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### From Words to Worlds: Exploring Constitutional Functionality by Beau Breslin

Robert L. Tsai

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black migration to the North, which made the Democratic Party more northern and liberal, and the population growth and migrants that augmented Republican ranks throughout the Sunbelt. He also examines the evangelical reaction and the secular response, noting that the “contemporary relationship between church-going habits and presidential vote actually emerged quite suddenly between the 1988 and 1992 elections” (p. 115). In addition, both books characterize contemporary electoral campaigns as primarily about mobilizing core constituencies, rather than appealing to swing voters. They both conclude that gerrymandering played little role in congressional polarization. Both are skeptical about any easy reforms that would reverse these trends. And both reflect back on the famous 1951 American Political Science Association report “Toward a More Responsible Two-Party System” by warning political scientists to “be careful what you wish for, lest it come true” (Abramowitz pp. ix–x; see also Fiorina pp. xv–xvii, 159–60).

With both books drawing on many of the same data sources, it is clear that the principal differences between them are interpretive. But the disagreements are not merely semantic or superficial. Together they provide a productive debate about contemporary political representation in the United States. Each is provocative, engaging, easy to read, perfectly appropriate for use in undergraduate courses, and capable of reaching an audience beyond political science.

Still, in reading two such books that take for granted an extraordinary intensity of elite polarization in American politics, I wonder if the use of roll-call votes to measure congressional polarization has led to an exaggerated view. Looking instead to the policies pursued by the two parties when they are in power suggests more centrism than extremism. Even during the years of unified Republican control under President George W. Bush, legislation on hot-button issues generally hewed close to mainstream opinion—for example, limiting federal recognition of gay marriage but not interfering with state policies to the contrary, and banning only some late-term abortion procedures. When the Democrats subsequently came back to power, with supermajority control of the Senate after 2008, they did not roll back the Republican policies that they had so vigorously opposed. The 2003 Medicare prescription drug benefit, created to great outcry among Democrats, was only marginally tweaked during the landmark health care reform of 2010. President Bush’s highly contentious antiterrorism domestic surveillance programs were retroactively validated by a Democratic-controlled Congress in 2007. At this writing, a Democratic Congress is likely to extend the controversial 2001 Bush tax cuts for all but the highest income taxpayers (and it is possible that even those may be preserved). President Bush’s auto and banking bailouts were continued under Obama.

Such continuities suggest that a considerable share of the polarization in Washington voting and rhetoric may be engineered for political communication and voter mobilization. During an era of remarkably tight two-party competition, the party out of power continually impeaches the performance of the party in power in a bid for increased public support. But in the end, the two parties may not disagree nearly so profoundly as they seem to now.

**From Words to Worlds: Exploring Constitutional Functionality.** By Beau Breslin. Baltimore: Johns Hopkins University Press, 2008. 232p. \$50.00.  
doi:10.1017/S153759271000263X

— Robert L. Tsai, *American University*

With this concise and lively treatment of constitutions and their functions, Beau Breslin aims to restore the role of text to the study of democratic constitutionalism. Marginalized by scholarly attention to the actions and interpretations of particular legal actors, he says, the U.S. Constitution as a “unique composition” serving “symbolic and practical” purposes has all too often been overlooked (pp. 3, 5). As a corrective, Breslin trains attention on seven functions served by a written constitution: transforming existing orders, conveying collective aspirations, designing institutions, mediating conflict, recognizing claims of subnational communities, empowering social actors, and constraining governmental authority. Each chapter is devoted to explicating a different function. Throughout, the author employs useful examples from around the world, with Canada, Iraq, Israel, South Africa, and the United States receiving the most attention.

Breslin’s approach makes for a learned, accessible introduction to the reasons why people worldwide might turn to written constitutionalism, even if it is not always conducive to fine-grained scrutiny of any particular people’s constitution-writing experience. The author is at his best when he moves beyond the various attributes of constitutions in the abstract and comments on global trends. In these places, he flirts with the empirical questions of constitutionalism over time: namely, how the practice has changed, what appears to have been learned from others’ experiments, and what these lessons bode for the future of constitutionalism. He observes that constitutions have gotten longer (p. 55), and that the typical preamble, such as that of the South African Constitution, now painstakingly records a country’s tragic past to be overcome instead of remaining content with universal statements on liberty and justice (p. 57). As constitutions have become more codelike, they have also devoted more space to articulating individual liberties, often in advance of establishing the structure of government (pp. 84–85).

Breslin’s account stimulates several questions: Are these trends, accelerated by the processes of antitotalitarianism

and decolonization, indicative of efficient writing practices or rote copying? How many are bottom-up constitutions and which are top-down charters? Could we say, with any assurance, that the ascendance of written constitutionalism has produced greater freedoms as well—or is this presumed cause-and-effect relationship between writing and liberty more imagined than proven?

Among the constitutional functions explored by Breslin, two seem particularly salient in the post-Cold War age: managing social conflict and preserving cultural heritage. Social movements worldwide have unleashed not only tales of historical oppression but also urgent pleas for legal accommodation. Breslin presents Canada as a successful episode of writing to manage conflict and recognize cultural minorities (pp. 106–10, 121–32). He marshals polls suggesting that Canadians' participation in the 1982 revision of their constitution unified them around a vision of pluralist democracy (pp. 108–9). Assuming this to be true, is it a replicable experience, or is there something about Canadian society or its traditions that made this outcome uniquely plausible?

Another of Breslin's claims worth unpacking is the impact of international opinion favoring written constitutionalism. Just as acquiring nuclear weapons once signified international stature and influence, having a constitution to call one's own secures a people a place among the community of modern nations. It must be a powerful temptation, then, to author a constitution in order to maximize aspirational and expressive gains, even when the gulf between text and enforcement is likely to be significant. Along with the advent of global constitutionalism, one might expect a corresponding rise in vastly underenforced and incompletely authorized constitutions. It is an empirical matter to discover the extent to which intended functions actually are fulfilled, or whether, instead, constitutional provisions are either ignored or work at cross-purposes.

As Breslin notes (p. 98–99), the international expectation to have a constitution of one's own is bucked by Israel, whose citizens made plans to write a unitary constitution in 1948 but have never completed the task. Two reasons are frequently cited: fears that a constitution would, first, dilute the nation's religious distinctiveness and, second, hamstring efforts to deal with matters of national security. Perhaps with Canada in mind, the author observes that authoring a Bill of Rights might "have the effect of reaching out to minority religious and ethnic groups who have long felt oppressed by government policies" (p. 100). Likewise, transparent ordering of state institutions "might go a long way toward appeasing communities that believe the largely unconstrained authority of the state has contributed to ongoing violence" (p. 100). At this point, a thicker case study of Israel, like Breslin's extensive treatment of Canada, might prove illuminating. What factors have enabled Israel to be perceived as a

modern constitutional democracy while simultaneously avoiding the harshest condemnation for refusing to codify legal limits with clarity? Has the staunch support of Western allies promoted or stunted Israel's legal development?

To the extent that internal practices have allowed Israel to walk a fine line, the relatively brisk maturity of Israel's legal culture may have something to do with it. The Israeli Supreme Court's declaration of a "constitutional revolution" elevating the Basic Law to supreme normative status suggests that juridic constitutionalism has filled the void to repair any reputational damage caused by piecemeal constitutionalism. Although the 1992 Basic Laws mention only a slice of rights found in liberal nations, Aharon Barak led the Israeli Supreme Court through a creative synthesis of disparate legal texts, deeming speech and equality—two rights not mentioned in the Basic Law—to be nevertheless part of Israeli constitutional law's protection of "dignity." Still, to what extent can judge-driven constitutionalism provide features found wanting in original design?

This leads to a deeper question: the circumstances under which underwritten or disaggregated constitutional systems succeed or fail. The inquiry may be understood as a natural outgrowth of Breslin's project, for eventually one will want to know what metrics ought to be used to assess the actual functionality of design choices. Theorists assume a necessary organic connection between a citizenry and its constitution for certain functions (e.g., aspirational, identity-making) to be realized. Is it consent, authenticity, inclusiveness, or procedural fairness that ought to be the benchmark for this connection? Although he offers Joseph Raz's perspective that the moral legitimacy of a constitution derives from the justifications of original authors but can change as time passes, Breslin himself does not take a firm position as to how a constitution maintains legitimacy over time. Perhaps—consistent with a functional account—certain core functions must be well served before a constitution is declared legitimate in the eyes of the living?

Breslin's later discussion of England's unwritten constitutional tradition suggests that a robust legal culture is essential to a polity that stands the test of time. Once developed, such a culture inculcates respect for rules and controversial outcomes, fosters lawyers and activists capable of testing written commitments, and enables jurists to envision plausible routes when democratic majorities show little patience for the enforcement of legal limits. The text of a constitution may begin the task of creating such an ethos and legalized way of life—by rhetorically empowering committed citizens and talented judges and establishing rule-of-law mechanisms with a shot at growing strong and uncorrupted. But much of these social conditions upon which success depends lie far beyond the text of a constitution. They have to do with text, but after the

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moment of inscription they have more to do with how others make use of the text.

Breslin's erudite book elucidates the reasons a people might engage in constitutional creation in the first place—the point at which dreams are the most glorious and words are the most inspirational. What follows can never match a people's sheer audacity in that moment, but with Breslin's helpful prompting, it may one day be possible to test their leap of faith.

### **Democracy in the States: Experiments in Election**

**Reform.** Edited by Bruce E. Cain, Todd Donovan, and Caroline J. Tolbert. Washington, DC: Brookings Institution Press, 2008. 256p. \$62.95 paper, \$26.95 cloth.

### **The Way We Vote: The Local Dimension of American Suffrage.**

By Alec C. Ewald. Nashville, TN: Vanderbilt University Press, 2009. 256p. \$69.95 cloth, \$29.95 paper.

### **Discount Voting: Voter Registration Reforms and Their Effects.**

By Michael J. Hanmer. New York: Cambridge University Press, 2009. 264p. \$79.00.  
doi:10.1017/S1537592710002641

— Edward M. Burmila, *University of Georgia*

Aldous Huxley commented that consistency “is contrary to nature, contrary to life. The only completely consistent people are dead.” If so, then the American electoral system, with its local diversity in rules, practices, and political culture, is a living, breathing, and evolving entity. One of the distinguishing characteristics of American elections compared to other advanced democracies is the absence of uniform, “nationalized” elections. Instead, voting and counting ballots are fundamentally local activities. While localism is a boon for political scientists, given the opportunities for natural experiments it creates, allowing local interpretations of such a basic democratic right has been problematic historically. To what extent are local differences in procedures and practices permissible if they have a demonstrable impact on individuals' ability or propensity to participate in elections? This question underlies debates over election reform in the United States, and these reforms in turn motivate and inform the three works reviewed here.

In *The Way We Vote*, Alec Ewald, the author of prominent research on voter registration and felony disenfranchisement, provides a thorough account of the origins and history of the American tradition of decentralized control of elections. The vagaries inherent in this highly localized system of administration are often fodder for critics, but Ewald takes a different approach, acknowledging the variation in the system while arguing that localism is both intentional and beneficial. His major theoretical contribution stems from the argument that the right to vote is fundamentally a “practice” (p. 9) conditioned by local institutions that administer elections. While the right

to vote is derived from the law, the local institutions that execute the law and administer the actual process of voting are equally important components of suffrage in practice. Those local institutions vary in the United States to a degree unique among democracies.

The bulk of Ewald's book is devoted to a detailed account of the origin, history, and evolution of shared local, state, and national control of elections in the United States. This is the strength of the book, making it of particular interest to scholars of American political development. The history of American suffrage shows that control of the electoral process is decentralized by design. It reflects both the American interpretation of democratic ideals and practical considerations. Reaching back to colonial times, Ewald explains how elections evolved from operations purely under local control to the complex mix of congressional mandates, court rulings, state laws, and local practices that exists today. While recognizing the value of the element of centralized control—the Voting Rights Act, for example, was inarguably beneficial by ensuring the consistent application of rights—he argues that local practices are an essential component of self rule and popular sovereignty.

This segues into Ewald's core account of the four benefits of localism: increased efficacy and ownership of the political process, the potential for innovation and experimentation, the diffusion of power as a bulwark against the centralized authority, and increased participation driven by social approbation when local institutions are instrumental to the electoral process. Ultimately, Ewald makes a valuable distinction between standardization and uniformity as goals of election reform. He argues that reforms are best focused on standardizing elections—ensuring transparency, accuracy, fairness, participation, and equal access. But reforms neither can nor should seek to enforce uniformity, defined as ensuring that all voters across the country have identical experiences on Election Day. In other words, variable aspects of elections, such as the method of voting, polling hours, and provision of alternative voting methods, should remain under local control to maximize the benefits of localism.

While *The Way We Vote* is primarily historical in its analysis, *Discount Voting* offers the cutting edge of mixed-methods research on the relationship between voter turnout and electoral rules. Michael Hanmer, whose work has established him as a rising name in research on turnout and voting technology, tackles a question that has plagued scholars of American turnout for the past three decades. If, as the existing literature argues, registration is a costly barrier to voting, why have structural reforms that facilitate registration done so little to improve turnout? He focuses on two reforms—Election Day registration (EDR) and both state and federal “motor voter” laws that combine driver services, such as renewing a license, with voter registration.