Culture and the Rule of Law: Cautions for Constitution-making

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INTRODUCTION

Constitutional reform is a growth industry around the world. The fresh activity in drafting new constitutions is driven not just by revolutions and regime changes, but also by the emergence of developing nations as players in a global
economy. Pressures mount for all of these countries to create constitutional and legal structures and systems that comply with international expectations. These expectations reflect minimum standards for the protection of human rights, required by developed nations and international organizations for membership and participation: the United Nations, the European Union, and other regional associations of member states. Such expectations may also include reforms in the commercial sector, necessary to qualify for support from international financial institutions such as the World Bank and the International Monetary Fund, as well as to encourage foreign investment in the domestic economy. In most cases, the constitution-drafting exercises are aimed at establishing and maintaining the “Rule of Law,” widely perceived to be a prerequisite for economic development and for international cooperation and support.

The push to meet international expectations, to conform to “international best practices” in these fields, has created strong pressure for the homogenization of constitutions and law. A country needing a new constitution will necessarily be invited to adopt, to “import,” constitutional texts and principles from other, perhaps more developed nations, knowing that (1) such concepts have been tried and proven in other successful nations, and (2) they have clearly met all the international expectations.

Those involved in international Rule of Law promotion efforts, including constitution drafting, have run into difficulty, however, attempting to import successful rule of law institutions from donor countries (i.e., the West), to developing and post-conflict societies. One of the reasons for the failures appears to be profound cultural differences between the donor nation and the target society. A constitution is, and must be, both a product of and a reaction to the society’s culture, and that includes its legal tradition, its history, and its political ideology. Constitutional reform must, therefore, look beyond foreign models and “international best practices.” If it is to function effectively to establish and maintain the Rule of Law in a given

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society, the constitution must be drawn up with specific reference to the local culture.

I. CULTURAL CHALLENGES AND OPPORTUNITIES

The difficulties encountered by Rule of Law reformers should come as no surprise to scholars of comparative law, who study how the varying legal systems around the world are shaped by the legal tradition of each place. A “tradition” runs far deeper than a “system,” of course. Systems can be changed with simple constitutional, or even legislative, reform. But a tradition is the product of history, of generations of experience with legal norms and dispute resolution mechanisms. In many societies, religious principles play a large role in their legal tradition, as these define principles of right and wrong, of a person’s duty to his neighbor, of forgiveness and retribution, as well as karmic or eternal consequences of wrongdoing.

Legal systems may be designed to reflect these deeply rooted societal values, or may be designed to react to them. If the religious and cultural tradition of society is steeped in principles of forgiveness and reconciliation, a highly retributive, or punishment-oriented, criminal system is unlikely to find resonance in the community. In that situation, the legal system will need to embrace and apply the non-punitive, reconciliation-oriented culture. Retributive justice may make no sense in that environment.

In contrast, some cultural artifacts need not be replicated in the legal system, precisely because they are deeply ingrained in the shared values of the community. For example, if the culture is one that inculcates each new generation with a strong respect for authority, it may not be necessary for the legal system to grant the legal authorities strong powers of enforcement. When compliance—with judicial decisions or other legal mandates—is presumed, or ensured by cultural factors, the legal system need not be structured to force such compliance. In this way, the legal system does not reflect or recreate the cultural norms so much as complement them.

A third possibility may be when cultural factors are inimical to the establishment of the Rule of Law. This may include entrenched cultures of corruption, or of traditional leaders being above the law. In this situation the legal regime and constitution must react to the cultural norms, establishing strong enough institutions to overcome these barriers to the establishment of the Rule of Law.

A variety of examples explored below demonstrate with greater specificity how cultural factors may impact the Rule of Law and any efforts to establish and maintain it. Cultural factors present both obstacles and opportunities; the key for drafters of new constitutions, and for Rule of Law reformers in general, is to recognize them and respond to them.

A. Spiritual Deterrence v. State Deterrence

Principles of deterrence may well have more force outside the formal legal system than inside it, particularly in religious societies. Fear of spiritual consequences or circumstances in the next life (e.g., in post-mortal existence, or reincarnated terrestrial lives) may also be a deterrent for tortious behavior, bad faith, or criminal activity. A key example arises in the context of Hindu society. Hinduism’s much criticized “caste” system is usually condemned by Rule of Law reformers as a violation of human dignity and fundamental human rights. That system, however, is intimately tied up with the concept of karma. Bad acts produce bad karma, and bad karma in this life means that your next life will be in a less desirable state. Poor treatment of Dalits (or untouchables), therefore, becomes a central part of the system for deterring anti-social behavior. No one can afford to accumulate bad karma in this life for fear that it will doom them to misery in the next life.

The hope in establishing a legal system, perhaps, is that threat of prosecution or civil liability through robust and efficient Rule of Law institutions will produce a deterrent effect. But human institutions can never produce deterrence at the same level that religious deterrence can, in a believing community. Whatever punishment the law provides is inevitably discounted by the probability of getting caught (the enforcement rate). Spiritual retribution however, as it is usually
understood, is doled out by an omniscient judge, whose enforcement rate is necessarily one hundred percent.

B. **Cultural Deterrence v. State Deterrence**

In insular communities, the shame associated with wrongdoing, particularly the dishonor brought to the family, may be a far more powerful deterrent than the threat of criminal punishment, tort liability, or breach of contract damages. The degree to which the wrongdoer is subject to shame, and the extent to which shame is an effective deterrent, is tied up inextricably with cultural values and norms.

Some cultures and societies will shun a wrongdoer, excluding him from the community. In cultures that practice shunning, it can be a far more serious threat than more conventional penalties from Western legal systems, such as civil fines or incarceration. In Roma society, for example, the principal values include insularity, identity, and integrity against external threats. A *rom* (a gypsy man) will have been taught his whole life that the *gaje* (the non-Romani community) are inherently unclean; any association with them except in a commercial transaction (it is okay to do business with the *gaje*) will contaminate the *rom*. Expulsion is, therefore, a potent threat, as the Roma have no identity outside their insular society, and can associate with no outsider.

C. **Respect for Authority**

Another cultural norm that is fundamental in the establishment of an ordered society is respect for authority. Do individuals choose to comply with the decrees and expectations of authority figures? This concept overlaps with religious deterrence, discussed above, but is broader. In some cultures, respect for authority is not necessarily rooted in deterrence, the fear of consequences, but rather in terms of genuine respect for the authorities.

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4. The Amish communities of the United States practice shunning, or “meidung,” of those who do not adhere to the strict moral code of the community. It is this practice that separated them from the rest of the Mennonite community.

Rule of Law reformers will insist that respect for authority is a function of the legitimacy of the leadership which is, in turn, a function of its integrity and transparency. But some of this is more deeply rooted in culture starting with how children are raised: the degree to which children defer to their elders, obey their parents, etc.

The other variable is the question of which authority. While some cultures may foster a greater sense of respect for authority, not all authorities will enjoy comparable levels of respect. Religious authorities and traditional leaders (the wise, the old, the descendants of heroes) may inspire much greater respect than political leaders or law enforcement personnel.

As an example, Wade Channell points to issues in Balkan culture, reflected in Bulgarian literature:

In the 1950s, Bulgarian author Elin Pelin published the short story titled Andreshko, in which the principal character became a hero through resisting enforcement. The protagonist, Andreshko, is a poor farmer who picks up a traveler while driving his horse cart back to the village. As they converse, Andreshko discovers that the traveler is an enforcement judge who is going to Andreshko’s village to seize the assets of a neighbor in satisfaction of a tax lien. Torn between his legal duties and his loyalty to a friend, Andreshko decides for the friend. He pretends to take a short cut but instead drives the cart into a swamp until it is mired. He then unharnesses the horse and rides home alone, abandoning the enforcement judge. This story has been taught to schoolchildren for over forty years. Today, Andreshko is the patron saint of resistance to enforcement, the heroic defender against attachment.

Channell observes that such a strongly entrenched cultural value—making heroes of those who defy civil authority—poses particular challenges for establishing the Rule of Law: “Overcoming [Andreshko’s] legacy will not be met simply through better written laws.”

6. For further discussion of "Source of Law," see infra Section I.D.
8. Id.
D. Source of Law

A related concept in comparative legal traditions is “source of law.” In some societies, perhaps most notably Islamic states, the law may be understood to come from God, revealed through prophets, and contained in holy texts. The society’s understanding of the law as a divine one, with eternal consequences for its violation, can be a powerful force for law-abiding behavior and the Rule of Law in general.

But even if the source of the law is not religious, the source is important in how the public perceives and responds to the law. If the law is perceived to be a product of democratic processes, enacted by public servants, elected by and representing their constituents, the law will enjoy some legitimacy in the eyes of the public. In this scenario, the source of law is the social contract, and compliance with it may be more easily expected in such a society, precisely because citizens are participants in and beneficiaries of that social contract. Contrast that with laws issued by corrupt officials, or by a despot who is desperate to retain power. In those circumstances, the public may be more inclined—indeed, they may even feel a moral imperative—to defy the law, rather than allow the corrupt officials to be rewarded for their corruption, or to allow the despot consolidate his power.

For these reasons, democracy and transparency are vital components of Rule of Law strategies around the world. These are considered essential in developing respect for law and legal institutions. But if there is no cultural tradition of such respect for civil authority, even transparency and democracy will not necessarily inspire respect. The “source” of such laws, in a society with a long history of public corruption, will still be deemed suspect. Respect for the law often follows from respect for its source. And if government has always been corrupt, the

culture and tradition of disrespecting the government and its laws will not change overnight.

E. Reputational Capital

In other cultures, the primary motivator for law-abiding behavior is reputational. This may appear, at first blush, to be a restatement of the issues of cultural deterrence (e.g. shaming and shunning) discussed above. But reputational capital is a valuable commodity in business, and can be a power incentive for law-abiding behavior in the marketplace. A businessperson cannot afford to breach contractual agreements, defraud her partners, or cheat her customers, because if she does, it will become impossible for her to do business in the future. If she has a reputation for breaching agreements, no one will dare enter a contract with her. If she has a reputation for cheating her customers, those customers will go to her competition.

These factors may lead to an economy where major transactions are accomplished without written contracts, without the threat of litigation, but with the giving of one’s word and a handshake (or the cultural equivalent). Vibrant commerce has emerged in such societies despite the fact that they lack a strong, clear, or enforceable system of commercial and contract law. Rule of Law reformers will lament the “fast and loose” quality of commerce in such a society, claiming that it undermines the Rule of Law. Those promoting economic development will lament the barriers to foreign investment in such a society, where the foreign investors are not part of the reputational circles. This is another manifestation of the “outsider” problem in culture-based Rule of Law regimes, discussed below.

F. The “Outsider” Problem

Many cultural contributions to the Rule of Law lose their force when outsiders are introduced into the system. Those who are not a part of the community may not share the cultural values of the community or society. This can hinder economic development by denying outsiders entry into markets, and can create the potential for spoilers to abuse and exploit the system. If the primary consequence of anti-social behavior is societal shame or shunning, the society is vulnerable to the rogue who
cares little about shame or societal acceptance. If the primary consequence is spiritual (bad karma or the threat of hellfire), the nonbeliever will feel free to defraud his neighbor.

Outsiders of any kind will suffer in such an environment, as tourists in developing countries can attest. Tourists are the ultimate outsiders, and can easily be defrauded and exploited without local cultural consequences. An acquaintance of the author was recently cheated by a taxi driver in Istanbul, who overcharged her five-fold and then attempted to conceal part of her payment to insist that she had underpaid him. His faithless dealing with an obvious outsider will not harm him personally—she is not in a position to hurt his prospects for future cab fares. Her stories, retold to others, may harm tourism in Turkey, however; in that way society as a whole will suffer from this isolated breakdown in Rule of Law, but the individual who caused this harm remains entirely unaccountable for the fraud he perpetrated. While the Turkish economy may have flourished under a system of reputational capital in business, outsiders know that they bargain in the Turkish bazaar at their own peril.

Reputational capital is similarly less effective large urban settings, where business is often done with strangers. It can promote faithful dealings and suppress anti-social behavior most effectively in insular communities, particularly in small towns and tribal societies where everyone knows everyone. In large urban settings, where business is often done with strangers, the system is far less effective. The problems of outsiders aside, there can be little doubt that reputational capital can function very effectively, in certain cultures, to dissuade faithless business dealing and promote both respect for commercial property and the keeping of agreements.

G. The Problem of the Large, Anonymous, and Pluralistic Society

A variant of the “outsider” problem, or perhaps the logical extension of it, arises in multi-cultural environments. Cultural constructs to support the rule of law are most effective in communities with a strong sense of shared culture. If the society is divided culturally, with minority groups of different culture or religion, the impact of cultural pressures, such as shaming, lose their potency in deterring anti-social behaviors.
As with reputational capital, this effect is exacerbated in large, urban, anonymous communities. The businessman is usually dealing with strangers, so the reputational consequences of one’s behavior become very small. Accordingly, these societies are far more likely to need strong legal and regulatory systems to enforce civil and criminal law. Statutory and constitutional authority will play a much larger role in such societies in deterring crime and encouraging compliance with norms of an ordered society.

II. CULTURAL CONFLICTS—DIFFERENCES THAT CAN UNDERMINE THE RULE OF LAW

It is easy to see how culture can play a vital and compelling part in the larger effort to establish the rule of law. At times, however, cultural differences can produce catastrophic side effects in efforts to reform the justice sector.

As an example, we can look back to the role karma plays in a Hindu society. The religious and social order uses the concept of karma, and the threat that one might come back as a Dalit in the next life, to deter bad behavior. If rule of law reform includes protection of basic human rights, meaning that Dalits can no longer be discriminated against, the upshot is not necessarily an improvement in societal order. Although Dalits may now enjoy basic human rights protections they never dreamed up before, the threat of bad karma consequences may disappear completely. Accordingly, religious deterrence of anti-social behaviors is eliminated as a direct result of a Rule of Law intervention. The attempt to address human rights abuses actually undermines the Rule of Law, by removing the central motivation to be a law-abiding citizen.

Another example comes specifically in the area of judiciary, as “judicial independence” is typically championed as a pillar of the Rule of Law. But where there has been a culture and tradition of judicial corruption, efforts to strengthen judicial independence can do more harm than good. This problem will be explored in the section that follows.
III. CULTURAL EXPECTATIONS OF THE JUDICIARY

When the Rule of Law breaks down, the role of the judiciary comes into question. An independent judiciary may well be seen as a solution to the problem. Indeed, if the legal system is being manipulated by political actors for private or political advantage, it may be necessary to give the judiciary greater independence to withstand such pressures and efforts at manipulation. But such a reform is really nothing more than a power shift: taking power from the political (or criminal) powers that are manipulating the courts and giving that power to the judges themselves.

Whether this is an improvement in the Rule of Law overall depends in large part whether the judges can be trusted—any more than those who are manipulating them—with that power. The question comes back to issues of culture. A truly independent judiciary is free to do the right thing, regardless of what other powerful interests would want or expect. But a truly independent judiciary is just as free to do the wrong thing, to pursue its own corrupt agenda the minute it is freed from the shackles of political control.

Whether a judiciary can be trusted and, perhaps even more importantly, when it will be trusted, is in large measure a function of culture, of the legal tradition in that society. Does society expect its judiciary to function with integrity? Do the judges expect this of their colleagues, and of themselves? Ultimately, this culture or legal tradition is a product of a variety of influences, including ideology and history. It will be instructive to consider a few examples.

A. A Tradition of Corruption?

Judicial independence is not a desirable good in itself. It is only a means to an end, based on the assumption that judges who are truly independent will use that independence to render proper judgments, without regard for the popularity of those decisions. This principle is rooted in a culture that trusts judges. Only if we believe judges want to do the right thing do we believe that increasing their independence will improve the

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10. See discussion infra Part III.B.
Rule of Law. In a society where the judiciary has always been corrupt, that tradition is likely to continue in an era of newfound judicial independence.

Judicial independence is desirable only if judges are inclined to do the right thing, so it is often balanced against a compelling need for judicial accountability. Accountability is, of course, at odds with independence. If someone is holding a judge accountable, then that person has power, with the threat of discipline, to influence the judge’s decisions. That may be good, if it gives the judge a reason to avoid corruption. It may be bad, if the disciplinary authority misuses its “accountability” power to influence judicial decisions.

The important point, with respect to culture, is that if there is a tradition of corruption, judicial independence is not a good but an evil. Judges who are already inclined toward corruption—who expect to be corrupted, who expect corruption from their colleagues, whom lawyers and the public expect to be corrupt—should not be given enhanced independence. The increased independence will only exacerbate the corruption and further undermine the Rule of Law. If the tradition is one of corruption, therefore, constitutional drafters should create a system oriented toward greater accountability; this will hopefully give the judges new reasons to act ethically and appropriately.

B. Historical and Ideological Roots for Judicial Culture

1. Common Law Culture

The legal tradition in common law countries is a product of its history, as courts in these societies have often functioned to protect individuals from the abuses of the crown. Those countries have been happy to empower courts to interpret laws and the constitution, even to make law, and to grant them greater independence, seeing them as part of the greater Rule

11. MERRYMAN & PÉREZ-PERDOMO, supra note 3 at 35 (“In the United States and England . . . there was a . . . judicial tradition . . . in which judges had often been a progressive force on the side of the individual against the abuse of power by the ruler . . .”).
of Law solution. 12 The judiciary must be independent of the executive, the thinking goes, because it is the judiciary who must protect the people (in their individual capacity) from oppression by the executive.

2. Civil Law Culture (e.g. France)

The legal tradition in France is different, leading to a distinctly different concept for the role of the judiciary in its constitution. In the pre-revolutionary years, the courts in France were perceived as a vehicle for the King’s oppression of the people. The French, therefore, sought to severely circumscribe the powers of the courts, particularly with respect to the powers of legislative and constitutional interpretation. 13 “This ideology was already established under Roman Law tradition, revitalized by the French revolutionaries, who did not see the judiciary as a champion of the rights of the people (like in England), but rather as a barrier and a threat to democratic governance.” 14 The role of the judiciary in the French system, therefore, was conceived differently, based on its distinct legal tradition, one that trusted courts less, and therefore limited their power.

3. Communist/Socialist Culture

An entirely separate legal tradition shaped the role of the judiciary in the second world, under communist ideology. The role of the socialist state or, perhaps more precisely, of the party in that state (“Party”), is that of champion of the rights and interests of the workers. One of the foundations of the system is the principle that workers will be exploited by capitalists without the intervention of the Party, whose actions are an expression of the collective will of the workers.

In the socialist state, therefore, the Party protects the rights of the people not from public government oppression (because the government is already on the side of the “people”) but from

12. Id. at 35 (“The fear of judicial lawmaking [in the United States and England] . . . did not exist. On the contrary, the power of the judges to shape the development of the common law was a familiar and welcome institution.”).

13. Id. at 53 (“Experience with pre-revolutionary courts had made the French wary of judicial law-making disguised as interpretation of laws.”).

private economic exploitation. Because the Party is already on the side of the people, there is no contradiction if the Party places a telephone call to a judge in an important case and dictates the desired or appropriate outcome to him. Such “telephone justice” was apparently common in Eastern bloc nations before communism’s dramatic and sudden decline in the late 1980s. And from the ideological perspective of a Marxist/Leninist, there is nothing offensive about it. Indeed the problem comes only when one doubts the wisdom, judgment, agenda, or ethics of the Party that makes the decision in that case.

The Westerner views “telephone justice” as a wholesale corruption of the Rule of Law, an archetypal example of how and why judicial independence is important. To the Westerner, who defines justice in individual terms, the defendant in the telephone justice example receives no justice. But from a different ideological and cultural perspective, the benefit of the whole is considered more critical than the rights of any individual, and the Party is the appropriate entity to determine what is in the best interests of the people in general.

Put another way, common law society embraces judicial independence because it trusts courts, and has less confidence in political parties, or in political branches of government. Communist society, at the other end of the spectrum, trusts the Party, and has less confidence in the courts. In either case, the Rule of Law depends upon the integrity of the entity that is empowered; it depends on whether that entity deserves the trust and confidence reposed in it.

IV. PUBLIC CONFIDENCE

Of course, it is not enough that the public institutions under a new constitution be worthy of trust. For them to function appropriately to support the Rule of Law, the public must actually trust them. Otherwise, the public legal institutions will be under-utilized or actively disregarded, and individuals will resort to self-help to resolve their legal and disputes. Here again, culture becomes extremely important, as a whole range of cultural factors—religious and spiritual, respect for authority, source of law, history and tradition—will affect whether the public will respect new legal and constitutional institutions.
Creating a sound judicial structure in a new constitution is an important step, but a small one, toward the ultimate goal of establishing and maintaining the Rule of Law in a society. Public confidence in the system is essential, and until it is achieved, Rule of Law institutions will be plagued with dysfunction: the public will not trust their disputes to the system, will not abide by the decisions of those institutions, and will actively undermine or circumvent the efforts of such institutions. Remember the story of Andreshko, above. It will likely take at least one generation, and probably more, to overcome cultural resistance to untrusted institutions.

It may be more effective in the long run, and will certainly be more effective in the short run, to leverage those institutions that the public already has confidence in. In post-colonial Africa, for example, this will include customary law structures that function in tribal communities. Many African constitutions explicitly recognize the legitimacy of customary law and the traditional institutions that administer it right alongside the statutory courts, as they grapple with ways to implement this “legal pluralism.”

This is yet another example of how a new constitution must be drafted with specific reference to existing cultural norms and artifacts in that society. There is no one-size-fits-all constitution, and any attempt to impose such a “best practices” constitution is likely to complicate and frustrate Rule of Law goals that motivated the constitutional reform in the first place.

V. CHANGING THE CULTURE

In extreme circumstances, the new constitution may be a vehicle for changing culture. Indeed, the Rule of Law may be entirely incompatible with certain cultural norms or institutions. Any effort to change culture will be problematic both practically and politically. It cannot be accomplished merely by adopting a new constitution.


First, culture values and expectations are deeply ingrained in people’s and communities’ respective psyches. They live their lives by these rules, whether they like them or not. Even if the new constitution changes those rules, people will not necessarily change their behavior or expectations. Members of the general public typically do not even read their constitution, and certainly do not consult it when deciding how to act on a given day. Given the disconnect between the general public and the text of the constitution, Rule of Law reformers have been criticized for focusing too much on constitutions and supreme courts, rather than on reforming institutions that will more directly impact the daily lives of its citizens, such as police practices.

Second, attempts to change culture are inherently judgmental and condescending, which can inflame tensions and foster resentment. In Africa, for example, efforts to defend human rights against long-standing cultural practices in tribal communities (including things like polygamy, female circumcision, and other practices that marginalize or commodify women) inevitably raise the specter of colonialism. It resembles a new imperialism, a 21st century effort to “civilize the savages,” forcing “more enlightened” European norms upon them.17 Islamic states similarly resist the international human rights consensus that conflicts with their understanding of God’s will, particularly regarding the rights and roles for women.

But there are certain cultural norms that cannot be defended in today’s world. Practices such as slavery and human sacrifice, no matter how deeply rooted in tradition and culture, cannot be embraced or protected in a 21st century constitution. Constitutions exist, in part, to protect the rights of victims of such practices as well as other disenfranchised minorities.

Just as compelling is the case against cultural norms and traditions rooted in abuse of power. Sometimes a “culture of corruption” is cited as an issue or problem in a developing or post-conflict society. While the local population is fully acculturated to it, used to living under regime marked by public corruption, and have adapted their lives to it—knowing how and

whom to bribe, for example, to stay out of trouble or get things done—they do not embrace it and will not defend it.

Even this type of cultural change, uncontroversial as it eschews even internally unpopular norms, is difficult to bring about. The new constitution may help, embodying and memorializing new rights, and establishing the mechanisms for enforcing them. It may establish recourse for victims of corruption, setting the stage to root out such corruption. But corruption is not so easily extinguished. Again, it will probably take a generation, and likely more than one, to bring this type of cultural change to a society. The most effective approaches for promoting the Rule of Law, therefore, may lie in extremely long-term initiatives, including public education.\footnote{18}

\section*{CONCLUSION}

The upshot is that the culture, and more specifically the legal tradition, of any society is a major ingredient in the elixir that will, hopefully, produce the Rule of Law there. Some cultures have features that may be helpful and supportive in the effort to establish the Rule of Law, such as respect for authority, or extra-legal incentives to avoid anti-social behavior. Some cultures have components that are inherently destructive of the Rule of Law, such as a longstanding tradition of public corruption. Local culture can, therefore, present either opportunities or obstacles for the Rule of Law promotion efforts. The constitution must be drafted with this in mind, leveraging and building upon those aspects of existing culture that serve Rule of Law objectives, while accommodating and mitigating those that threaten to undermine the Rule of Law.

Particular caution is warranted to avoid unintended consequences in constitutional reform efforts, as cultural factors may cause the best-intentioned reform efforts to backfire. If customary law maintains law and order in a community but fails to protect the rights of women, a new constitution that eliminates the customary law forum, in a salutary attempt to

\footnote{18. Unfortunately, donor nations and private funders of Rule of Law promotion efforts typically demand to see results from their donations, channeling money into short-term, high-visibility projects. Public education initiatives, which may be far more important in changing culture, and establishing a Rule of Law culture, are less likely to attract donor money.}
protect the rights of women, may destroy the institution that maintains law and order. If human rights protections imposed on a Hindu society remove caste distinctions, undermining the cultural credo of karmic consequences, the members of the society may lose a key incentive to avoid anti-social behaviors. Reformers, including drafters of new constitutions, must ensure that their reforms do not do more harm than good.

In so doing, they should keep in mind that they are contributing to the creation of a new culture: one that protects human rights, promotes economic opportunity and development, and supports the Rule of Law. If they can do that, drawing up a constitution that preserves and leverages local cultural norms and institutions that promote the Rule of Law, the constitution’s drafters can not only avoid the pitfalls of cultural imperialism, but also greatly enhance the chances for a smooth and successful transition to a society characterized by the Rule of Law.