psychology and constitutional studies suggests that constitutional attachment is strongest when constitutional values are consistent with broader cultural norms, when constitutional institutions are perceived as fair and effective, and when citizens have direct experiential knowledge of constitutional rights and processes (Gibson & Caldeira, 2009). Conversely, constitutional legitimacy erodes when constitutional institutions are perceived as corrupt, partisan, or remote from the everyday concerns of citizens, or when constitutional values are experienced as hostile to the cultural identities and life-worlds of significant social groups.

4.3 Constitutional Crisis and Delegation

Constitutional crises—moments of acute conflict in which the authority and legitimacy of the constitutional order are publicly contested—provide particularly revealing windows into the sociological dynamics of constitutional legitimacy. Levinson and Balkin (2009) distinguish between different types of constitutional crisis, including crises of constitutional fidelity (when actors refuse to comply with constitutional norms), crises of constitutional design (when existing constitutional provisions prove inadequate to govern current conflicts), and crises of constitutional legitimacy (when the constitutional order as a whole loses its claim to the allegiance of significant social actors).

The dynamics of constitutional delegitimation are complex and multi-causal. Economic crisis, social inequality, ethnic and religious conflict, elite corruption, and the failure of constitutional institutions to deliver effective governance can all contribute to erosion of constitutional legitimacy (Habermas, 1973). The wave of democratic backsliding observable in many countries since the mid-2000s—including Hungary, Poland, Turkey, Venezuela, and the United States—reflects, in significant part, the failure of established constitutional orders to maintain legitimacy in the face of growing social inequality, cultural polarization, and institutional dysfunction (Levitsky & Ziblatt, 2018).

5. Comparative Constitutional Sociology

5.1 Liberal Democratic Constitutionalism

Liberal democratic constitutionalism—characterized by the separation of powers, judicial review, protection of individual rights, and democratic elections—has been the dominant constitutional paradigm of the post-World War II international order. The spread of liberal constitutionalism through decolonization, the collapse of communist regimes in Eastern Europe, and the "third wave" of democratization in Latin America, Africa, and Asia represents one of the most significant constitutional developments in modern history (Huntington, 1991).

Yet the sociological study of liberal democratic constitutionalism reveals significant variation in the social foundations, functions, and outcomes of nominally similar constitutional orders. Ran

Hirschl's (2004) comparative study of Israel, Canada, New Zealand, and South Africa demonstrated that the judicialization of politics—the transfer of political decision-making from elected institutions to constitutional courts—was not simply a consequence of rights entrenchment but reflected specific configurations of social power, in which professional and economic elites used constitutional courts to insulate preferred policy outcomes from democratic revision.

5.2 Postcolonial Constitutionalism

The constitutional histories of postcolonial states present some of the most complex and contested terrain for constitutional sociology. The constitutions adopted by newly independent states in Africa, Asia, the Middle East, and the Caribbean at the moment of decolonization typically combined inherited colonial institutional frameworks—Westminster parliamentarism, French republicanism, federal structures—with formal commitments to popular sovereignty, fundamental rights, and national development (Wheare, 1960).

The sociological literature on postcolonial constitutionalism identifies several recurring tensions. First, there is the tension between the universal language of constitutional rights and the particularist claims of cultural, ethnic, and religious communities that may experience liberal constitutional norms as alien impositions (An-Na'im, 1990). Second, there is the tension between formal constitutional democracy and the social structures of patronage, clientelism, and ethnic mobilization that characterize much of postcolonial political life (Mamdani, 1996). Third, there is the tension between the constitutional promise of development and social equality and the structural constraints imposed by colonial economic legacies, global capital flows, and international financial institutions (Okoth-Ogendo, 1993).

5.3 Authoritarian Constitutionalism

A growing body of scholarship has drawn attention to the constitutional practices of authoritarian regimes—what Ginsburg and Simpsen (2014) term "authoritarian constitutionalism." Contrary to the assumption that constitutions are inherently democratizing instruments, authoritarian regimes regularly adopt and maintain constitutions that serve functions quite different from their liberal democratic counterparts: providing a framework for coordinating elite behavior, signaling commitment to potential investors, managing international legitimacy demands, and providing a legal architecture for the regulation of political opposition.

The sociological analysis of authoritarian constitutionalism reveals that the relationship between constitutional form and political reality is more complex and variable than liberal constitutional theory assumes. Constitutions in authoritarian regimes can simultaneously legitimate and constrain state power, provide meaningful rights protections in some domains while permitting systematic rights violations in others, and serve as resources for both official and oppositional actors (Moustafa, 2007).

6. Constitutional Identity and Social Pluralism

6.1 Constitutions and National Identity

Constitutions are not only legal frameworks but identity-constituting texts. Constitutional preambles, foundational narratives, symbolic provisions, and the organization of rights and citizenship encode particular conceptions of national identity—of who "the people" are, what their shared history and values consist in, and what kind of political community they aspire to be (Jacobsohn, 2010). The sociological study of constitutional identity examines the ways in which constitutional texts participate in the ongoing construction and contestation of national identity.

Gary Jacobsohn (2010) has developed the concept of constitutional identity to capture the dynamic, contested character of constitutional self-understanding. Constitutional identity is neither fixed nor unified; it is a site of ongoing negotiation among different social actors who offer competing interpretations of the constitutional tradition and its implications for current political controversies. Constitutional courts play a central role in this process of identity construction, but they are not the only relevant actors: political parties, civil society organizations, media, and ordinary citizens all participate in the ongoing elaboration and contestation of constitutional identity.

6.2 Pluralism, Multiculturalism, and Constitutional Accommodation

The management of social pluralism—ethnic, religious, linguistic, and cultural diversity—is one of the central challenges facing contemporary constitutional orders. Will Kymlicka's (1995) influential theory of multicultural citizenship argued for the constitutional accommodation of minority rights, including rights to cultural self-determination, self-government, and representation, as a means of achieving just integration of diverse social groups within a common political framework.

The sociological study of constitutional pluralism examines how different constitutional arrangements—federalism, consociationalism, minority rights, affirmative action, and official multiculturalism—shape the integration or fragmentation of diverse societies. Comparative research suggests that constitutional arrangements that provide meaningful recognition and accommodation of minority identities can strengthen social cohesion and democratic stability, while constitutional orders that impose a single cultural or national identity tend to generate resistance and conflict among minorities (Norris & Inglehart, 2019).

7. Toward a Sociological Model of Constitutional Vitality

Drawing together the theoretical and empirical analysis developed in the preceding sections, this paper proposes a sociological model of constitutional vitality—a framework for analyzing the conditions under which constitutional orders achieve durable social embeddedness, normative legitimacy, and adaptive capacity.

The model identifies four key dimensions of constitutional vitality. First, **participatory legitimacy**: constitutions that emerge from genuine processes of popular participation and

deliberation command stronger legitimacy than those imposed by narrow elites or external actors. Second, **cultural resonance**: constitutions that articulate values, identities, and aspirations that are congruent with the lived experience of significant social groups are more likely to achieve social embeddedness than those that are experienced as alien impositions. Third, **institutional trust**: the vitality of a constitutional order depends on the integrity and effectiveness of the institutions charged with its interpretation and enforcement; constitutional courts, legislatures, and executive agencies that are perceived as fair, competent, and independent contribute to constitutional legitimacy, while corrupt or partisan institutions undermine it. Fourth, **adaptive capacity**: constitutions that can evolve in response to changing social conditions—through amendment, judicial reinterpretation, and informal normative development—are more durable than those that are rigid and unresponsive.

8. Conclusion

This paper has argued that the sociological analysis of constitutions illuminates dimensions of constitutional life that are systematically obscured by legal formalism and mainstream constitutional theory. Constitutions are not merely legal texts but sociological artifacts—products of social processes, sites of social struggle, and instruments of social integration and identity formation. Their legitimacy is not established by formal enactment alone but depends on the degree to which constitutional norms achieve genuine social embeddedness—the internalization of constitutional values within the everyday normative life of a society.

The comparative analysis developed in this paper reveals the diversity of constitutional sociologies across different historical and political contexts: liberal democratic orders, postcolonial states, and authoritarian regimes each present distinctive configurations of constitutional form, social power, and normative legitimacy. The sociological model of constitutional vitality proposed here provides a framework for analyzing these configurations and for identifying the conditions under which constitutional orders achieve durable social embeddedness.

Future sociological research on constitutionalism should attend to the global dimensions of constitutional change, including the role of international organizations, transnational legal networks, and global civil society in shaping national constitutional orders (Halliday & Shaffer, 2015). It should also attend more carefully to the micro-sociological dimensions of constitutional life—the everyday practices through which ordinary citizens engage with, appropriate, and contest constitutional norms (Ewick & Silbey, 1998). And it should take seriously the challenges posed to established constitutional orders by populism, authoritarianism, and democratic backsliding, developing sociologically grounded accounts of constitutional resilience and fragility.

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