23

Political Aspects

FRIENDS?

The perennial question of all political society is: 'to cooperate or not to cooperate?' Even though collaboration comes naturally to us, it is still hard to do. Because we are hardwired to distrust strangers, we need information on the reliability of others before we can make common cause with people we do not know. This creates incessant and major problems: information on trustworthiness is hard to come by, we tend to misread it and all kind of biases get in the way – as Malcolm Gladwell shows in his book *Talking to Strangers*.[1] To make matters worse: cooperation is not a free choice; we must work together in order to survive. This means that our days are spent worrying about others' trustworthiness, weighing the information they give us, before we can make some sort of informed decision. Sound strategies are of the essence. The gullible will most likely get cheated; the overly suspicious will lose out as well. And it is not a one-off game – we need to bond with different people at different times to best serve our interests. But work together with whom? Which alliance works best? When and for how long? We are constantly pondering our best cooperative chances, forever triangulating and assessing incomplete and mostly distorted bits of information. It is a wonder we can sleep at all if not for the miracle of taking risks and the wonder of leaps of faith.

When cooperative information comes from many different sources, things can get mindbogglingly complicated. An episode of the epic sitcom *Friends* illustrates the agony resulting from strategic complexities of this kind.[2] Joey's best friend and flatmate Chandler is in a secret relationship with their neighbour Monica, who is also his friend Ross' sister. Joey is in the know and has agreed to keep mum. In this

[1] Gladwell 2019.

[2] Episode 14 (production number 467664), season 5, 'The one where everybody finds out', first aired in 1999.

https://doi.org/10.1017/9781009385084.028 Published online by Cambridge University Press

episode from 1999, Monica's flatmate Rachel and her former flatmate Phoebe find out about Monica and Chandler when they happen to visit the flat opposite the building and see Monica and Chandler kissing. After a hilarious bit of confused questioning, they tell Joey what they know. Joey is relieved. Assured that enough people know, he feels that he can finally inform other friends – including Ross – about the relationship. Not being the brightest of sparks, he has struggled to keep the secret. But Phoebe and Rachel – a bit put out at being left out of their best friends' secret for so long – decide not to confront Chandler and Monica and play dumb in order to wind up Monica and Chandler. They insist that Joey holds his tongue, which completely bewilders him. In the key scene, Joey is flummoxed by the complexities of the strategic combinations.

RACHEL: Phoebe just found out about Monica and Chandler.
JOEY: You mean how they're friends and nothing more? (Glares at Rachel.)
RACHEL: No. Joey, she knows! We were at Ugly Naked Guy's apartment [apartment opposite Rachel and Monica's apartment] and we saw them doing it through the window. (Joey gasps) Actually, we saw them doing it up against the window.
PHOEBE: Okay, so now they know that you know and they don't know that Rachel knows?
JOEY: Yes, but y'know what? It doesn't matter who knows what. Now, enough of us know that we can just tell them that we know! Then all the lying and the secrets would finally be over!
PHOEBE: Or, we could not tell them we know and have a little fun of our own.
RACHEL: Wh-what do you mean?

[a little later, when Joey has admitted to Monica and Chandler that Phoebe and Rachel know about the relationship because they saw them kissing from the opposite flat]

JOEY: I'm sorry! But hey, it's over now, right? Because you can tell them that you know they know and I can go back to knowing absolutely nothing!
MONICA: Unless…
JOEY: No! Not unless! Look this must end now!
MONICA: Oh man, they think they are so slick messing with us! But see they don't know that we know that they know! So…
CHANDLER: Ahh yes, the messers become the messies!
[…]

Joey is overwhelmed by the combinations. He wants to stay friends with everybody (general peace), which will require him to enter an alliance of some sort to prevent him breaking his personal promise not to tell the secret. But his friends have their own interests too – Joey's choices depend on theirs, which raises all kinds of dilemmas and makes decision making – in view of the various consequences – very hard. Translated into a simple scheme, the following sets of consequences might unfold:

https://doi.org/10.1017/9781009385084.028 Published online by Cambridge University Press

	Joey tells the truth	Joey keeps the secret
Rachel and Phoebe tell the truth	Monica and Chandler will not be able to play their trick ('mess with the messies') – Everybody will be a little annoyed but not overly.	Monica and Chandler will be able to play their trick ('mess with the messies') but probably on an already overwhelmed Joey. General peace (friendship) is compromised.
Rachel and Phoebe keep the secret	Monica and Chandler will be able to play their trick ('mess with the messies') on Rachel and Phoebe. General peace (friendship) is compromised.	Monica and Chandler will not be able to play their trick ('mess with the messies'), Joey's conscience is still burdened and general peace has in reality been compromised (if all friends are being secretive their friendship is no longer 'genuine' – it is no longer an honest bond).

Nobody can win in this situation, but everyone owning up would seem the most logical strategy as it would cause the least harm. But that would, of course, not be very funny. Joey, Rachel and Phoebe choose a different course of action in this episode of Friends.

Dilemmas like this are classic elements of comedies – for good reason. They pique our interest and make us laugh because we recognise conundrums like this in our own lives. Every choice depends on what others do, and deciding whether or not to collaborate depends on 'reading' the other, on incomplete information, and even on ignorance and taking a risk. Even game shows use this format of expounding collaborative strategies.

> In the finale of ABC's reality show *The Bachelor Pad* (2010–2012) the winner could pocket a $250,000 prize in a final test. The two finalists, 'were forced to go into separate rooms and decide whether they wanted to "keep" or "share" the final prize. If they both picked 'share', the money would be split evenly between them ($125,000 each). If only one picked 'share' and the other 'keep,' the keeper gets the entire prize ($250,000) and the other (the weeper) gets nothing. If they both pick 'keep,' then neither gets the cash and it is split among the other losing contestants (about $14,000 each).[3]

[3] http://freakonomics.com/2010/09/17/the-prisoners-dilemma-makes-a-reality-tv-appearance/. (consulted 12 December 2018)

https://doi.org/10.1017/9781009385084.028 Published online by Cambridge University Press

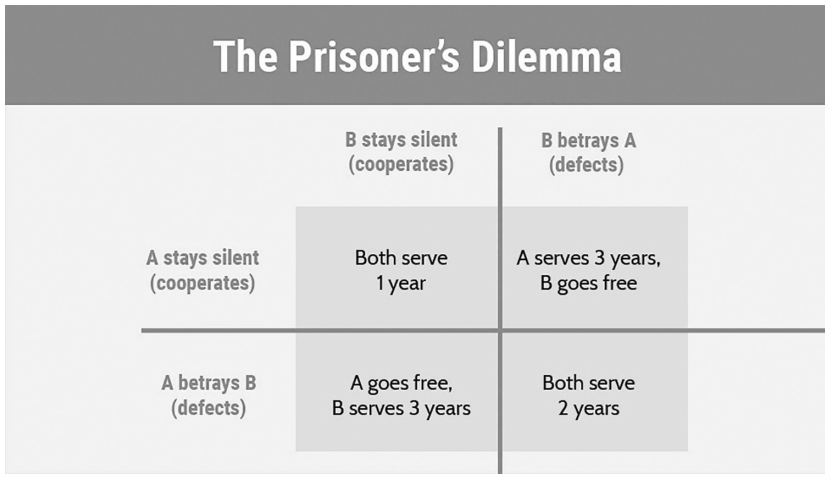
The snag, of course, was that neither finalist knew what the other would do. A classic instance of what economists call a prisoner's dilemma and the collaborative theory associated with it: game theory.

Constitutional Game Theory

Game theory is a branch of mathematics and economics focused on decisions. The prisoner's dilemma involves a hypothetical cooperative conflict. Two armed-robbery suspects were both carrying a weapon when they were arrested; they were apprehended separately and have not been able to communicate. The prosecutors offer each prisoner a bargain. They can either betray the other by testifying against them, or cooperate with the other suspect by remaining silent. The possible outcomes are:

- If A and B each betray the other, each of them serves two years in prison,
- If A betrays B but B remains silent, A will be released and B will serve three years in prison (and vice versa),
- If A and B both remain silent, both of them will serve only one year in prison (on the lesser charge).

Set out in a scheme:



Prisoner's dilemma payoff matrix

This very American example invites you to consider the Nash equilibrium.[4] What is the best thing an apprehended suspect can do? What is the optimal strategy: a cooperative strategy (remaining tight-lipped) or a non-cooperative strategy (confessing)?

[4] A proposed solution of non-cooperative games devised by John Forbes Nash Jr., a Princeton University fellow and Nobel Prize laureate in economics, and the main character in the

https://doi.org/10.1017/9781009385084.028 Published online by Cambridge University Press

On the face of it, it may be best for both suspects to stay tight-lipped (lenient punishment), but if one of them confesses – abandoning the cooperative strategy of keeping mum, so to speak – she can expect no punishment at all and maximises her benefit through selfishness. Selfishness 'logically' offers the greatest reward in this game. In reality, however, people seem more prone to display a systemic bias towards *cooperative* behaviour, in this and similar games, despite what is predicted by simple models of 'rational' self-interested action.[5] Actual cooperative decisions do not blindly follow simple one-off, rent-seeking paths.

Whilst most of us will rarely be involved in armed robberies, we are constantly confronted with dilemmas of this kind. What do we do if we all agree to cook for each other and do the washing-up, but someone ducks her duty after eating like a king at communal meals? And what if we enter the Tour de France and cycle head over head the Alpe d'Huez climb, trying to catch up with a runaway Chris Froome, but a cyclist evades front work, saving his energy for a blistering final sprint to win the leader's jersey and the stage. How do you deal with this? And what on Earth does this have to do with constitutions? Everything.

Constitutions, as expounded, are always about the 'we' – rules on a group, group decisions and the role of individual group members. Constitutions define a political arena, where distribution decisions[6] are taken by and for a group (and usually in its name). This always leads to contention. How do we coordinate our efforts? When do we work together? How do we deal with members who do not acquiesce in majority agreements? Who gets what? Who does not get what? Why? It is like an infinite episode of *Friends*, and endless *Bachelor Pad* show. Like life itself, which constantly plays tricks with the dualism of our basic neurological disposition. On the one hand, we are evolutionarily predisposed to pursue our self-interest and on the other hand, we are inherently altruistic[7] – and we depend on trust and recognition for cooperation.

The Minimax Constitution

Cooter shows in his 2000 book *The Strategic Constitution* how most of the big constitutional theory questions – 'what is a good constitution?' – can be attributed and boiled down to simple game-theory questions. Prisoner's dilemmas always play a role

biographical film *A Beautiful Mind* (2001). He developed them in his Ph.D. Dissertation entitled 'Equilibrium points in n-person games', Nash 1950 and 'Non-Cooperative Games' Nash 1951.

5 Fehr & Fischbacher 2003.

6 This is what all political processes are about according to Lasswell's famous definition: 'Who gets what, when, how?' Lasswell 1936.

7 Hofman 1981 and Gintis, Bowles, Boyd & Fehr 2003. There is still debate as to whether altruism is an innate trait, or a form of intelligent group behaviour (*reciprocal altruism*: self-sacrifice

in drafting constitutions. Freedom, whether or not constitutionally protected, gives individuals the liberty to choose, follow their preferences and satisfy their desires. This condition also contributes optimally to economic growth and prosperity because only free markets can match supply and demand efficiently and maximise utility.[8] But individual freedom can often only be achieved collaboratively, by limiting governmental power, for instance, restricting political distribution decisions that impinge on the scope of individual decisions. Government power, on the other hand, is itself a highly sought-after commodity because being in charge allows you to capitalise your own, short-term selfish (group) interests and try to expropriate the jackpot – a proportion of market revenues.[9] To prevent this, the future constitutional community must somehow try to limit political power now and in the future by binding its exercise to law and legal rules. But, it is certainly not a foregone conclusion that justice will prevail in a contest with power. Spain had no fewer than 43 coups between 1814 and 1923;[10] and Paraguay has had 19, Japan 11 and Haiti 27 coups in the last 200 years.[11]

Cooter concludes that the first goal of a constitution must therefore be:

> […] to impose the rule of law and protect the liberty of citizens. Game theory provides a useful restatement of this goal. A player who follows the *minimax* strategy in a game minimises the maximum harm that he can suffer.[12]

A 'minimax constitution's' equilibrium:

> […] minimises the harm when the worst political possibilities materialise. The minimax constitution pursues the classical political goals of security, legality, and liberty.[13]

Everyone would like a minimax constitution like this. It meets the moral precepts of a catalogue of great thinkers, including Immanuel Kant's categorical imperative (a generalised test of your decisions and actions: would you arrive at the same decision if it were to apply to everyone?),[14] John Stuart Mill's harm principle (freedom

for reasons of kinship or in the hope of being paid back in kind). The articles cited show that altruism, contrary to what might be expected (survival of the fittest), has evolutionary advantages; altruism might thus be innate.

8 Cf. Leitzel 2015, p. 4–6.

9 Barry Weingast puts in in the following terms: 'the fundamental political dilemma of an economic system is this: a government strong enough to protect property rights and enforce contracts is also strong enough to confiscate the wealth of its citizens.' Weingast 1995, p. 1.

10 According to the table in Cooter 2000, p. 11 (who quoted *The Economist* in 1992).

11 Cf. the Wikipedia overview of coup d'états https://en.wikipedia.org/wiki/List_of_coups_d%27%C3%A9tat_and_coup_attempts_by_country#Austria (Consulted 19 July 2018).

12 'In a zero-sum game, minimising the maximum harm is equivalent to maximising the minimum payoff. Thus the minimax constitution can also be described as the maximum constitution.' Note 26, Cooter 2000, p. 11.

13 Cooter 2000, p. 11–12.

14 Finding moral good by generalising your own interests, principles and motives for action (maxims). Kant summarises it as: 'I ought never to proceed except in such a way that I could

https://doi.org/10.1017/9781009385084.028 Published online by Cambridge University Press

should only be limited to prevent harm to other individuals),[15] and John Rawls' veil of ignorance (how would you organise a just society if you were ignorant of your own situation?).[16] But perhaps it is too good to be true. Achieving such ideal equilibriums requires reasonable, rational and honest people. This cannot be said of all of us and certainly not all the time. A succession of recent Nobel Prize winners has shown that our behaviour is sometimes also motivated by less noble motives. The game is marred by people who secretly peek from behind the veil of ignorance, thinking 'to hell with Kant's moth-eaten imperative or a hippyish harm principle': I'm not sacrificing any of *my* freedom for some greater good; that's just the way some of us are.

Richard Thaler (Nobel Prize laureate in economics 2017) wrote an entertaining and good book on this subject: *Misbehaving*. He shows how many modern economic and political theories assume reasonable, rational people and rational human behaviour (Adam Smith's rational *homo economicus*), but, in fact, *real* people's behaviour is often far from rational.[17] We have limited ability to act rationally (bounded rationality) because we are constantly inclined to completely misjudge risks and overestimate ourselves, causing us to negotiate ineptly (bounded self-interest). On top of this, we have a limited capacity to control ourselves (bounded willpower).[18] We 'misbehave' all the time and do not suddenly stop doing so when having to make important political decisions, not even when making the most fundamental of all political decisions: a constitution.

If you try to make forecasts in economics or politics and you want to calculate them according to some formula or (economic) model, you will soon be confronted by humanity's irrational side. You can use the law of large numbers to partly filter this out. On balance, the irrationality of a few people does not hinder the (predictable) rationality of large groups due to a mechanism we also call the wisdom of the crowds; the concept of the *homo economicus*. On balance, we will act rationally. Even so, forecasting is still difficult, as Buchanan and Tullock illustrated in their 1962 classic *The Calculus of Consent*.[19] This is because masses are not the starting point; all forms of economic or political cooperation start with cooperation between two or more individuals. And it is not just something we do easily or right away. We need to be seduced, enticed, lured into 'what is in it for me?' We work together by exchanging goods and services in our mutual desire to gain something – to benefit ourselves. This is no different in economic cooperation than in political or collective

also will that my maxim should become a universal law.' ('[…] ich soll niemals anders verfahren, als so, daß ich auch wollen könne, meine Maxime solle ein allgemeines Gesetz werden.') Kant 2011 (orig. 1786), p. 33.

[15] Formulated by Mill (who never used the term harm principle) as 'the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.' Mill 2002 (orig. 1859), p. 8.

[16] Rawls 1999 (orig. 1971) p. 19.

[17] Thaler 2015, chapters 7 to 13, and in particular chapter 13 (*Misbehaving in the Real World*), p. 115–124.

[18] Sunstein, Jolls & Thaler, especially p. 1477–1479.

[19] Buchanan & Tullock 2007 (orig. 1962).

action, despite it sometimes taking a little longer in the latter to work out what everyone's benefit is, what the interests are, and which utility is being maximised.

Adam Smith's classical economic-theoretical assertion that the pursuit of your individual interest almost automatically serves the general interest (by increasing prosperity) is not so self-evident in the political and constitutional world. Yet, economic laws can still help improve understanding and prediction of the course and outcomes of collective action, including in political processes. When you realise that individuals can and want to pursue collective utility maximisation, you can also calculate how, driven by economic motives, they try to do so efficiently and optimally. Buchanan and Tullock attempt in their 'public choice theory' to use maximisation and efficiency theories to calculate, understand and predict in models how and where people in a competitive politico-economic community achieve an equilibrium. This also involves game theory,[20] but also shows that the shortest route to the sacred minimax constitution cannot be found or calculated directly. If it were possible, we would immediately introduce this constitutional optimum everywhere as a blueprint.

The problem is that there is a difference in approach between the political and economic worlds. Smith's economic law asserts that pursuing your own short-sighted interest is not possible at the expense of all other market participants, as was assumed in economic theories before Smith.[21] Instead, other participants potentially benefit from your behaviour thanks to an increase in general prosperity. If the pie grows, there is more to be shared out and everybody may benefit. But does this rationale apply to a political society too? The economic approach to (political) collective action processes (*the utility maximising approach*) maintains that individual utility maximising behaviour best serves general prosperity and hence also the public, general interest. The *power maximising approach*, on the other hand, assumes that collective decision-making processes are a zero-sum game: one person's gain is another's loss. Perhaps the truth is somewhere in the middle. It is difficult to know because the picture is (further) muddled by a phenomenon called 'group dynamics'. Buchanan and Tullock conclude at the end of their book that political communities are complex and multifaceted. They contend that their theory on political processes shows:

> […] that individuals are the only meaningful decision-making units, that these individuals are motivated by utility-maximising considerations, and that they are well informed and fully rational in their choices. Yet we know that 'groups' do exist as something apart from the individual members, that individuals are motivated by many considerations, and that individuals are far from being either well informed or rational in their political behaviour. [This] would seem to restrict severely the descriptive, explanatory, and predictive value of our theory.[22]

[20] *Ibid*., p. 19–22. Cf. Fukuyama 2011, p. 448.

[21] As described by Thomas Malthus in his pamphlet *An Essay on the Principle of Population* in 1798. He assumes that prosperity must necessarily decrease if population growth increases, due to finite resources. For this reason, we call this approach 'Malthusian'.

[22] Buchanan & Tullock 2007 (orig. 1962), p. 297.

It is just not possible to predict or calculate the best choice, a constitution's minimax option. And it would not even desirable to boot; constitutional rules are not collective or public choice algorithms. Constitutions are not about the outcomes of political decision-making – they do not prescribe solutions – but rather accommodate and channel conflict of interest resolution and political processes. Ginsburg and Huq aptly note that:

> Successful constitutions channel conflict through formal political institutions, as opposed to forcing antagonists to take disagreements to the street.[23]

Minimax is a procedure rather than a solution.

CONSTITUTIONAL ARCHITECTURE FOR DIVIDED SOCIETIES

Constitutional arrangements try to reconcile the pursuit of individual or factional interests and the importance of larger-scale cooperation. As we have seen, individuals and smaller groups do not automatically bridge this gap and embark on the unknown travails of cooperation on a larger scale. We are naturally conservative, attached to the things and people we know.[24] Individuals have to be convinced – by making them believe in the material benefits of the new form of cooperation and order. This can be done by calculation, proving the benefits of the new form of cooperation. Large-scale and convincing proof to join is best achieved by making an appeal that appeals to everyone – connecting with something everyone believes in. If the new community has a shared religion, it can be said that the new larger-scale order has God's blessing or has been ordained by God. If you live in the world guided by science, rationality and an anthropocentric world view, then these elements can be used to show the added value of larger-scale cooperation and order: your investment in large-scale cooperation – renouncing some of your freedom – ultimately pays off (protection, improved competitive capacity of your group as a whole, reduction of the costs of conflict). As Alexis de Tocqueville (1805–1859) observed, if you are led by rational considerations, then cooperation in a larger group under constitutional rules is often a form of *enlightened self-interest*.[25]

Bridging Differences

It is one thing wanting to reconcile individuals and a large-scale society's interests and quite another actually doing so. Aligning individual interests and desires one-on-one with those of large groups of individuals as a group is a logical impossibility – even for

[23] Ginsburg & Huq 2016-*introduction*, p. 18.

[24] Cf. on this subject Amodio, Jost, Master & Ye 2007 and Fowler & Schreiber 2008, p. 912–914. Cf. May 2018, p. 120–121.

[25] Tocqueville 2002 (orig. 1835 and 1840), p. 595 where he says: 'The Americans, on the contrary, are fond of explaining almost all the actions of their lives by the principle of interest rightly

an instant. It is completely impossible. Myriad utopian experiments (including of the communist and fascist variety) claiming to unify individual and state interests offer ample proof: state-based communities of this kind always rapidly degenerate into repressive regimes. All that can be done is to try to recognise and reconcile individual and collective interests, for example, by looking for an acceptable compromise (which, incidentally, does not have to satisfy everyone). This primarily involves reconciling the opposing interests of large groups, and channelling conflicts so that differences do not undermine a community's collective capacity to cooperate.

Modern constitutions contain a multiplicity of rules designed to reconcile social differences for exactly this reason. However, constitutional ambitions and results vary widely. Some constitutions aspire to little more than acting as a peace treaty to defuse or freeze (recent) conflicts, such as East Timor's 2002 constitution. Constitutions like these attempt to induce loose forms of cooperation in a new federative association, combining it with some form of institutionalisation of political, cultural or ethnic differences.[26] Other constitutions go further and try to actually reconcile groups in a new (federative) association (e.g. South Africa 1996)[27] and, whilst recognising differences and identities, try to meld them in a single nation.[28] It goes without saying that this requires far more than soothing words in a constitution, but it is noteworthy that the constitutions of many post-conflict countries in the past few decades predominantly focus on safeguarding and consolidating peace.[29] Constitutions and constitutional arrangements are increasingly used as 'social cement'.[30] They have become a popular medicine to overcome and cure political, ethnic, religious or cultural cleavages and conflicts. As a result, a thriving pharmaceutical industry has taken root, dispensing constitutional remedies across the world. Since the fall of the Berlin Wall, international organisations, sponsors and experts have jostled at the bedside of revamped states with diagnoses and prescriptions which they believe will do just the trick. They have been particularly prominent at times of great change in societies: in the aftermath of the Balkan wars, during the accession of eastern and central European countries to the EU, and during and after the Arab Spring.

understood; they show with complacency how *an enlightened regard for themselves* constantly prompts them to assist each other, and inclines them willingly to sacrifice a portion of their time and property to the welfare of the State' (my italics). Cf. De Waal 2019, p. 30 ff.

[26] Wallis mentions a series of countries in which traditional socio-political groups maintained a formal and protective role in the new political dispensation, including Palau, Tonga, Vanuatu and so on. Cf. Wallis 2014, p. 332.

[27] The preamble contains a brief and meaningful reference to the past: 'We, the people of South Africa, Recognise the injustices of our past; Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our country; and Believe that South Africa belongs to all who live in it, united in our diversity.'

[28] Cf. the different forms of constitutional bargains discussed in the contributions to Choudhry and Ginsburg 2016.

[29] Samuels 2006.

[30] Freely adapted from Jon Elster 1989, whose metaphor primarily referred to rationality and not to constitutions.

Constitutional Formulae

What kind of constitutional arrangement – what kind of medicine – works best for a given situation? How do you resolve political conflicts, especially in deeply divided or segmented societies, in a peaceful and durable manner? Any remedy of this kind will mainly revolve around finding a good balance between majority and minority interests. Can constitutional rules on fair (democratic) decision-making prevent minority or individual rights from being trampled underfoot? The most common solution is the concept of the democratic constitutional state (or liberal democracy): the combination of a democratic system with the guarantee of limited government (bound by the law and separation of powers), protected individual and group rights (human rights, fundamental freedoms) and independent judicial arbitration. Democratisation and judicialisation – forces that certainly do not always coexist harmoniously.[31] For which form of democracy (a majoritarian or consensual system, such as consociational democracy) is most suited,[32] which electoral system (universal suffrage, plurality voting in single-member electoral districts, proportional representation and so on) is best fitted, or which government system (presidential, parliamentary, power sharing or power concentrating,[33] centralised or decentralised and so on) fits best? Which position and role are to be conferred on the independent judiciary in relation to democratic political bodies? Which modality of judicial review is optimal? And how do you best guarantee all of this in a constitution?[34] There are many conceivable – and passionately contested – formulae. It is not certain which works best,[35] but some kind of constitutional philosopher's stone is in great demand – a constitution that brings eternal peace to the constitutional community and joy to the world for that matter, with no more than the written word.

[31] Shapiro and Sweet 2002. Isaiah Berlin concisely expresses the paradox: 'there is no necessary connection between individual liberty and democratic rule. […] This connection […] is a good deal more tenuous than it seemed to many advocates of both.' Berlin 1969, p. 130–131. Francis Sejersted argues that they are essentially two different concepts of freedom: 'The rule of law and democracy correspond to the two different concepts of liberty, the negative, which makes liberty dependent on the curbing of authority, and the positive, which makes it dependent on the exercising of authority.' Sejersted argues that these concepts are (quoted by Berlin), '"two profoundly divergent and irreconcilable attitudes to the ends of life." The claims of each of them have, however, "an equal right to be classed among the deepest interests of mankind."' Sejersted 1997, p. 131.

[32] Lijphart 2004, p. 97.

[33] Also called centripetal.

[34] Horowitz, an advocate of plurality voting systems and presidential government, recommends strong and firmly embedded constitutional institutions – such as a constitutional court – to maintain balance in the system. Horowitz 2014. As well as the rather older Horowitz 1991.

[35] Lijphart – challenged by people like Horowitz – is less cautious. Based on his own study of thirty-six democracies around the world, he rejects Horowitz's predilection for power-concentrating majoritarian systems: 'In sum, power sharing has proven to be the only democratic model that appears to have much chance of being adopted in divided societies, which in turn makes it unhelpful to ask constitution writers to contemplate alternatives to it.' Lijphart 2004, p. 99. Cf. Choudhry 2010 *introduction* (and in particular p. 15–26 for a summary of the Lijphart-Horowitz debate).