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The Idea of a Constitution

Hanna Fenichel Pitkin

The requirement to be extremely brief today is welcome to me, for on the idea of a constitution, if I know anything at all, I am surely a hedgehog (who “knows one big thing”) rather than a fox (who “knows many things”).¹ All I have to offer is the fact that our idea of what a constitution is, is inevitably tied to how we “ordinarily”—that is, naturally, spontaneously—use the word “constitution” and related words; and that the patterns of use of such important, abstract, and politically contested words always involve deep inconsistencies. So, to understand what a constitution is, one must look not for some crystalline core or essence of unambiguous meaning but precisely *at* the ambiguities, the specific oppositions that this specific concept helps us to hold in tension.

In particular, it is worth attending to two uses of the word “constitution” which may at first seem wholly irrelevant to our obviously public and political concerns, irrelevant to the Constitution of the United States, whether considered as the document whose bicentennial we celebrate or as a tradition of interpretation and public practice.

The first of these uses is “constitution” in the sense of composition or fundamental make-up, the “constituent parts” of something and how they are put together, its characteristic frame or nature. Concerning a person, “constitution” can mean either physical make-up (we say someone has a “robust” or a “delicate” constitution) or temperament, the frame of one’s character. With respect to a community, this use of “constitution” suggests a characteristic way of life, the national character of a people, their ethos or fundamental nature as a people, a product of their particular history and social conditions. In this sense, our constitution is less something we *have* than something we *are*. This sense, is, I think, what Charles McIlwain meant by the “ancient” idea of a constitution; no doubt he had in mind Aristotle’s *politeia*, which refers not to fundamental law or the locus of sovereignty but to the distinctive shared way of life of a *polis*, its mode of social and political

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1. Sir Isaiah Berlin, *The Hedgehog and the Fox* (New York, 1957).

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articulation as a community.² When Aristotle wrote his *Constitution of Athens*, he produced primarily a history of that city.

The second use of “constitution” which deserves our attention is its function as a verbal noun pointing to the action or activity of constituting—that is, of founding, framing, shaping something anew. In this sense, our constitution is neither something we have nor something we are so much as something we *do*—or at any rate *can* do. It is an aspect of the human capacity to act, to innovate, to break the causal chain of process and launch something unprecedented.

How do these two uses of constitution—as fundamental character or way of life and as the activity of constituting—illuminate the political and legal sense of “constitution”? The latter use serves to remind us that constitutions are *made*, not found. They do not fall miraculously from the sky or grow naturally on the vine; they are human creations, products of convention, choice, the specific history of a particular people, and (almost always) a political struggle in which some win and others lose. Indeed, in this vein one might even want to argue that our constitution is more something we do than something we make: we (re) shape it all the time through our collective activity. Our constitution is (what is relatively stable in) our activity; a stranger learns its principles by watching our conduct.

From the perspective of this sense, there is nothing particularly sacred or inviolable about a constitution. Our “founding fathers” were men, not gods, and the same powers that they exercised in framing our Constitution are latent in us as well, in our ordinary human capacity for creative action, particularly for collective, shared creativity. We are the species that constitutes itself, that collectively shapes itself, not just genetically through reproduction, as all species do, but culturally, through history. That is what Marx meant, I think, by calling us the “species being,” and what Aristotle meant by calling us the “political animal.” I am far more different from a woman of ancient Egypt than my cat is from her cat, because I am so much a product of my culture, shaped by all the intervening history. For most of us most of the time, our history-making and species-shaping are, of course, inadvertent, the unintended, collective by-product of our myriad private activities. But our capacity for human self-constituting is most fully realized when it is consciously and deliberately exercised, collectively. This sense of “constitution,” then, is activating and empowering, calling us to our powers as co-founders and to our responsibilities.

And yet, constituting is not just doing whatever one pleases, the expression in action of just any impulse or appetite. To constitute, one must not merely become active at some moment but must establish something that lasts, which, in human affairs, inevitably means something that will enlist and be carried forward by others. Unless we succeed in creating—together

2. Sir Charles Howard McIlwain, *Constitutionalism: Ancient and Modern* (Ithaca, N.Y., 1947).

with others—something lasting, inclusive, principled, and fundamental, we have not succeeded in *constituting* anything.

And so we come back to “constitution” as fundamental ethos or temperament. For not every choice we make, no matter how active, innovative, or willful, succeeds in expressing the chooser’s real needs or basic commitments, whether the chooser be one person or a whole polity. So, although constituting is always a free action, how we are able to constitute ourselves is profoundly tied to how we are already constituted by our own distinctive history. Thus there is a sense, after all, in which our constitution is sacred and demands our respectful acknowledgement. If we mistake who we are, our efforts at constitutive action will fail.

So there you have the hedgehog’s song: the constitution we have depends upon the constitution we make and do and are. Except insofar as we *do*, what we think we *have* is powerless and will soon disappear. Except insofar as, in doing, we respect what we *are*—both our actuality and the genuine potential within us—our doing will be a disaster. Neglect any one of these dimensions, and you will get the idea of our United States Constitution very wrong.