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Between Law and Politics

Memory in Constitutional Preambles

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This thesis explores memory in constitutional preambles and argues that a new form of public and institutional memory – here discussed as constitutional memory – emerges from constitutional law, which acts as an intersection of law and politics. By approaching constitutional preambles as lieux de mémoire akin to monuments and memorials, they are understood as manifestations of political will in that they reimagine entire communities by drawing upon a carefully crafted narrative of the past, as well as a carefully selected catalogue of national memories. As such, they deal with specific memories which can be not only altered but at times suppressed altogether, showing how memory is effectively mobilised as an instrument of politics to emphasise certain things of the past whilst effacing others. By dividing the 134 constitutional texts of this study into four distinct groups using the Democracy Index by the Economist Intelligence Unit, this thesis analyses how memory is invoked in constitutional argument and how it varies between different regime types. This is achieved by coding the qualitative material and classifying it using a loosely defined content analysis method.

Based on a theoretical framework deriving its key concepts from memory studies, this thesis establishes the phenomenon of constitutional memory as a politically sanctioned and politically funded rite of remembering, which is practised by political elites to construct meanings of the past and propagate them more widely or impose them on other members of society through legislation. This is because, despite the limited legal value of constitutional preambles, the prestige of constitutional law is perceived to lend a considerable degree of credibility to its contents, meaning that constitutional preambles can be expected to speak with the same voice of authority as the other sections of the constitutional text. Thus, when constitutional memory makes a claim about the past, such claims operate somewhere between the realms of historical and ideological fiction, which places a particular importance on who and what is remembered and commemorated in constitutional preambles and how such practices of remembrance can have a significant political impact beyond their legal context.

The results of the research reveal that the lower the democratic ranking of the state, the higher the word count of its preamble. In this respect, authoritarian regimes produce by far the longest preambles, which also represent the most advanced attempts to erect a monument to ages past in constitutional argument. They contain the most references to memory, describing not only the essence of the people but also how things came to be; what is perceived to be traditional and what is an innovation; who has committed wrongs and who has been wronged; what we owe to others and what they owe to us, not to mention who is deemed worthy of praise and who of blame. The analysis of the 134 constitutional preambles also reveals that undemocratic regimes claim the most democratic memories as their own, which presents them as stronger proponents of constitutional patriotism on paper than their democratic counterparts. Meanwhile, full and flawed democracies contain fewer such references in their preambles, which further establishes constitutional memory as a significant political resource that is used for identity and legitimation purposes by hybrid and authoritarian regimes in particular.

Key words: memory, constitutional preambles, lieux de mémoire, constitutional memory, commemoration, memorialisation.

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Note on constitutions and their translations

Constitutions generated by the Constitute Project have been translated from their native language into English by not one but multiple translators, which may affect how individual words and phrases appear in each constitution. This is to acknowledge the slight nuances in the meaning of the words that might have been lost in translation. In this respect, it may also be argued whether such texts can be effectively studied without knowing the original language. For instance, the current Myanmar constitution prohibits constitutional interpretation – including its preamble – if it is translated from Burmese. However, since these translations have been accepted by the Constitute Project, which is widely used amongst constitution-makers, legal experts, and scholars for legal research, they are here treated as the most accurate translations of the original constitutions currently available.

1 Introduction

“The past is never dead,” writes the American novelist William Faulkner in *Requiem for a Nun*, published in 1951. “It’s not even past.” Being one of the most quoted lines of his work, here Faulkner suggests that the past is left behind only if we assume that time flows relentlessly forward. But if, conversely, we assume that it is somehow cyclical or concurrent, then the past is still occurring, even if we cannot perceive it in the present. In fact, the past is often so present that it cannot be really considered past – for it is not merely time that is simply left behind, but rather something that is recalled time and time again “in the service of conceptions and needs of the present”¹. This gives rise to different interpretations of the past. However, when such interpretations clash, the political aspect of memory becomes clearer, as well as the political means by which historical events are remembered or commemorated. The following slogan from George Orwell’s *1984*, published as early as in 1949, is fully aware of the political uses of the past: “Who controls the past controls the future. Who controls the present controls the past.” What both authors mean is not only that the past is very much alive but also that it is essentially kept alive, that great power is vested in the hands of those who succeed to mobilise memory as an instrument of politics. Therefore, memory here will be examined as a potential site of contestation on which public and institutional forms of remembering and forgetting are built and, as suggested by Lebow, can have profound implications for elite behaviour and mass responses².

Whilst the Orwellian state viewed history as merely being a political tool for modifying individual memory through the influence of propaganda, Orwell himself was somewhat mistaken in his statement that the past can be controlled because it is not that “he who fills the memory, defines the concepts, and interprets the past, wins the future”³. Indeed, to control the past in the Orwellian sense is to attempt to achieve exactly this. When historical records are deliberately distorted or falsified, specific memories of the past can be not only altered but at times suppressed altogether, giving rise to terms such as “social amnesia” which describes a collective effort to suppress one’s memories, especially those deemed disgraceful or inconvenient for a particular social group or nation⁴. To control the past, then, is to suggest that by reinforcing collective and institutional notions of memory, individual memory can be

¹ Schwartz 1982, 374.

² Lebow 2008, 25.

³ Torpey 1998, 7.

⁴ Jacoby 1997.

effectively suppressed. However, if memory is considered to make people who they are, they are likely to safeguard and defend their memories, regardless of whether they are individual, collective, or official⁵. This lends credibility to one of the underlying arguments of this thesis, that memory is to be understood primarily as a social construct capable of shaping our sense of identity and belonging, as well as dividing us into different social groups.

1.1 Hypotheses

With the introduction in mind, this study focuses on memory in constitutional preambles. It will employ the theoretical framework and concepts of memory studies and examine constitutional preambles as a site of memory (*lieux de mémoire*). As such, their legal value will only be discussed briefly, as much of the existing literature on constitutional preambles has already discussed it to great lengths, hence the exclusion of such discussions. Here, constitutional preambles will be understood as manifestations of political will – after all, they are meant to give a concise statement of the nature of the system in question, as well as declare or identify the source of authority for the document⁶. Since this is often achieved through a historical biography, and given the particular prestige that each constitution enjoys, constitutional preambles have as much to do with politics as they have to do with memory and identity⁷.

Despite their considerable popularity amongst modern constitutions, constitutional preambles, in the context of this study, have only received scant scholarly attention⁸. This study intends to fill this gap as well as to contribute to the empirical and theoretical study of memory by approaching constitutional preambles as an intersection of law, history, and politics.

Therefore, the goal of this study is to essentially argue that a new form of public and institutional memory known as constitutional memory emerges from constitutional law with profound implications within the realm of constitutional politics. To achieve this, I will use the Economist Intelligence Unit's (hereinafter cited as EIU) Democracy Index to divide most modern constitutions into four distinct groups according to their regime type – which are full democracy, flawed democracy, hybrid regime, and authoritarian regime – and use them as a

⁵ Lebow 2008, 29.

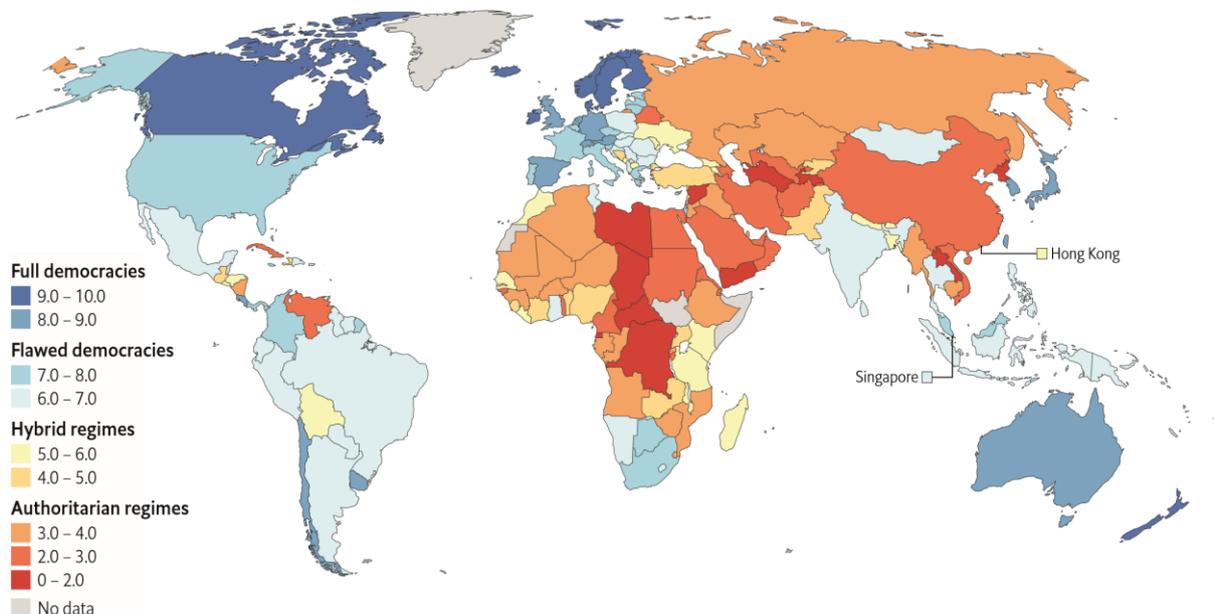
⁶ Addis 2018, 1.

⁷ For constitutional politics, see Kissane and Sitter 2010a.

⁸ Voermans et al. 2017.

starting point for comparative research⁹. However, this comparison will only include those with a preamble to their constitution, as some countries, such as those without a codified constitution in particular, do not include one, which are consequently disregarded as being irrelevant to this study¹⁰.

Figure 1: Democracy Index 2020, global map by regime type.



Source: The Economist Intelligence Unit.

Whilst legislators maintain several relations with the past, their way of managing such relations and engaging with the past is significantly different from that of historians, owing to the former's ability to pass sweeping historical value judgements in legislation, often to the dismay of the latter¹¹. What professional historians are likely to find troubling is that legislators may in so doing "[flatten] out the complexity of human experience and [leave] no room for different interpretations of the past"¹². Indeed, they may reference the past in a way that is not necessarily any more affirmative or conservative than traditional historiography, but rather normative, as commonly understood in the sense of *historia magistra vitae*¹³. It is precisely then that legislators become historians as well as *magistri* of their constituents,

⁹ See Appendices 2, 3, 4 and 5. In 2020, almost 70% of countries covered by the EIU's Democracy Index recorded a decline in their overall score because of government-imposed restrictions on individual freedoms and civil liberties that occurred across the globe in response to the coronavirus (COVID-19) pandemic. The global average score fell to its lowest level since the index began in 2006.

¹⁰ Such countries include Great Britain, Israel, Libya, New Zealand, Oman, and Saudi Arabia. Sometimes uncoded constitutions are imprecisely referred to as "unwritten" despite being written down in a variety of official documents, albeit not codified in a single document as in the case of most modern constitutions.

¹¹ See Balkin 2020; Varga 1994, 150–161.

¹² MacMillan 2010, 114.

¹³ Fögen 1995, 1613–1614.

through the constitution that is the fundamental and supreme law of the state, which essentially acts as a profession of faith in the political system that ensues from it¹⁴. To speak in Plato's terms, then, even as preambles describe, symbolise, and guide constitutional interpretation, they may ultimately serve as means of persuasion in achieving and maintaining constitutional and political legitimacy. As mentioned earlier, this is often achieved through a historical biography. The implications of such histories will be discussed later.

Building legitimacy is not the only focus of the constitutional preamble – defining nationhood is equally important, as well as addressing the future aspirations of the nation. However, constitutional preambles typically reinforce only collective and institutional notions of memory, thus relegating individual memory to a position of insignificance. This can give birth to very pompous narratives of nationhood which involve explicit references to historical events, leaders, and political movements. As with all histories, such references altogether constitute a certain interpretation of the past, one that seeks to answer questions such as who we are, where we come from, and where we are heading. Yet here it should be noted that only certain historical events and leaders seem to make it to the constitutional world: indeed, most are crucially left out for both practical and ideological purposes. A preamble cannot possibly serve as a history textbook, informative though it may be. Rather, to make a concise statement, it relies on a very selective narrative of the past which may leave little to no room for differing interpretations. This means that where certain interpretations, including references to historical events, leaders, and political movements, can be essentially “immortalised” or “canonised” in legislation, regardless of historical evidence to the contrary, holding onto an opposing interpretation can be at worst criminalised in the same process, as seen in some authoritarian cases¹⁵.

Based on the above discussion, constitutional preambles serve as a unique site of memory through which the mutability of memory becomes tangible. Being the most important legal documents that dictate all other areas of law, constitutional texts alone enjoy a degree of prestige incomparable to other sites of memory, let alone other state institutions. Indeed, the topos of *historia magistra vitae* can be found in not only the letter but also the spirit of the law: if constitutional law is to be understood to be the highest source of authority, then the

¹⁴ Voermans et al. 2017, 150.

¹⁵ A textbook example of this can be found in the constitution of the People's Republic of China which asserts that Taiwan, officially known as the Republic of China, is “part of the sacred territory of the People's Republic of China”. As a result, those who refuse to acknowledge this may face legal consequences in China despite Taiwan being *de facto* independent.

interpretations of the past included in its preamble must speak with the same voice of authority. Therefore, the constitutional preamble, even with relatively little legal value, becomes a teacher of life when it recounts historical events in much the same way as history textbooks do, with the exception that its context lends a greater degree of credibility to its contents.

But why is it that constitutional law must be complemented with history, such as a historical biography? Legal analysis aside, this can be understood as part of the so-called “memory boom”, the idea of a crisis in which the abundance of memory can be attributed to a fear of social amnesia or forgetfulness¹⁶. Similarly, Nora argues that “the most continuous or permanent feature of the modern world is no longer continuity or permanence but change [...] an accelerated precipitation of all things into an ever more swiftly retreating past” caused by the uncertainty that comes with the present, that also places on the present “an urgent duty to remember”¹⁷. The same sense of duty can be found in constitutional argument – after all, it lays the foundation for all legislation and expects the surrounding society to operate accordingly. However, this prompts the question as to whether their preambles are expected to carry a similar sense of duty. As citizens, is it indeed our duty to remember, as suggested by Nora? If so, then some things are eventually bound to be forgotten, or alternatively made forgotten, if the fear of social amnesia turns into a fear of social change.

Such fear may be the driving force behind attempts to mobilise memory as an instrument of politics. To be sure, it is the mutability of memory that makes it such a potential target for politicisation – how it is created, recalled, and altered to serve the immediate needs of the present, as well as the aspirations for the future. With this in mind, it can be established that knowledge of memory must influence the practice of memory, which, in turn, negates the validity of any understanding of the interaction between institutional, collective, and individual memories, thus creating an infinite regress¹⁸. In some countries with a greater degree of public awareness of memory, however, this might not be the case. In others, where no such awareness of the past and its memorialisation exists, coming to an understanding where institutional, collective, and individual memory begins and where it ends may turn out

¹⁶ Arnold-de Simine 2013, 14.

¹⁷ Nora 2002.

¹⁸ Lebow 2008, 25.

to be a challenging task. In the most authoritarian cases, as discussed earlier in reference to Orwell, this can have profound political implications.

At the time of writing this paper, 51 countries of the 57 authoritarian regimes listed by the EIU's Democracy Index included a preamble to their constitution¹⁹; likewise, 33 of the 35 hybrid regimes²⁰; 40 of the 52 flawed democracies; and only 10 of the 23 full democracies, resulting in 134 out of 167 preambles in total. Since the number of preambles representing each group is different, this will affect how information is displayed in the tables of Chapter 4 and 5, which should be kept in mind when studying the results of the research. Regardless, it can be argued that a preamble is a dominant characteristic of most modern constitutions nowadays, of authoritarian and hybrid regimes in particular. As to why authoritarian and hybrid regimes are likelier to include a preamble and why they are longer in length than their democratic counterparts will be given more attention in later chapters.

1.2 Research questions

Much of the existing literature on constitutional preambles has either focused on the analysis of their legal functions²¹ or non-legal functions²². Out of these two types of studies, the latter provides a more suitable starting point for the research questions of this thesis: how do constitutional preambles, through the much-discussed use of memory, serve as a means of persuasion in achieving and maintaining constitutional and political legitimacy and how does constitutional argument make use of memory as a political resource? More importantly, what exactly is remembered and commemorated in constitutional argument? How does this practice differ between authoritarian and democratic regimes? According to Müller, this relationship between memory and political power has received only little attention and will thus be one of the main focuses of this thesis²³.

Based on the above, I will examine how constitutional argument invokes and constructs memory and how constitutional memories differ between the four main regime types of the EIU's Democracy Index and why. In addition, I will clarify and further develop the concept of

¹⁹ Whereas some constitutions do not simply include a preamble, Guinea and Mali have no constitution currently in force at all due to recent political instability, hence their exclusion from this study. For example, a coup d'état conducted by the Guinean military overthrew President Alpha Conde on 5 September 2021 and suspended the constitution.

²⁰ Hong Kong, although listed by the EIU, is not an independent country, therefore it is excluded from this study.

²¹ E.g. Frosini 2012; Winckel 2000.

²² E.g. Addis 2018; Voermans et al. 2017; Ginsburg et al. 2014.

²³ Müller 2002, 1.

constitutional memory, a form of public and institutional memory that emerges from constitutional law, arguing that constitutional texts represent a site of memory. As such, they become a significant political resource for those seeking to achieve and maintain constitutional and political legitimacy through the authority of constitutional law. This is also closely related to what was previously discussed as the idea of a crisis of memory due to its abundance. Therefore, not only is constitutional law complemented with history for such purposes, but also because in times of the so-called “memory boom” it seems that we are increasingly tasked with an urgent duty to remember and know our history, which is passed on to us even through legislation. This essentially lends to “a politically sanctioned and politically funded rite of remembering [...] adjusted to a publicly or politically approved narrative” and, as a result, the feasibility of this enterprise as it is acknowledged by elite and public opinion alike²⁴.

The structure of this paper is organised as follows. Chapter 2 will explain the methodology of this study in more detail and why it was chosen for this particular research task, which is then followed by Chapter 3 that will outline the theoretical framework of the study, focusing on the concept of memory and the origin and development of codified constitutions. Building upon the existing literature, Chapter 4 will explore constitutional preambles as lieux de mémoire, referring to the theoretical background presented earlier, as well as examine the concept of constitutional patriotism. Commemoration and memorialisation in constitutional preambles will then be discussed in Chapter 5, with the concluding Chapter 6 discussing the future of memory and the significance of the remarks made earlier.

²⁴ Winter 2007, 366; Lebow 2008, 29.

2 Research design and managing data

This chapter presents the qualitative research design that will precede the theoretical framework presented in Chapter 3. It is divided into three parts: Section 2.1 describes the methodological approach of the study; Section 2.2 discusses content analysis and coding, leaving Section 2.3 with the task of describing the coding frame created in NVivo. The results of the research are then presented in Chapters 4 and 5.

2.1 Methodology

Research methods are primarily divided into quantitative and qualitative approaches and thus involve specific methods of collecting and analysing data, depending on research questions and data characteristics. As suggested by the name, quantitative approaches focus on quantifying and analysing numerical data, also known as quantitative data, to explain a particular phenomenon, whereas qualitative approaches focus on non-numerical or qualitative data to achieve the same goal. Given that the two approaches are designed to deal with different types of data, the methods favoured by each of these traditions are also many and varied. However, since this study explores constitutional memory in what can be readily classified as qualitative data, I will hereafter only refer to the qualitative research tradition and its methods. As observed by Bowen, institutional and organisational documents, such as constitutional texts, have experienced a surge of interest in qualitative research in recent years not least because of their increased accessibility, but also because of their perceived authenticity and usefulness²⁵. For instance, constitutional texts are freely available and translated into English from the Constitute Project, which was launched in 2013 as an online recourse for constitution-makers, legal experts, and scholars, as well as students²⁶. As such, this online database consisting of all the world's constitutions was also used to collect the data needed for this thesis²⁷.

Like its quantitative counterpart, the qualitative research tradition is in many ways concerned with interpretation. Yet in qualitative research, notes Schreier, researchers are capable of

²⁵ Bowen 2009.

²⁶ Available at <https://www.constituteproject.org/?lang=en/>.

²⁷ It should be noted that the primary data of this study only includes constitutions that are currently in force at the time of writing this thesis – any subsequent constitutions and their later versions that have come into force after the completion of this thesis may intervene with its conclusions. Therefore, when a constitution is cited here and conclusions are drawn from its contents, the reader is advised to make sure whether new enactments have been made since.

producing multiple interpretations of the same data due to the symbolic nature of qualitative data²⁸. Unlike quantitative research, which is often concerned with numbers and statistical analysis and can be repeated to produce the same results, qualitative research rather focuses on constructing meaning: how is memory, in reference to Nora, contained in constitutional preambles and what makes them a site of memory? What kind of language amounts to this phenomenon? To be sure, qualitative research has indeed a lot to do with language: there are as many interpretations as there are interpreters. This, of course, is not to say that all interpretations are equally valid. Whilst different interpretations of the same data can be valid, in qualitative research, their validity can be assessed based on the transparency of the researcher, whether the method used was appropriate to the research question, and, most importantly, whether alternative interpretations were considered²⁹.

This study attempts to achieve what has been described above, which is to explain the phenomenon of constitutional memory as accurately as possible. However, since memory as a social phenomenon has hardly ever been studied in the context of constitutions, the lack of methodological references presents certain challenges. This is further complicated by the fact that even in memory studies alone, which is a highly diverse field involving a variety of theoretical perspectives, methods can vary drastically depending on the research question. For instance, the study of individual memory through autobiographies would likely involve drastically different methods from the study of collective memory through religious shrines, ruins, museums, or buildings. For this reason, I will refer to the theoretical framework in the next chapter as a lens through which the study of constitutional memory is contextualised and, most importantly, conceptualised as an increasingly relevant theoretical concern deserving of further research.

2.2 Content analysis and coding

As this study explores memory in constitutional preambles, a research method is required to explain this phenomenon. For this purpose, I will adopt a qualitative approach using a loosely defined content analysis method based on the following description. Schreier defines qualitative content analysis (QCA) as “a method for systematically describing the meaning of qualitative material”, which is done “by classifying material as instances of the categories of a

²⁸ Schreier 2012, 20.

²⁹ *Ibid.*, 26–27.

coding frame”³⁰. QCA is useful here because qualitative data often requires engagement in some degree of interpretation. As such, its meaning is never given, but instead constructed through a process which brings together the researcher’s perception of the material with their own individual background.³¹ The result is typically descriptive in nature because the goal is to describe a given phenomenon in some or greater detail³². Given the high volume of data here, it is specifically this descriptive nature of qualitative research, its potential in interpreting and constructing meaning, that makes this method particularly suitable for this study.

QCA is sometimes imprecisely equated with many different qualitative methods for data analysis. Schreier reminds that because quantitative content analysis has evolved more and become more sophisticated than its qualitative counterpart, QCA as a research method, especially in English-speaking countries, has only recently become more well-known. Instead, similar methods such as “thematic coding” or “qualitative media analysis” have been used, but which simply use another term for what is essentially understood to be QCA.³³ Yet what these methods have in common is that they still seek to describe the meaning of qualitative material, which is also what this study is primarily concerned with.

As stated earlier, QCA is used for systematically describing the meaning of qualitative material, which is here achieved by coding. This allows qualitative data to be analysed in a less condensed and more structured manner whilst also reducing its complexity³⁴. Coding is typically done by using a qualitative data analysis software, such as NVivo, which was also used in this study thanks to its various interactive features. To put it simply, the coding process involves “analysing qualitative text data by taking them apart to see what they yield before putting the data back together in a meaningful way”³⁵. However, it should be noted that coding should be always done for a purpose, since it is never an end in itself³⁶. This defines it as being more of a means to an end, rather than only a method to analyse a certain type of data. Moreover, it is particularly useful when determining the presence of certain words, themes, and concepts, as in the case of this study. Sometimes referred to as open coding, it essentially describes “the process of breaking down, examining, comparing, conceptualising

³⁰ Ibid., 2012, 1.

³¹ Ibid., 2012, 2.

³² Flick 2014, 5.

³³ Schreier 2012, 14.

³⁴ Flick 2014, 11.

³⁵ Creswell 2015, 156.

³⁶ Richards 2015, 105.

and categorising data”³⁷. The result is typically a coding frame, an organisational structure used to represent the important themes and concepts of the research.

2.3 Creating a coding frame in NVivo

QCA offers a highly flexible method for creating a coding frame, which can be understood as an organised and systematic approach to categorising and interpreting qualitative data. In qualitative content analysis, a coding frame is what essentially connects the observed data to the research question and the aims of the researcher, an attempt to describe a given phenomenon through the use of certain themes and concepts determined before or during the coding process. A coding frame also precedes the conclusions of the research, which is why this section seeks to explain and understand its reliability and validity. A coding frame is reliable when it is based on consistency, in other words, when it goes beyond individual understanding, such as consistency with how it is understood by another researcher or perhaps at another time. Its validity, on the other hand, rests on how adequately the categories represent the concepts in the research question, especially those that guide the researcher’s perception of the material. However, an important distinction between quantitative and qualitative content analysis is that whilst both can be concept-driven, QCA tends to do so less and focus more on the specifics of the data, which makes it more data-oriented than its quantitative counterpart.³⁸ Since this study does include an extensive theoretical background, using it as a lens through which the constitutional preambles are interpreted, the focus will include both the specifics of the data as well as the conceptual framework presented in Chapter 3, thus resulting in a loose adaptation of QCA.

With the above in mind, the resulting coding frame includes not only the themes and concepts whose presence was determined during the analysis phase, but also concepts that the author of this thesis was primarily looking for in the qualitative data³⁹. Its structure is hierarchical, meaning that it contains both main categories and subcategories, as well as hierarchical levels that reflect the complexity of the research question⁴⁰. In NVivo, such categories can be given additional features using attributes and values, such as defining characteristics, context and descriptions attached to each unit of analysis, which are akin to variables and values in

³⁷ Corbin and Strauss 2015, 61.

³⁸ Schreier 2012, 6–7.

³⁹ See Appendix 1.

⁴⁰ Schreier 2012, 40.

quantitative research⁴¹. However, since the qualitative data of this study is only concerned with one specific type of documents, such attributes were not used extensively. Instead, each preamble, which constitutes a single unit of analysis, was assigned a regime type according to the Democracy Index, which makes it possible to examine the categorical differences not only within each regime type not also between all the four regime types. Without this distinction, the third research question concerning whether there are differences between democratic and authoritarian regimes would be impossible to answer. For further research, additional attributes can be assigned to each preamble to examine differences between different regions, for instance, or how countries of one religion compare to countries of another. In qualitative content analysis, the possibilities are as many as there are research questions.

The practical procedure can be described as follows: each constitutional preamble was downloaded in PDF format from the Constitute Project and then uploaded into NVivo, which was followed by the analysis phase. A coding frame was then created based on the existing categories of the researcher, mainly the two main categories, as well as the ones that were formed based on their relevance to the research questions, which are the subcategories. The main categories represent the overarching themes and concepts of the research, whereas the subcategories become more specific depending on their distance from the main categories; as can be seen from Appendix 1, the further they are from the two main categories, the more specific and unique they are. In addition, when creating a coding frame, the number of subcategories has to be narrowed down enough to establish the scope and focus of the paper, but also not too much so as to avoid inadequately answering the research questions. What this means is that certain subcategories of the lowest levels were disregarded due to their irregular occurrence, instead focusing on the ones with the most relevance as well as occurrence.

Although Schreier describes it as the “heart” of qualitative content analysis⁴², a coding frame is still only a tool for arriving at the conclusions of the research. As mentioned earlier, coding should always be done for a purpose. For this reason, Chapters 4 and 5 will explore the findings of the analysis phase that has been described here.

⁴¹ Bazeley and Jackson 2013, 129.

⁴² Schreier 2012, 174.

3 Theoretical framework and definitions

This study borrows much of its theoretical framework and definitions from memory studies, namely Pierre Nora, who coined the term *lieux de mémoire*. This will be one of the most important concepts used in this thesis. Furthermore, this chapter will introduce memory as a social construct and examine different forms of memory starting with three related assumptions. First, elite and public opinion has become somewhat aware of memory as a source of contestation. Second, they have also become more receptive to the implications of this information. Third, this growing awareness will have important consequences for future efforts to influence memory at institutional, collective, and individual levels.⁴³ What this means for this thesis is that the social dimension of memory, and finally the malleability and politicisation of memory, is now perhaps more observable than ever. As will be seen in the coming pages, constitutional law, or the preamble in particular, is one such example of an instance whose contents change as new constitutions are drafted. However, due to the limitations of this thesis, I will not be able to focus on individual cases and will instead opt for a broader conclusion about the implications of this process, namely in relation to democratic development. The theoretical discussion and subsequent conclusions of this thesis can then be used – and are also encouraged to be used, if deemed useful – to conduct further research on related issues.

3.1 Memory as a social construct

As mentioned earlier, memory will be here examined as a social construct which is based on social interaction and finally mediated by language. Koselleck discusses the relationship between language and historical reality as follows:

What you say today has a different meaning tomorrow. A word spoken once and a sentence written down once congeal irrevocably and unalterably as soon as they are preserved. But reception resists being controlled by the person who has spoken or written. [...] History certainly never happens without language.⁴⁴

Indeed, to speak with Koselleck, what we remember today is remembered differently tomorrow. Memory is also closely linked to imagination: according to Ricœur, “[I]f these two affections are tied by contiguity, to evoke one – to imagine it – is to evoke the other – to remember it. Memory, when reduced to recollection, thus operates in the wake of the

⁴³ Lebow 2008, 25–26.

⁴⁴ Koselleck 2018, 18.

imagination.”⁴⁵ However, since two people can recall the same past event differently, individual memories can be made sense of within the context of different social groups that they belong to, which makes it possible to discuss memory at institutional, collective, and individual levels. One such group, and perhaps the most relevant one to this study, is nation. Also known as “imagined communities”⁴⁶, nations are based on the imagination of collective memories. This will be discussed more in the coming pages.

What has been mentioned several times in this paper but was never given a proper description is individual memory, that is, what people remember, or believe that they remember, about their past. Whilst not as relevant to this chapter as other forms of memory, it nonetheless deserves a mention. Memoirs, autobiographies, and interviews are rich in such memories and are often held as the most authentic kind of memories because they essentially rely on individual experience as opposed to other accounts of the past. However, they are not to be taken as static but as ever-evolving and changing with each retelling, being highly dependent of the social milieu in which the person is situated at the time.⁴⁷ This paints a rather unreliable picture of the accuracy of individual memory. Needless to say, this thesis will not deal with individual memory any further than by concluding that individual memory is deeply informed by the other notions of memory that will be discussed in the next section, hence its significance.

3.1.1 Public and institutional memory

In this paper, memory will be also understood as a political construct, focusing on the process of creating, altering, and erasing a certain conception of the past. Here, individual memory is not enough alone to explain this process. Rather than focusing only on what people believe that they remember about their past, to examine memory as a political construct requires an approach that builds upon the recognition of collective remembrance. Public memory does exactly this: it describes not only how people remember the same thing, but also how this kind of collective remembrance forms “a crucial aspect of our sense of togetherness, our existence as a public”. It suggests that it is through public memories that individuals become public beings whose capacity for remembrance is rooted in a healthy and functioning public

⁴⁵ Ricœur 2004, 5.

⁴⁶ Anderson 2006.

⁴⁷ Lebow 2006, 11.

sphere: without it, the question of whose memories make it to the public consciousness and whose do not, becomes a relevant political concern.⁴⁸

When such memories reach the point of institutionalisation and become ingrained into the public consciousness, institutional memory offers a more nuanced answer to the above question than the other two notions of memory. It describes “efforts by political elites, their supporters, as well as their opponents, to construct meanings of the past and propagate them more widely or impose them on other members of society”⁴⁹. Unlike public memory, which focuses on a particular sense of togetherness achieved through memory, institutional memory focuses on the ways how such groups influence the practice of memory in a public sphere, which can be framed as a top-down process. Here, the role of political power is perhaps most pronounced, aided by the fact that elite constructions of memory borne out of this process shape the memories of groups and individuals, which is also known to influence public opinion.⁵⁰ This was well illustrated in the French Revolution which became a contested symbol of the Enlightenment amongst many intellectuals. Its supporters saw it as “a defining moment for France and a worldwide opportunity to redefine the purpose of government [...] a revolution,” as described by Lebow, “in the best sense of the word.”⁵¹ Its opponents, on the other hand, considered it “a revolt against the best traditions of France that would [only] lead to anarchy and dictatorship”. This comes to show how different groups, not only elites but also their opponents, with opposite political agendas seek to weaponise their interpretations of the past in order to combat those of their political rivals.

The implications of the above process are many, but some can be already discussed here before proceeding to the next section. To be sure, interactions taking place between institutional and individual memory which seek to influence public opinion occur within the realm of politics, hence memory as a political construct. This is implicit in the notion that publics have the capacity to authorise or, alternatively, reject certain memories, which gives rise to a growing sense of responsibility to remember certain things and to collectively express regret⁵². For different social groups and individuals, however, these processes are hardly the same. Whose memories make it to public consciousness and whose do not is a matter of political debate. Although people are generally capable of expressing regret, they

⁴⁸ Phillips 2004, 4–5.

⁴⁹ Lebow 2006, 13.

⁵⁰ *Ibid.*, 10–11.

⁵¹ *Ibid.*, 13.

⁵² Phillips 2004, 5.

are likely to express regret over different things for different reasons, which varies greatly across different cultural contexts.

3.1.2 Collective memory

With the previous sections in mind, it can be established that memory acts as a bridge between the past and the present, binding communities together or, when necessary, tearing them apart. Collective memory, which builds upon the pioneering work of the French sociologist Maurice Halbwachs, a student of another notable French sociologist Émile Durkheim, describes this process as a reflection of the dominant discourses of society without which individuals would struggle to form communities and bonds of solidarity with each other. Perhaps one of the most striking findings of this kind of research is “the extent to which individual memories are shaped through interactions with other people and reflect, and often reinforce, [these] dominant discourses of society”.⁵³ To put it simply, collective memory describes the opposite of individual memory by focusing on what different groups remember or believe that they remember about their past as opposed to individuals alone⁵⁴. Such memories are held as “a collection of traces left by the events that have affected the course of history of the groups concerned”, revisited on such occasions as holidays, rites, and public celebrations⁵⁵. Much like institutional memory, collective memory is also associated with many physical sites of memory, including religious shrines, ruins, museums, buildings, amongst other locations associated with memorable events⁵⁶.

In contrast to the above, Phillips defines collective memory by “commonality of content”, that is, how different people regardless of whether or not their identities are shared remember the same event. It is social memory, he goes on, that has a basis in shared experience, shared history or place, or shared project. However, according to him, collective memory has no such basis but is instead distributed over a given population or set of places. Unlike social remembering, collective recollection is independent of existing clans, or regions, or projects in common. Thus, it happens at once “spontaneously and involuntarily, and its entire *raison d'être* is a convergent focus on a given topic: typically an event but also a thought, a person, a nation”. This definition has a strong focus on the plurality of memory, so much so that individual or group identities do not count. The singularity of memory, by contrast, is

⁵³ Lebow 2006, 4, 8.

⁵⁴ Cf. Kansteiner 2002.

⁵⁵ Ricœur 2004, 119.

⁵⁶ Lebow 2008, 37.

synonymous with “intimacy and bonding [that] are important aspects of [social and individual] remembering”. In collective remembering, such things are not only irrelevant but also intrusive.⁵⁷

The distinction between social and collective remembering presented above is further explored by Cubitt. In his definition, social memory has a more direct relation to individual memory than its collective counterpart. When individuals formulate and articulate memories of their past experiences, they produce knowledge and awareness of the past that involves “a wide variety of cultural devices [...] envisaged as being somehow general and collective”. However, in his understanding, social memory is more than an accumulation of individual remembering: it is a process through which interpretations of the past are put into circulation by social memory, rather than the other way around. Though at times generated by and within such processes of social memory, collective memory, on the other hand, operates in the realm of ideological fiction.⁵⁸ It is also shaped by institutional memory, as can be observed in the birth of nation states⁵⁹.

Besides the definitions used in this study, collective memory has become an increasingly popular theoretical concern for a wide spectrum of academic disciplines, meaning that there is much more to the research of collective memory than offered here. However, as this study does not focus on collective memory per se, this section will not be able to provide a thorough overview of the history of collective memory studies and discuss every theoretical contribution in detail. This is also because there are plenty of studies that have already taken up this task. Nevertheless, scholarship on collective memory has managed to tackle contentious topics related to this thesis, including catastrophes and their related traumas such as slavery, Fascism, World War II, the Holocaust, and post-war genocides and human rights abuses⁶⁰. For this reason, the study of collective memory was given its own section.

3.1.3 Between law and politics: defining constitutional memory

The previous sections have attempted to present a relevant theoretical framework to facilitate the upcoming discussion of constitutional memory as a form of public and institutional memory that emerges from constitutional law. This section draws upon the work of Miklóssy

⁵⁷ Casey 2004, 23–24.

⁵⁸ Cubitt 2012, 15–19.

⁵⁹ Lebow 2008, 37.

⁶⁰ Lebow 2006, 9.

and Nyssönen in that constitutional memory describes efforts to canonise a certain interpretation of the past through legislation⁶¹. In their work, the practice of such memory has been commonly observed in the use of preambles which attempt to construct long-lasting national memories by commemorating historical events, leaders, and political movements, amongst other things. In so doing, they elevate such memories into the consciousness of the legal system, which can be seen as an identity-building process of nation states as much as an attempt to shape memory at institutional, collective, and individual levels. In constitutional argument, the use of memory, in other words, how constitutional interpreters invoke and construct memory, is what defines constitutional memory⁶². By borrowing from cultural memory studies, here it can be distinguished between potential or actual constitutional memory, depending on whether constitutional memory is conceived through the constitutional texts alone or also through social and historical contexts in which its meaning is interpreted⁶³.

Apart from the above definition, constitutional memory can also be understood as being related to official memory which, according to Bodnar, describes efforts by political elites to advance their visions of the past whilst at once combating those deemed unofficial⁶⁴. To be sure, constitutional memory emerges at the intersection of law and politics, making it perhaps the most blatant display of official memory – what is remembered and commemorated in legislation most certainly represents official memory, as well as political thinking *par excellence*. However, since this study maintains that constitutions become a site of memory through such practices, official memory will here be only treated as a related concept. This is not to say that the two exclude each other, but rather the opposite: official memory is the *raison d'être* of constitutional memory. Without acknowledging the former, the latter would remain much less tangible. They are shaped by and for each other, thus reinforcing notions of the kinds of memories discussed earlier. Needless to say, whilst constitutional memories are indeed official, not all official memories are necessarily constitutional. Commemoration through veneration, namely the commemoration of the state, is what sets constitutional memory apart from the former⁶⁵.

As was already established in Chapter 1, it is not only what is said about the past that constructs what is here understood as constitutional memory but also what is omitted, which

⁶¹ Miklóssy and Nyssönen 2018.

⁶² Balkin 2022.

⁶³ See Assmann 1995, 130.

⁶⁴ Bodnar 1992, 13–14.

⁶⁵ Megill 2007, 29–30.

shapes our understanding of “who we are and how things came to be; what is traditional and what is an innovation; who has committed wrongs and who has been wronged; what we owe to others and what they owe to us”. In so doing, constitutional memory tends to emphasise certain things of the past whilst effacing others, providing resources for understanding the world around us and, when necessary, assigning praise and blame. However, because memory can indeed be so selective, the assumption of constitutional legitimacy becomes undermined when it is not dependent on social consensus and majority opinion, which, in turn, delegitimises the use of memory in constitutional argument.⁶⁶

What the above means for memory at large is precisely what was discussed as the institutionalisation or, in reference to Miklóssy and Nyysönen, canonisation of memory and how elite constructions of memory shape individual and collective memories, not to mention how such practices influence public opinion⁶⁷. In other words, the use of memory in constitutional argument is nothing short of contentious: if memory can indeed be used to influence public opinion to achieve and maintain constitutional and political legitimacy, as suggested by a growing body of academic work⁶⁸, the practice of such memory becomes a major political concern for those affected by it.

The use of memory in constitutional argument can be illustrated through instances of interaction between institutional and individual memory, especially when a major constitutional reform takes place. According to Scheppele, after such changes occur, the immediate aftermath is often characterised by a sense of political discontinuity because constitutions are rarely drafted in times of continuous tranquillity⁶⁹. This is most evident after a regime change⁷⁰. For example, after 1989 in Eastern Europe, the legislators of the newly independent nation states were eager to distance themselves from their Communist past, which had influenced political life in Eastern Europe for half a century, in order to return to their pre-Soviet nationalism⁷¹. With this in mind, Miklóssy and Nyysönen have specifically studied the constitution of this region, most notably Hungary, and found that when history

⁶⁶ Balkin 2022, 1–3.

⁶⁷ Lebow 2006.

⁶⁸ E.g. Chatterje-Doody and Tolz 2019; Kelley 2017; Wang 2014.

⁶⁹ Scheppele 2008, 1378.

⁷⁰ Historically articulated forms of national identity are most effectively harnessed as a legitimisation tactic during pivotal regime moments, which has been studied by Tudor and Slater 2021.

⁷¹ Grinchenko and Narvselius 2018; Kuposov 2017; Kissane and Sitter 2010b.

debates are heated, constitutional argument can be effectively used to suppress such debates⁷². This has several implications which will be discussed here as well as in later chapters.

When used to suppress history debates, constitutional memory appears in direct opposition to what is called “democratisation” of history, that is, a perceived emancipatory trend amongst certain social groups to reconnect with their past and to reaffirm their identities, which rather gives rise to the opposite trend, “undemocratisation” of history. According to Nora, such groups and their emancipation can be attributed to three types of decolonisation: international, domestic, and ideological. International decolonisation refers to those previously having stagnated in the ethnological inertia of colonial oppression; domestic decolonisation refers to minorities particularly, but not limited to, in Western societies and their integration with the mainstream. Lastly, ideological decolonisation refers to those whose traditional, long-term memories, typically those resulted in political persecution, have been confiscated, destroyed, or manipulated by totalitarian regimes.⁷³ The latter type of decolonisation has been studied by Miklóssy and Nyssönen in their work on Eastern Europe, prompted by research questions similar to those concerned with this thesis. Against this backdrop, when an emancipatory trend is attempted to be prevented or even merely disrupted through constitutional memory, the reasoning behind such attempts is easily influenced by ideology, including current power dynamics. Here, Eastern European constitutions before and after the post-Communist reforms offer a textbook example of constitutional memory as something that both prevented, disrupted, and, finally, enabled new social emancipatory trends in the post-Communist era⁷⁴.

The above discussion needs to be further elaborated. What is meant by “undemocratisation” of history here is that constitutional memory can create “memory regimes” which describe “a set of cultural and institutional practices that are designed to publicly commemorate and / or remember a single event, a relatively clearly delineated and interrelated set of events, or a distinguishable past process”⁷⁵. Therefore, such regimes may, when equipped with the authority of constitutional law, dictate as to what can or should be commemorated and remembered about the past and what should not, hence the term undemocratisation in reference to Nora. In so doing, certain memories become solidified in constitutional argument, creating interpretations of the past that attempt to construct long-lasting national memories

⁷² Miklóssy and Nyssönen 2018.

⁷³ Nora 2002.

⁷⁴ See Grinchenko and Narvselius 2018; Miklóssy and Nyssönen 2018.

⁷⁵ Bernhard and Kubik 2014, 15–16.

and identities as a result of such memory regimes. With this in mind, constitutions can be understood as containing “indirect memory laws” which further advance the earlier notion of “undemocratisation” of history.⁷⁶

In this study, constitutional memory is mainly applied to the preamble section of the constitution, thus excluding the other sections which might be no less important to the analysis of the use of memory in constitutional argument⁷⁷. This is acknowledged as being somewhat problematic, as new constitutions are drafted upon the memory of previous constitutions, meaning that the entire document is rich in what is understood to construct memory. However, for the sake of cohesiveness, the primary data of this study only consists of preambles. I will explain why in the following. They not only share a similar form regardless of legal tradition, but they also form a cohesive set of data, making the use of memory an observable phenomenon across the 134 different constitutions. In addition to sharing a similar structure, they also share similar functions as well as goals⁷⁸. Another reason for the exclusion of the other sections is simply the limitations of this study. To examine 134 constitutions in their entirety would hardly be within the scope of any master’s thesis, but to examine their preambles, on the other hand, which are generally only a page or two long, proves to be a much more manageable task. Moreover, if the constitutions were examined in their entirety, the group of constitutions should preferably be significantly smaller and require a different, perhaps more case-specific approach from the one adopted by this study. Since this study only applies the concept of constitutional memory to the use of preambles, this leaves much room for further studies to explore such memory and how it is created, recalled, and altered in constitutional argument.

In the next and final section of Chapter 3, I will briefly explore modern constitutionalism, its origin and development, and how constitutionalism came to define Western legal and political thought. Although nearly every country in the world has a constitution of some sort, the purpose of the next section is to come to an understanding of constitutions as being central to the Western legal tradition. Then, I will explore the use of preambles and their variations, as well as their common characteristics.

⁷⁶ Nyssönen and Metsälä 2019, 3–5.

⁷⁷ Cf. Balkin 2022.

⁷⁸ Voermans et al. 2017; see also Kildea 2011.

3.2 Origin and development of modern constitutionalism

The origin of modern constitutionalism can be traced to the 18th century revolutions in France and America. These events were heavily influenced by the leading figures of the Enlightenment era, which gave rise to many legal and political concepts that now serve as cornerstones of liberal political and legal theory, including the division and limitation of governmental power, the recognition and protection of certain individual rights, the protection of private property, and the notion of representative or democratic government⁷⁹. With this in mind, the American constitution of 1787 is still amongst the oldest constitutions in active use, beginning with the famous words “We the People” which have since been adapted by other constitutions around the world. Eventually, constitutionalism came to define Western legal and political thought and is also thought to have been connected to periods of Western hegemony⁸⁰. Since the Enlightenment, a constitution has come to refer to either a written law or, as in some rare cases, a gathering of rules established predominantly by custom.

Constitutionalism can be seen as having at least two distinct meanings: one is concerned with the actual forces and composition of society – be it cultural, economic, legal, political, and social – whilst the other refers to the formal written document that describes the superficial structure of the state institutions. Here, a further distinction between ancient and modern constitutionalism needs to be drawn. The former, dealing primarily with the nature of social groups, was put forth by ancient constitutionalists such as Aristotle and Cicero. The latter, on the other hand, is a strictly formalist and instrumentalist notion of constitutionalism whose proponents included John Locke, James Madison, and Hans Kelsen, amongst many others who followed them.⁸¹ In this study, constitutionalism is mainly explored in the latter sense, whereas the former is acknowledged as still being a major influence on constitutionalism today. To be sure, the kinds of normative questions asked by Aristotle and Cicero, such as “What was the history of the Spartan people?”, for instance, or “Were the economic forces which led Corsica to an agrarian economy formative in their culture?”, can still be found answered in many constitutions around the world, most notably in their preambles. The use of preambles and how such normative questions are still relevant today will be explored in greater detail in the next section.

⁷⁹ Butleritchie 2004, 6.

⁸⁰ Kumm 2018, 168.

⁸¹ Butleritchie 2004, 3–4.

As suggested by the above, constitutionalism as a culture has a much longer history than is necessary to trace here, dating back to ancient Greece and Rome. However, when it comes to modern constitutionalism, its existent historiography consists of surprisingly recent endeavours. According to Dippel, the history of modern constitutionalism is still “a history in need of writing” due to lack of research on constitutionalism as a historical phenomenon⁸². He argues that we have yet to come to a full understanding of the history of constitutionalism in the 1776-1848 revolutionary era since scholars, despite having widely contributed to countless studies of constitutionalism as a legal and political phenomenon, have failed to grasp constitutionalism beyond national legal history, which, he goes on, is not only essential to our understanding of modern constitutionalism in the Western world but also to the global understanding of the history of public law⁸³.

Dippel’s analysis aside, it should be noted that some legal historians have already risen to the task of adopting new approaches to the study of the history of constitutionalism. Since the global transformation of the institutional framework of the Western world throughout the last quarter of the 18th and the first half of the 19th century, scholars have viewed the American and French revolutions as two pivotal moments in the history of public law, which marked a shift from divine law to natural law. Most studies detailing this transformation and other liberal revolutions up until 1848 have deliberately focused on what was borrowed from the two revolutions and what all constitutions have in common.⁸⁴ This is hardly surprising, considering how many constitutions today begin with the words “We the People” in direct reference to the 1787 constitution. In 1987, two hundred years later, Time magazine even went as far as to call it “a gift to all nations”, proclaiming proudly that 160 of the 170 constitutions then in existence included charters modelled directly or indirectly after the U.S. constitution⁸⁵.

What has been discussed above in part explains why this section is only able to provide a very brief overview of the history of modern constitutionalism. Even so, further research is needed to complement this study with a more comprehensive understanding of the historical phenomenon of modern constitutionalism that expands on the endeavours undertaken by some legal historians in the early 21st century whose results have been presented here. In the

⁸² Dippel 2005, 153.

⁸³ *Ibid.*, 153–154, 167–169.

⁸⁴ Delbecke 2014, 427–430.

⁸⁵ Greenwald 1987.

next and final section of Chapter 3, however, this background will be useful when discussing the use of preambles and how they developed along the Western legal tradition.

3.2.1 Variations of constitutional preambles

The term “preamble” is derived from the Latin word *preambulare*, which means “to walk before”. In formal terms, a preamble constitutes the introduction to the constitution and often bears the heading “preamble” or some alternative, equivalent title, such as “foreword” or “preface”. However, they can also appear without one. Formal classifications aside, a preamble can also be defined by its content. In substantive terms, a preamble does not then have to be attached to the beginning of the constitution but, rather, can be defined by its specific content. Such content often explores the history behind the constitution’s enactment, as well as the nation’s core principles and values.⁸⁶ When it comes to length and style, their variations are many, not to mention the motivations behind their authors. Typically, however, a preamble provides the purpose and rationale of the law or elucidates its intention, reflecting what Carl Schmitt would call “fundamental political decisions”⁸⁷. This refers to the aspirations and principles that its authors found particularly important at the time of its writing, which highlights its political and historical significance. Therefore, a preamble places the law in question in its political and historical context.⁸⁸

One of the earliest preambles can be found in the 18th century B.C. Code of Hammurabi, which, evoking the greatness of the ruler, begins as follows:

When Anu the Sublime, King of the Anunaki, and Bel, the lord of Heaven and earth, who decreed the fate of the land, assigned to Marduk, the over-ruling son of Ea, God of righteousness, dominion over earthly man, and made him great among the Igigi, they called Babylon by his illustrious name, made it great on earth, and founded an everlasting kingdom in it, whose foundations are laid so solidly as those of heaven and earth; then Anu and Bel called by name me, Hammurabi, the exalted prince, who feared God, to bring about the rule of righteousness in the land, to destroy the wicked and the evil-doers; so that the strong should not harm the weak; so that I should rule over the black-headed people like Shamash, and enlighten the land, to further the well-being of mankind.⁸⁹

⁸⁶ Orgad 2011, 715–718.

⁸⁷ Schmitt 2005.

⁸⁸ Voermans et al. 2017, 6.

⁸⁹ As cited and translated by L. W. King at <https://avalon.law.yale.edu/ancient/hamframe.asp/>.

Other early examples include Egyptian–Hittite peace treaty from the 13th century B.C. and the Ten Commandments⁹⁰ of the Old Testament, which are both preceded by an introductory statement⁹¹. Needless to say, these statements are not preambles in their modern sense, but they nevertheless serve a similar purpose in setting the tone for the rest of the text.

However, it was not until classical antiquity that preambles became a source of debate. In *The Laws*, Plato suggests that preambles motivate citizens to obey the law by distinguishing between persuasion and coercion. Using a medical analogy, he explains this by comparing the medical practices of a free doctor with that of a slave doctor, arguing that the former is associated with persuasion and the latter with coercion.⁹² In practice, preambles, in Plato’s terms, are expected to be “more lyrical and poetic than the body of laws and as such appeal to the heart as well as the mind”⁹³. Such laws are known to him as “double” laws, in contrast to “simple” laws, because they not only coerce but also explain their underlying reasons and objectives⁹⁴.

Whilst the debate of preambles continued long after Plato, which also included opposing voices such as Posidonius, they only became more common with Diocletian in the late 3rd century A.D. The preambles of this era typically referenced God, imperial legitimacy, and relevant historical events – all of which Plato, or Posidonius, for that matter, never discussed in their work. Hundreds of years later, the divine origin of political power, as well as paternal solicitude for the subjects, and the commemoration of historical events were still common references in countless Latin preambles of the Early Middle Ages. This trend changed again during the High and Late Middle Ages in accordance with the medieval assurance that “nothing ever changes”, which involved ideas of an essential, ever-lasting identity and timelessness.⁹⁵ Such preambles, at the height of the Christian Empire, also emphasised virtue and practical wisdom as in the following example from Charles V in the early 15th century:

One of the main virtues by which all rulership is guarded [...] is the virtue of prudence; because of prudence earthly politics are donated and entrusted to rulers and governors. Because of prudence they have knowledge of past events and access to the past, an experienced feeling for things to happen in the present and

⁹⁰ The preamble to the Ten Commandments reads as follows: “I am the Lord thy God, which have brought thee out of the land of Egypt, out of the house of bondage.” (Ex. 20:2)

⁹¹ Voermans et al. 2017, 7.

⁹² Plato 1967/1968, 720a–720e.

⁹³ Roach 2001, 139.

⁹⁴ Plato 1967/1968, 721a–721e.

⁹⁵ Fögen 1995, 1597–1603.

[...] foresight into ventures which may take place. With this virtue and by means of it, with justice, strength and moderation, all kingdoms must be governed.⁹⁶

Only after the French Revolution in the 18th century did preambles, with the changing legal and political landscape of continental Europe, go out of fashion. Following the new ideas of the Enlightenment, such as the rise of rationalism, the need for preambles came into question because the people became the authors of the law and saw no reason to instruct themselves about “why, how, by which right, and for which purposes they had made a law”⁹⁷. However, this did not apply to the fundamental laws of society such as constitutions which still made use of preambles.⁹⁸ Unlike ordinary legislation, which saw the exclusion of introductory statements, European codifications were regarded as political agreements or contracts still in need of prologues. Yet the revolution challenged the idea of an ever-lasting cultural identity that had been prevalent in preambles for centuries – “the memory of a nation” – and, to Plato’s dismay, eliminated the art of persuasion from European laws in the course of the 19th century. This became more common in ordinary legislation across continental Europe in the late 20th century.⁹⁹

It might come as no surprise that preambles made a significant comeback in the 20th century, as totalitarianism reared its head in Europe. Fögen offers four prominent examples of this development: the Third Reich; the legislation of the Allies after the Second World War; the German Democratic Republic; and the recent legislation in Germany and Europe¹⁰⁰. To be sure, the “preamble kitsch” associated with the Third Reich, which involved little to no persuasion and more coercion, could easily compete with the earlier preambles of Diocletian, Justinian, Rotary, and Leon VI, to name a few. What these preambles had in common was that they presented an “ever-caring paternal legislator”, with the exception that the Third Reich also attempted to take hold of the whole individual through such practices and constitute a new revolutionary order based on Nazi ideology and propaganda.¹⁰¹ After the Second World War, however, it was precisely the negative memory of this ideological campaign that explains why such preambles were later renounced and, instead, replaced with “a definition of what was wrong in the past and what will be right in the future”. Though still

⁹⁶ Ibid., 1601.

⁹⁷ Ibid., 1607.

⁹⁸ Voermans et al. 2017, 9.

⁹⁹ Fögen 1995, 1606–1607, 1614.

¹⁰⁰ Ibid., 1607–1618.

¹⁰¹ Ibid., 1608–1612.

referencing the past, this marked a major shift from the earlier preambles that rather sought to serve as a reminder of relevant historical events, both ancient and recent.¹⁰²

In the years following the end of the Second World War, the preambles of the Allied followed in the above footsteps, including references to the past that were not quite as traditional and conservative as those of Diocletian's, but rather normative as understood in the sense of *historia magistra vitae*. In West Germany, the preambles of this kind were commonly followed by a *damnatio memoriae*, the idea that certain memories, such as those associated with the Nazi period, were to be excluded from official accounts or at least condemned. Some preambles also involved narratives of reconstruction and hope, as seen in the following proclamation by the Allied Control Council in 1945:

By the elimination of the Hitler tyranny by the Allied Powers the terrorist system of Nazi Courts has been liquidated. It is necessary to establish a new democratic judicial system based on the achievements of democracy, civilization and justice. The Control Council therefore proclaims the following fundamental principles of judicial reform which shall be applied throughout Germany.¹⁰³

By contrast, in the German Democratic Republic, or East Germany, this was not the case. In terms of phraseology alone, these preambles were more akin to those of classical antiquity than their Western counterparts, emphasising political legitimacy and acting as a reminder that the future remained in the hands of the party. As such, they were at once “a newspaper commentary, a party platform, and an appeal for stronger commitment from the people”, much unlike their democratic counterparts, which, in Western Europe before and since the 1990s, have directly referred to ideals that can be traced to the Enlightenment.¹⁰⁴

With the above discussion in mind, it might be tempting to conclude that the increased use of preambles in the 20th century was connected to the rise of totalitarianism in Europe. However, as noted earlier, introductory statements were still commonly found in the beginning of many post-war constitutions, as they had been since the Enlightenment. To be sure, totalitarian regimes, not least the Third Reich, harnessed and tailored such legal means to suit their political programmes, but this was not the case in all of post-war Europe. The preamble to the 1789 Declaration of the Rights of Man, which also began the first constitution of the French

¹⁰² Ibid., 1612–1614.

¹⁰³ Ibid., 1613–1614.

¹⁰⁴ Ibid., 1614–1618.

Revolution in 1791 and is still referred to in the 1958 constitution of the Fifth Republic, reads as follows:

The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the objects and purposes of all political institutions and may thus be more respected, and, lastly, in order that the grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all. Therefore the National Assembly recognizes and proclaims, in the presence and under the auspices of the Supreme Being, the following rights of man and of the citizen:¹⁰⁵

It was only the purpose of preambles in ordinary legislation that became questioned after the revolution: consequently, they disappeared entirely. The above excerpt from the Declaration of the Rights of Man was, of course, inspired by the American Declaration of Independence, which, besides that of France, has since inspired many other constitutions.

Nevertheless, some concluding remarks about the use of preambles and their variations, as well as common characteristics since Diocletian's times can already be made here. As Fögen observes, totalitarian regimes throughout the 20th century produced "monstrous preambles without a restraint of shame" in contrast to democracies which were always somewhat more "scrupulous"¹⁰⁶. Yet, since the time of Plato, preambles have addressed "the current relation between ruler and subjects, of authority and obedience, of those holding the power of definition and those being defined, of those writing history and those being objects of history". As will be seen later in this thesis, this trend has changed only little: even recent preambles have referred to these relations as much as they did during the times of Plato, Diocletian, Justinian, Rotary, Leo VI, or Louis XVI.¹⁰⁷

¹⁰⁵ Reproduced at https://avalon.law.yale.edu/18th_century/rightsof.asp/.

¹⁰⁶ Fögen 1995, 1617.

¹⁰⁷ *Ibid.*, 1619–1620.

4 Lieux de mémoire and constitutional patriotism

This chapter examines memory in constitutional preambles referring to the theoretical background presented in Chapter 3, especially the concept of constitutional memory that was introduced in Section 3.1.3. However, unlike in previous chapters, here the focus is on constitutional preambles as a site of memory, or *lieux de mémoire*, including what constitutes a site of memory and what other kinds of sites of memory exist outside the context of this research. This will be discussed in Section 4.1. In Section 4.2, I will discuss the concept of constitutional patriotism and how the examination of memory in constitutional preambles reveals that the preambles of most modern constitutions display not only a strong political and but also a legal attachment to a national culture namely through the use of memory, which I argue serves as a means of persuasion in achieving and maintaining constitutional and political legitimacy.

4.1 Constitutional preambles as lieux de mémoire

This thesis uses the definition of *lieux de mémoire* as it is understood by Nora: it is defined as a site of memory, where memory at once crystallises and has occurred at a particular historical moment, involving not *milieus de mémoire*, or the real environments of memory, but the will to remember and deliberately reconnect with the past despite the absence of the latter. His definition suggests that there is no spontaneous memory: *lieux de mémoire*, without the intention to remember, would be no different from *lieux d'histoire*, which are merely sites of history. The fundamental purpose of *lieux de mémoire* is then to stop people from forgetting certain memories through the establishment of physical or conceptual spaces which only act as containers of said memory.¹⁰⁸ Such sites include but are not limited to museums, archives, cemeteries, festivals, anniversaries, treaties, depositions, monuments, sanctuaries, and fraternal orders¹⁰⁹. Even constitutions, as Nora himself argues, fall under this definition¹¹⁰.

The inspiration behind Nora's work was undoubtedly political: having lived through several major historical events in the 20th century, many scholars of contemporary history, including Nora, began to rethink their outlook on what it meant to be French through what he called

¹⁰⁸ Nora 1989, 7, 19.

¹⁰⁹ *Ibid.*, 12.

¹¹⁰ *Ibid.*, 21.

sites of French memory¹¹¹. In his view, such sites or legacies serve present needs by attempting to pass on traditions to new generations, thereby stopping people from forgetting or reminding them that they are indeed French¹¹². It is precisely this that made his whole endeavour inherently political: the attempt to reexamine French identity through the lens of memory, inspired by “a purely historiographical movement, the reflexive turning point of history upon itself”, as well as “the end of a tradition of memory”. These two ideas, both centred on France and French identity, ultimately gave rise to the study of *lieu de mémoire*, a critical analysis of French intellectual, political, historical frameworks through symbolic objects of French national memory.¹¹³

Some conclusions about what constitutes a site of memory can be drawn from the above discussion. First, sites of memory can be divided into three categories: material, symbolic, and functional. A site of memory is material when it is vested with symbolic significance, such as an archive, yet the observance of a commemorative minute of silence is more of a symbolic action. When it serves as the object of a ritual, such as a testament, it can be treated as functional.¹¹⁴ Second, a site of memory is not limited to only one of these categories. This is an important point for this section. Third, all these sites can be physical or conceptual, meaning that *lieux de mémoire* does not necessarily have to have a physical form. As discussed earlier, there must be a will to remember: otherwise everything would be considered worthy of remembrance¹¹⁵.

How do constitutional preambles fit this definition? As argued by Nora, constitutions are a site of memory, after all. However, his work did not specifically focus on such documents, which forces the author of this thesis to examine them against the backdrop of his definition for *lieux de mémoire* whilst referring to the theoretical framework in Chapter 3. Since constitutions are defined as sites of memory by Nora, a question arises whether they and their preambles should be here treated as a material, symbolic or functional site of memory. They exist as physical documents, which are given a great deal of symbolic value, yet due to their legal value they can also be considered functional. Of course, the legal value of preambles is very limited and cannot be generalised, as was mentioned in Chapter 1, but the fact remains that depending on how they are categorised, the focus of the following analysis will be

¹¹¹ Winter 2007, 392.

¹¹² Nora 1996, xxiv.

¹¹³ Nora 1989, 11–12.

¹¹⁴ *Ibid.*, 19.

¹¹⁵ *Ibid.*

affected. Due to this challenge, constitutional preambles are perhaps best categorised as belonging to all three of them: their physical form is not only the single document that is the constitution, but also the legal and political system that is expected to operate according to its written word, which includes society as a whole. The Democracy Index can also be partially treated as one such material instance because it evaluates political systems and their respective institutions based on their democratic development, which emerges from their democratic constitutions¹¹⁶. Granted, some constitutions can be democratic on paper, but still fall short in the Democracy Index, which means that this argument is not universally applicable¹¹⁷.

Constitutional preambles are also highly symbolic: as argued by Orgad, they explore the history behind the constitution's enactment, as well as the nation's core principles and values, thus reflecting the legal, cultural, and political landscape of the country¹¹⁸. This was already discussed in Chapter 3. Nevertheless, as symbolic sites of memory, constitutional preambles are so loaded with symbolic meaning that they can bear such a meaning not only within a country but also beyond their borders, such as the preamble to the U.S. constitution, which continues to influence constitutional preambles around the world with its famous beginning "We the People". However, the examination of the 134 constitutions of this study reveals that, in accordance with the conclusions made by Nyysönen, the terms "people" and "nation" are used to a varying degree in such preambles, not necessarily only in the sense of the U.S. constitution¹¹⁹. Another notable characteristic is that even countries classified as hybrid or authoritarian also begin their preambles with "We the People" despite their low ranking in the Democracy Index, which suggests that the statement can be additionally used to portray the country as being more democratic than it truly is. This will be further elaborated in Section 4.2 when discussing constitutional patriotism.

Perhaps most importantly, constitutional preambles constitute a functional site of memory because of the legal and political system that ensues from their symbolic descriptions of past

¹¹⁶ Nora referred to the notion of a historical generation in a similar manner, describing how it is material by its demographic content. He used this to explain how the three aspects of *lieux de mémoire* always coexist, which is also explored in this chapter to gain a better understanding of constitutional preambles as complex constructions of memory. In conclusion, the Democracy Index produces data that can be understood as a material aspect of constitutional memory for its explicit focus on its democratic content.

¹¹⁷ Although still a material site of memory, this is where the Democracy Index does not fully qualify as such, which is also acknowledged by the author of this thesis.

¹¹⁸ Orgad 2011, 715–718.

¹¹⁹ Nyysönen 2013.

deeds and future aspirations. This does not only refer to their legal value that was briefly discussed in Chapter 1, but also to the fact that such preambles, when their symbolic meaning is effective, must have functional consequences as well¹²⁰. This is different from the argument about their legal value, which can be debated using arguments such as how often a preamble is cited in court proceedings. Rather, their functional consequences have more to do with their broader implications for society: to what extent does the preamble serve to remind people of their past and how such attempts can reinforce certain notions of memory, such as public or institutional memory? This is certainly more challenging to justify as a phenomenon as opposed to simply counting how many times a preamble is cited, but it is precisely what this thesis is seeking to achieve. Furthermore, when functionality is considered, it becomes clear again that constitutional preambles have a great deal to do with politics, reflecting not only the current political landscape but also imposing its interpretations of the past on the people through the voice of its authority.

Based on the above discussion, this thesis will primarily examine constitutional preambles as symbolic and functional sites of memory. Yet one more distinction should be made within symbolic sites of memory because of its particular relevance to the research of this thesis. As explained by Nora, there are two types of symbolic sites of memory: those imposed from above and attended rather than visited, as well as those described as “sanctuaries of spontaneous devotion and silent pilgrimage, where one finds the living heart of memory”¹²¹. Constitutional preambles, being established by a national authority and maintained by their interest, here fall in the former category. The latter merely represent *lieu de mémoire* that are characterised by more passive and voluntary involvement, that are dominated rather than dominate the individual. Although only a minor distinction, this further establishes constitutional preambles as a site of memory that have more to do with “the coldness and solemnity of official ceremonies” than serving as “sanctuaries of spontaneous devotion”, which sets them apart from other such sites of memory.

Consideration should also be given to how constitutional preambles compare to other sites of memory, especially the ones mentioned earlier by Nora. Since constitutional preambles are here defined as those sites of memory that rather dominate than are dominated by the individual, they appear to have more to do with institutions such as treaties, depositions,

¹²⁰ Webber 1999, 260, 262.

¹²¹ Nora 1989, 23.

monuments, sanctuaries, and fraternal orders than museums, archives, cemeteries, festivals, and anniversaries, which are more likely visited than attended by the individual. However, this does not mean that constitutional preambles should only be equated with what Leibniz might call “paper memory”, or institutions that are concerned with documentation¹²². They are indeed documents, yet they have more in common with institutions that give rise to and maintain certain notions of public and institutional memory, rather than with centres of sheer documentation and data banks. This is because they are grounded in their political philosophy, suggesting “an argument in support of an action”, to quote Arendt, who would describe such institutions in the following manner:

And since we deal here with the written, and not with the spoken word, we are confronted with one of the rare moments in history when the power of action is great enough to erect its own monument.¹²³

Of course, here she refers to the American Declaration of Independence, but the same can be argued about modern constitutions and their preambles in general: they should be seen as monuments to ages past, serving as a reminder of past deeds and glories whilst making promises of equal measure for the future. The term “monument” is perhaps most apt here because they offer “a support for failing memory, a struggle in the war against forgetting, even the silent plea of dead memory”, just like many constitutional preambles¹²⁴.

In the next section, I will discuss Habermas’ concept of constitutional patriotism and how constitutional preambles play an important role in achieving and maintaining constitutional and political legitimacy. This will be complemented with what was discussed earlier that preambles employ the art of persuasion, as well as the remarks made here about constitutional preambles as monuments to ages past. Yet the most important takeaway from this section should be that constitutional preambles become a greater site of memory the more they have to do with the country’s past: when excluded, such as in the case of many full democracies as described in Chapter 1, no commemoration or memorialisation simply takes place within the context of preambular discourse since it does not exist. This makes each constitutional preamble a rather unique site of memory, tailored to the needs and aspirations of each constitution.

¹²² Ibid., 13.

¹²³ Arendt 1990, 130.

¹²⁴ Ricœur 2004, 41.

4.2 Constitutional patriotism

The concept of constitutional patriotism has become most closely associated with Jürgen Habermas who describes it as the idea that people should form a political attachment to the norms and values of a liberal democratic constitution rather than to nationalism or cosmopolitanism. Although his analysis was primarily concerned with post-war Germany and later the European Union, Habermas developed this concept to propose a plausible alternative for the post-national identities of European nations, which has since remained one of the most attractive yet ill-defined ideas in modern political theory¹²⁵. Whilst its abstract definition and excessive focus on Germany has drawn criticism both in and outside Germany, it offers an interesting model for countries which are in transition to democracy, especially those currently undergoing or still recovering from internal conflicts such as civil war, pervasive injustice, or theocratic modes of legitimation¹²⁶.

Constitutional patriotism, as described above, is relevant here mainly because the examination of the 134 constitutional preambles reveals that countries regardless of their regime type maintain varying relationships with their national culture through constitutional argument, which suggests the opposite of constitutional patriotism. Yet constitutional preambles still remain patriotic to themselves, serving as an introductory statement to the highest source of authority, codified or not. However, such statements are not patriotic in the sense that Habermas necessarily intended it: political allegiance is first and foremost owed to the people and their past deeds and glories, as well as their achievements and cultural heritage¹²⁷. Indeed, it rather appears that the memory of a nation lies in the heart of most modern preambles, not the idea that collective identity should be built upon democratic principles and values themselves. Only some constitutions that include an introductory statement, especially those without one, exclusively owe their political allegiance to such principles. Here, a clear trend can be observed: the more words a preamble contains, the more likely its content is rooted in the legal, cultural, and political landscape of the country¹²⁸.

Despite the presence of extensive references to democratic principles and values, or even such processes, some preambles serve as nothing but a democratic façade to something very

¹²⁵ Habermas 1996, 491–515, 566–567.

¹²⁶ Müller and Scheppele 2008, 67–68.

¹²⁷ See Chapter 5.

¹²⁸ See Appendix 6.

different¹²⁹. This applies to preambles with such references to international charters and declarations, such as the U.N. Declaration of Human Rights, but which are still classified as either hybrid or authoritarian according to the Democracy Index. For such preambles, it is also common to rely on memory as an important pillar of constitutional and political legitimacy. A good example of this is the Algerian preamble to the 2020 constitution:

The Algerian people express their complete commitment to human rights as specified in the Universal Declaration of Human Rights of 10 December 1948, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (both issued on 16 December 1966), the African Charter on Human and Peoples' Rights of 27 June 1981, and the Arab Charter on Human Rights of 23 May 2004.

This description is only moments before an extensive account of the struggles experienced by the Algerian people, which reads as follows:

Stretching back over thousands of years, their history is marked by a progression of exertion and struggle that has turned Algeria into an everlasting seedbed of freedom and a land of glory and dignity.

[...]

The Algerian people have always been struggling for freedom and democracy and they are resolved to uphold their national sovereignty and independence. With this Constitution, they are determined to establish a host of institutions based on the participation of every single Algerian man and woman in conducting public affairs and the capacity to achieve social justice, equality and freedom for everyone within the framework of a democratic and republican state. The Constitution aspires to be the appropriate framework for strengthening national ties and guaranteeing democratic freedoms for citizens.

The rhetoric of such preambles typically follows the logic that people have struggled for freedom and democracy for as long as one can remember, yet the Democracy Index reveals that such ideals are often expressed only on paper but not respected in practice, as in the case of Algeria. In the above passage, the struggle and resolve of the Algerian people to achieve freedom and democracy is what should have turned Algeria into “an everlasting seedbed of glory and dignity”, epitomising how such memories and experiences are used to defend constitutional and political legitimacy in the above manner. In this thesis, the notion of struggle and sacrifice is associated with negative memory and will be further explored in Chapter 5, but here it is treated more as a political resource which hybrid and authoritarian governments use to build their constitutional and political legitimacy. Besides Algeria, other

¹²⁹ Levitsky and Way 2002, 54.

constitutional preambles with a similar rhetoric include Bangladesh, Bolivia, Nepal, Palestine, Angola, Iraq, Nicaragua, Mozambique, Ethiopia, Zimbabwe, Cambodia, Myanmar, Vietnam, Rwanda, Egypt, Afghanistan, Cuba, Guinea Bissau, Sudan, China, Iran, Eritrea, Libya, Laos, Chad, Syria, and North Korea, most of which are also classified as authoritarian¹³⁰. Indeed, the Sudanese preamble to the 2019 constitution begins almost identically:

Drawing inspiration from the Sudanese people’s struggles over the course of history and during the years of the former dictatorial regime from the time that it undermined the constitutional regime on 30 June 1989; believing in the principles of the glorious September 2018 Revolution; honoring the lives of the martyrs and affirming the rights of the victims of the policies of the former regime; affirming the role of women and their active participation in carrying out the revolution; recognizing the role of young people in leading the revolutionary movement; responding to the aspirations of the Sudanese people to build a modern, democratic nation-state in accordance with an integrated reform project;

This “memory entrepreneurship”, as it would be called by Jelin, seeks constitutional and political legitimacy by assuming the ownership of such contested memories, which employs “memory entrepreneurs” who play an important role in how such memories are discussed in public debates¹³¹. Private and public enterprises concerned with memory, of which constitutional preambles are the latter, fall under this definition, yet here the focus is on those who draft and proclaim national constitutions and in so doing end up advancing their visions of the past whilst combating those of their political and ideological rivals. This bears a resemblance to the Orwellian thought in Chapter 1, that by having control over memory – its erasure as well as alteration – these memory entrepreneurs can gain legitimacy or moral authority and “present themselves as representatives of a reconstituted collective in need of safekeeping”¹³². According to Balkin, such attempts give rise an “economy of remembering and forgetting” where memory entrepreneurs may omit inconvenient events and instead produce fabricated accounts of the past to present themselves in the most favourable light to them¹³³. In constitutional argument, this seems to be a common occurrence: constitutional preambles rather seek to justify the status quo, and whilst they make promises for a better future, they make use of the past as a lesson to learn from, creating narratives of victimhood and resistance. As such, they speak of national tragedies as much as they do of their past deeds and glories, explaining how such memories and achievements shaped their history until

¹³⁰ The similarity between these constitutional texts was determined by making a cluster analysis in NVivo, which allowed the researcher to visualise such patterns based on coding similarity.

¹³¹ Jelin 2003, 33–37.

¹³² Autry 2017, 27.

¹³³ Balkin 2022, 12.

the moment of writing the constitution, which is typically characterised by a sense of Fukuyama's "End of History"¹³⁴, the idea that history ends at a certain point when the final form of government has been reached.

As was briefly discussed above, memory is invoked in constitutional argument not only through national achievements but also through tragedies, which can sometimes be "of more value than triumphs, for it imposes duties [and] requires a common effort"¹³⁵. Constitutional legitimacy in some preambles, such as the above authoritarian examples, is built upon such group narratives. These "stock stories" are essential to constructing a group's sense of self, being told over and over until they gain almost myth-like characteristics¹³⁶. They combine the idea of a constructed past with that of an imagined future, thus creating a pivotal point which serves to legitimise the constitution by establishing the meaning of the event of its promulgation¹³⁷. Furthermore, constitutional preambles make use of such stock stories by suggesting that future generations should forever remain grateful to past generations thanks to their ultimate sacrifice for the nation. Yet whilst many preambles commemorate their martyrs and other such heroes of the past, only some preambles discuss legacies of reconciliation, and even fewer refer to the past as a "healing wound", which reveals the self-righteousness of such preambles. The past is then almost only seen through the eyes of the victors and their losses rather than the eyes of the truly vanquished, which hints at the selectivity and erasure of memory in a manner that undermines the legitimacy of such accounts of the past: whose stories are told in the constitutional world and whose remain in the margins?

For hybrid and authoritarian regimes, this is when memory becomes a useful political resource. When invoked in constitutional argument, it almost becomes one's responsibility to know one's past; to honour the memory of those who sacrificed themselves for the nation; to accept that drastic times called for drastic measures, that the status quo should be respected because of the heavy price paid; and to believe in the affirmation that great things have been achieved thanks to the many efforts of the current party or government in power. This is because the very political and constitutional legitimacy of their power rests on the assumption that the past could not have been any different, that the government did all it could to achieve the best possible outcome. Indeed, the preamble is where the past is recounted and visions of

¹³⁴ Fukuyama 1992.

¹³⁵ Renan 2018, 261.

¹³⁶ Balkin 1998, 203–205.

¹³⁷ Lazar 2021.

the future forged: either the past was a necessary evil needed to restore order or an inspiring tale of a nation's endurance and hope, spun to inspire loyalty and admiration.

In constitutional argument, narratives of achieved freedom and democracy often serve as no more than window dressing. This is particularly true for those hybrid and authoritarian countries with a low ranking in the Democracy Index: the constitution maintains a façade of democracy that is projected not only to the world at large but also to the people within the country. Whilst such constitutions may not be fundamentally different from constitutional democracies on paper, typical constitutions of this kind are sometimes referred to as “paper constitutions” characterised by “semantic camouflage”¹³⁸. As such, they thus have more to do with political theatre rather than serving as normative benchmarks, given that they are merely descriptive maps of power¹³⁹. This also applies to their preambles: their revisionist crusades can produce any number of interpretations of the past, including narratives of a nation's years-long struggle for equality and how they finally entered an age of prosperity, but the fundamental question remains as whether they are there only to serve purely authoritarian aspirations in the absence of *de facto* democratic development.

Although constitutional patriotism does rely on memory as one of its “supplements of particularity”, referring primarily to Germany's self-critical remembering of the Holocaust and the German quest for a post-Fascist identity, it also comes with at least two perils. Ideally, as perhaps in the case of post-war Germany, memory would furnish the basis for a democratic consciousness and allow arguing about the past in an open public sphere. However, such perils would include “uncritical citizenship”, which is a by-product of constitutional veneration, and “civic millennialism” or “chosen-people syndrome”, which is rooted in the belief of one's own superiority and resembles nationalism rather than constitutional patriotism's fixation with post-nationalism. It is such illiberal scenarios that carry significant risks, when memory becomes quasi-sacred, unquestioned, and overall unquestionable.¹⁴⁰ Of course, perhaps it bears reminding that the concept of constitutional patriotism emerged mainly in relation to post-war Germany, which is why the emphasis on memory¹⁴¹ might be more justifiable, but what this paper is attempting to discuss here is that the perils of constitutional patriotism are somewhat exemplified in 21st century preambles, particularly

¹³⁸ Tóth 2017, 2–3.

¹³⁹ Ginsburg and Simpser 2014.

¹⁴⁰ Müller 2007, 10–11, 35–36, 81–83, 112.

¹⁴¹ In particular, the memory of the Nazi period and the Holocaust.

those of illiberal origin. Granted, the analysis of constitutional veneration would involve more than only the constitutional texts, such as how such preambles are present and made present in day-to-day political life, which, due to the limitations of this study, is best left for future studies.

Most importantly, constitutional preambles also exemplify Herman's notion of "autobiographies of power"¹⁴². Some of the longest preambles, which detail the country's history from its earliest phases until the present day, operate very much in this manner. As can be seen in Table 1 below, such preambles are also almost exclusively authoritarian¹⁴³.

Table 1: Twenty longest preambles.

Country	Last revised	Preamble word count (in English)	Regime type according to the EIU's Democracy Index
<i>Iran</i>	1989	3249	Authoritarian regime
<i>Algeria</i>	2020	1319	Authoritarian regime
<i>Egypt</i>	2019	1288	Authoritarian regime
<i>China</i>	2018	1224	Authoritarian regime
<i>Thailand</i>	2017	1176	Flawed democracy
<i>North Korea</i>	2016	911	Authoritarian regime
<i>Cameroon</i>	2008	862	Authoritarian regime
<i>Bahrain</i>	2017	723	Authoritarian regime
<i>Palestine</i>	2005	705	Authoritarian regime
<i>Hungary</i>	2016	703	Flawed democracy
<i>Croatia</i>	2013	678	Flawed democracy
<i>Chad</i>	2018	630	Authoritarian regime
<i>Cabo Verde</i>	1992	611	Flawed democracy
<i>Central African Republic</i>	2016	586	Authoritarian regime
<i>Angola</i>	2010	583	Authoritarian regime
<i>Morocco</i>	2011	580	Hybrid regime
<i>Iraq</i>	2005	566	Authoritarian regime
<i>Syria</i>	2012	548	Authoritarian regime
<i>Cuba</i>	2019	538	Authoritarian regime
<i>Madagascar</i>	2010	498	Hybrid regime

¹⁴² As cited in Sajó 1999, 2.

¹⁴³ For a full list of preambles with their word count, refer to Appendix 6.

The length of the preamble has direct implications for how much it is concerned with memory: based on coding frequency alone, most of the above preambles are amongst the most coded files of the NVivo project. This means that they have the most references as per the coding frame. On the contrary, almost all full democracies, including most flawed democracies, are amongst the least coded files, with more than half of the full democracies not including a preamble at all. This observation hints at the fact that hybrid and authoritarian regimes, in their emphasis on memory and a sense of togetherness achieved through national unity, are virtually stronger proponents of constitutional patriotism on paper than their democratic counterparts despite their *de facto* illiberal tendencies, which reveals the absurdity of such preambles and how constitutional patriotism can be used by authoritarian governments to promote very different political aspirations from its ideals.

Table 2: Ten most coded preambles in NVivo.

Country	Preamble word count (in English)	Regime type according to the EIU's Democracy	Number of references in total	Most common nodes (see Appendix 1)
<i>Egypt</i>	1288	Authoritarian regime	66	revolutions, nation, freedom, identity, land
<i>North Korea</i>	911	Authoritarian regime	65	prosperity, revolutions, nation, independence, defining moments
<i>Algeria</i>	1319	Authoritarian regime	62	struggles, defining moments, nation, prosperity, independence
<i>Iran</i>	3249	Authoritarian regime	57	revolutions, nation, victims, resistance, legacy of colonialism
<i>China</i>	1224	Authoritarian regime	48	prosperity, nation, revolutions, democracy, independence
<i>Cuba</i>	538	Authoritarian regime	44	revolutions, prosperity, independence, resistance, democracy
<i>Laos</i>	474	Authoritarian regime	32	nation, revolutions, liberation, independence, prosperity
<i>Croatia</i>	678	Flawed democracy	29	independence, defining moments, war, identity
<i>Nicaragua</i>	329	Authoritarian regime	27	revolutions, struggles, war, military, martyrs
<i>Papua New Guinea</i>	406	Flawed democracy	25	nation, democracy, freedom, prosperity, liberation

As can be seen from above, the ten most coded preambles are amongst those with the highest word count, which shows how memory is invoked in constitutional argument the longer they are. The implications of this observation will be further discussed in Chapter 5 and 6, focusing on the specifics of the coding frame and what exactly is commemorated and memorialised in the 134 preambles of this study.

Given how constitutional preambles contain such different yet also many references to memory, it should be noted that they cannot possibly produce an account of the past that excludes all modes of forgetting. Not even the longest preambles can overcome this – in fact, quite the opposite is true. This is because memory is fundamentally such a selective process, so much so that when forgetting has established its hegemony, it rather becomes an instrument of politics¹⁴⁴. This raises several concerns for the legitimacy of such memories and whether they should indeed be considered more legitimate than other memories, and thus leads to further political polarisation¹⁴⁵. When immortalised in a national constitution, it seems reasonable to argue that such memories would be given more credibility given their placement next to the set of rules and principles by which a country is governed. However, since national constitutions dictate all other areas of law, does that mean that all other memories should be equally affected, or even overridden, by them? At least Voermans et al. seem to argue to that effect: “As siren songs, [...] they try to connect the imagined ideals and beliefs of the constitutional world with the individual’s world.”¹⁴⁶

By contrast, many full democracies contain few or no references to memory, which also includes several flawed democracies and a few authoritarian regimes. Out of the 134 preambles, 20 files are completely uncoded, whilst 58 files – more than a third of the whole qualitative data – contain only three references to memory. This is a striking difference to the number of references in the most coded files¹⁴⁷. Furthermore, roughly half of the 58 files containing only three references are full or flawed democracies with the other half consisting of hybrid or authoritarian regimes. This means that although many preambles with few or no references are not necessarily democratic, those with the most references and the highest word count are almost exclusively undemocratic, in other words, classified as hybrid or authoritarian. For this reason, this thesis has placed a strong emphasis on democratic

¹⁴⁴ Nascimento Araújo and Sepúlveda dos Santos 2009, 77.

¹⁴⁵ See Kaasik-Krogerus et al. 2020.

¹⁴⁶ Voermans et al. 2017, 151.

¹⁴⁷ See Table 2.

development, or rather lack thereof, because it appears that such regimes produce preambles that represent the most ambitious attempts to shape constitutional memory. Judging by their word count alone, they are most enthusiastic about including a historical biography in their constitutions and setting up a legal and political monument to ages past, unlike their democratic counterparts, to which such legal means for political gain might be absurdly authoritarian.

Some recurring patterns in such preambles can be identified. Hybrid and authoritarian regimes often involve a sense of urgency to their constitutional argument: whenever an abrupt transformation takes place, such as a revolution, it appears to be something of a necessity to come to terms with one's past, as well as its impact on the present¹⁴⁸. However, this rarely includes expressions of guilt and responsibility, but rather promises of a brighter future after a period of political instability. What such preambles might express, on the other hand, is *damnatio memoriae*, meaning condemnation of memory, which was a Roman practice to erase disgraced leaders from official accounts, or simply alter them, after their deaths. Some modern preambles do so quite explicitly: however, whilst they are keenly aware of the failures of past governments, referring to tyranny and oppression experienced by the people, not a single preamble refers to its people as perpetrators or aggressors. Rather, each and every preamble with a focus on people only referred to them as either victims or heroes, which shows how memory is often constructed around certain narratives of victimhood rather than accountability.

According to Guriev and Treisman, information manipulation, which is what this section is also particularly concerned with, is an effective tool for building political legitimacy when authoritarian aspirations are involved¹⁴⁹. Further studies on the implications of this practice point at two possible outcomes. When the information is manipulated successfully, it either strengthens public support for the regime¹⁵⁰ or brings more attention to the regime's merits rather than flaws¹⁵¹. Constitutional preambles, then, in their emphasis on the past deeds and glories, not the inconvenient truths, are rather well suited for this endeavour in that they essentially serve as an official support for the failing memory of the people, reminding them of the sacrifices made and the losses endured in the name of the regime, whilst also focusing

¹⁴⁸ Meyer 2010, 173.

¹⁴⁹ Guriev and Treisman 2019.

¹⁵⁰ Jowett and O'Donnell 2018.

¹⁵¹ Wallace 2023; Chen and Xu 2015.

on the perceived positive outcomes of such legacies. As established by McCombs, this can influence public opinion by defining agendas and framing certain issues as being more important than others, which brings to mind one of the earlier arguments by Lebow in Chapter 1, that such forms of remembering and forgetting have broad implications for society at large¹⁵². The details of this analysis will be left for Chapter 5, along with the notion of memory as a very selective process.

This chapter has now attempted to explore constitutional preambles as *lieux de mémoire*, an argument which is based on the theoretical discussion in Chapter 3 and was further explored here in Section 4.2 as “memory entrepreneurship”. In addition, I have referred to Habermas’ concept of constitutional patriotism, showing that constitutional preambles maintain an intimate relationship with their respective national culture, which exemplify the perils of constitutional patriotism. I have also demonstrated that, given how hybrid and authoritarian regimes deal with their preambles, they are also – absurdly – stronger proponents of constitutional patriotism on paper than their democratic counterparts, as far as constitutional preambles are concerned. However, since preambles frame the event of a constitution’s promulgation in the service of its legitimation, perhaps they should not be dismissed merely as window dressing, but instead understood as a legitimation tactic¹⁵³. In reference to Plato, this supports the earlier notion that such preambles may serve as a means of persuasion in achieving and maintaining constitutional and political legitimacy through the use of memory, which in this paper is treated as a significant political resource for hybrid and authoritarian governments above all.

¹⁵² McCombs 2014; Lebow 2008.

¹⁵³ Lazar 2021, 1–3.

5 Commemoration and memorialisation in constitutional preambles

In this chapter, I will focus on the specifics of the coding frame and describe what is commemorated and memorialised in the 134 preambles of this study. These two practices will be first explained through a short theoretical distinction, which justifies the structure of this chapter. Therefore, commemoration and memorialisation will be understood here as two slightly different, yet not mutually excluding, processes of remembering and discussed in Sections 5.1 and 5.2, respectively.

5.1 Commemoration

Given the context of constitutional law, commemoration is perhaps best defined as a political act. Ashplant et al. support this notion, arguing that it plays a crucial role in shaping identity by drawing upon a common interpretation of the past, whilst also reaffirming shared values and ideals¹⁵⁴. In this respect, commemoration is both an affirmation of one's identity as part of a collective, as well as an important political tool that allows the creation and recreation of collective identity through commemorative activities¹⁵⁵. Whilst such activities are many and varied, here in this section I will solely focus on constitutional preambles and how they operate as a practice of public commemoration.

To expand on the above definition, Light and Young define commemoration as a practice of remembering that reifies public memory by turning it into visual spectacle, which is most commonly observed in the permanence of statues, monuments, and memorials, as well as streets, buildings, and urban landmarks¹⁵⁶. Although constitutions are hardly as visual at all, they can be understood as sharing the same sense of permanence as the above examples, acting as a monument to ages past. However, like monuments, constitutions only tend to remain around as long as their presence is deemed legally and politically appropriate. This means that people and events commemorated by a previous regime can be effectively decommemorated or even removed from the public arena, which was common in many post-Communist states that wanted to distance themselves from their Communist past, resulting in the removal of several monuments and memorials. Furthermore, things can also be

¹⁵⁴ Ashplant et al. 2000.

¹⁵⁵ Spillman 1997.

¹⁵⁶ Light and Young 2015, 234.

recommemorated in a similar fashion.¹⁵⁷ This brings attention to the fact that commemoration, as well as memorialisation, is a highly selective practice that is just as capable of reviving the memory of someone or something as it is of sending it back into complete oblivion: a monument erected one day to commemorate a past leader can be taken down the next day and replaced with a new one. Because of this, it should come as no surprise that totalitarian and authoritarian regimes seem to employ such tactics the most because their political legitimacy partly depends on it¹⁵⁸.

Involving the coordination of both individual and collective memory, public commemoration is rooted in the social construction of memory and is therefore to be examined as the product of contest and negotiation. This is because commemorative activities may appear to be consensual when, in fact, its results can be anything but.¹⁵⁹ In addition, public commemoration is defined public when it involves the use of public spaces or resources that are associated with public institutions or, similarly to Lebow's definition of institutional memory, when its aim is to institutionalise and ingrain certain memories into the public consciousness. With this in mind, constitutional preambles serve perhaps as a textbook example of public commemoration in that their efforts to commemorate historical events, leaders, and political movements are just as determined as those of statues, monuments, and memorials, which can be funded by private or public individuals and organisations. Meanwhile, constitutional preambles are provided by the state as introductory statements or opening provisions to constitutions, which places them amongst the most public of commemorative activities.

Before proceeding to the next section, a few more additions to this short definition of commemoration should be made. As was touched upon earlier in the previous chapter, commemoration is also first and foremost "a narrative rather than a replica of an experience that can be retrieved and relived"¹⁶⁰. This is why it is as selective as it is rhetorical and open to interpretation, and why critical consideration of the use of different rhetorical strategies is necessary. Browne views that the more commemoration becomes more ritualised, the more it

¹⁵⁷ Ibid., 237.

¹⁵⁸ Todorov 2001.

¹⁵⁹ Gillis 1994, 5.

¹⁶⁰ Sturken 1997, 7.

also becomes rhetorically significant, which forces to examine who and what is commemorated and how such rituals of remembering can serve political ends¹⁶¹.

5.1.1 Documents: Leibniz’s “paper memory”

Constitutional preambles have a lot to do with Leibniz’s “paper memory”, which refers to the commemoration of legal and political documents, including international treaties, declarations, and even past constitutions. This intertextuality is a characteristic primarily shared by two groups, hybrid and authoritarian regimes, as seen from Table 3.

Table 3: Documents referenced in constitutional preambles.

Document	Preamble category 1 (full democracies)	Preamble category 2 (flawed democracies)	Preamble category 3 (hybrid regimes)	Preamble category 4 (authoritarian regimes)
Charters	0	2	4	16
Constitutions	0	1	0	6
Declarations	0	2	9	18
Treaties	0	0	0	7

As can be seen from the above, hybrid and authoritarian regimes contain by far the most references to other documents (excluding their own constitutional context). Such documents include, but are not limited to, the Charter of the United Nations of 1945, the Universal Declaration of Human Rights of 1948 – the most common reference in the declarations subcategory – and the African Charter on Human and Peoples’ Rights of 1981.¹⁶² The treaties and constitutions subcategories, on the other hand, include more diverse references related to each constitution’s legal and political context. The only flawed democracies with such references include France and Slovenia, the former of which has been described as a “prototype” – along with the U.S. preamble – due its influence on later constitutions¹⁶³. Yet

¹⁶¹ Browne 1999, 169.

¹⁶² Cf. Voermans et al. 2017, 42–45.

¹⁶³ Ibid., 105–115.

what is striking about these findings is that despite most of these agreements dealing with human rights and fundamental freedoms, it appears that including references to such documents is a dominant characteristic of preambles of illiberal origin, not of liberal origin, which could have been explained by the high scores of full and flawed democracies in the Democracy Index. However, whilst references to international declarations and human rights treaties could be dismissed as no more than window dressing here, they should be examined together with what other references such preambles contain and why only some hybrid and authoritarian regimes refer to them.

References to documents concerned with human rights and fundamental freedoms can be understood as part of international human rights discourse. Beck et al. describe two reasons why human rights language is prevalent in constitutions and their preambles. First, they find that human rights language is prevalent in newer constitutions because newly founded states are more susceptible to global influences than core nations, which have already established their political traditions and identities at a much earlier phase. Second, this kind of language is driven by the extent of the international human rights regime at the time of a constitution's writing. This means that due to an increasing number of human rights agreements globally, modern preambles are more likely to contain references to them.¹⁶⁴

In addition, Beck et al. find that progressive human rights language is connected with the acknowledgment of past injustices, even going as far as to suggest that the adoption of such language might be related to when a country is undergoing a democratic transition or recovering from a period of violent conflict or oppression¹⁶⁵. They came to these conclusions by empirically studying the 189 constitutions that were in effect in 2005 and were able to identify a pattern in how countries seek reconciliation after authoritarian or oppressive episodes. This is particularly interesting for this study that is specifically focused on memory because many of these constitutions – or more so their preambles – do indeed acknowledge past wrongs and injustices, whilst also showing commitment to international declarations and human rights treaties. For example, the Chad preamble to the 2018 constitution, in so doing, recalls the “[y]ears of dictatorship and of single-party rule [that] prevented the flourishing of any democratic culture and political pluralism”, much like the Congolese preamble to the 2011 constitution that considers “injustice and its corollaries, impunity, nepotism,

¹⁶⁴ Beck et al. 2012, 483–501.

¹⁶⁵ Ibid., 489.

regionalism, tribalism, clanism and patronage, by their multiple vicissitudes, [to be] at the origin of the general decline of values and of the ruin of the country”. Whilst not limited to only these preambles, many preambles of this kind refer to the past in much the same way as described by Beck et al., which supports the conclusions of their study that progressive human rights language has the strongest presence in constitutions that are undergoing or recovering from authoritarian and oppressive episodes. On the other hand, in a more recent study by Beck et al., this focus on past injustices is excluded in favour of a transnational legal approach, which makes their most recent findings less relevant to this section¹⁶⁶.

On the contrary, references to past constitutions form a slight exception here for their lack of human rights language, although they still refer to past injustices and struggles – and apparently even more consistently than other references of this category. The Angolan preamble to the 2010 constitution reads as follows:

Aware that these elections are part of the long tradition of the struggle of the Angolan people to achieve their citizenship and independence, proclaimed on 11 November 1975, the date on which the first Constitutional Law in the history of Angola came into force, and courageously preserved through collective sacrifice in the defence of national sovereignty and the territorial integrity of the country; [...]

Such references typically celebrate national achievements brought about by past constitutions, such as gaining independence or promoting democratic development, even in the latter’s conspicuous absence. The Mozambican preamble does the same by referring to “the armed struggle for national liberation”, which was “won on the 25th of June 1975, [when] the Mozambican people were given back their fundamental rights and freedoms [through the 1990 constitution].” Cuba, Laos, and Vietnam, by referring to their respective revolutionary struggles, also commemorate past constitutions, but mainly in relation to their transition to socialism. Out of these three preambles with a strong focus on revolution, the Lao and Vietnamese preambles describe the importance of several past constitutions to an extent unlike any other preamble of this study, including not one but at least three references to past constitutions.

Periods of violent conflict and oppression – particularly those arising from war or revolution – appear to be behind the adoption of human rights language, the commemoration of those landmark agreements in the history of the international human rights regime that provide a

¹⁶⁶ Beck et al. 2017.

legal and political framework within which these newly founded states promise to operate in the international sphere. Whether this should be treated merely as window dressing or a *bona fide* commitment to promoting equality and freedom whilst acknowledging the wounds of the past, is unfortunately beyond the scope of this thesis. However, the acknowledgement of past injustices and struggles, as well as their victims and martyrs, together with these commitments is an observation deserving of further research on how constitutions seek reconciliation with the past by referring to these experiences whilst also using progressive human rights language in doing so.

5.1.2 Historical events: past deeds and glories

A number of preambles detail a nation's history by referring to what are here understood as defining moments, which can range from being a brief account of past deeds and glories to an extensive historical biography¹⁶⁷. They are described as defining because such moments often give rise to an interpretation of the past that is focused on the positive outcomes of historical events, such as how nations overcame times of hardship and difficulty or became independent, but also because they can be perceived as defining to the notion of collective memory, being narratives about how nations view themselves or, given the context of constitutional law, rather should view themselves. As such, defining moments can be divided into two subcategories: historical events and important dates, the latter of which includes the observance of occasions such as constitution days, independence days, and other days deemed worthy of public commemoration. The legitimacy of these memories is typically drawn upon a perceived common interpretation of the past, as well as the idea that the fate of the nation always appeared to be in “the horizon of expectation”, to quote Koselleck¹⁶⁸.

Unlike the previous category, references to defining moments can be found in many different preambles across all four regime types, especially in flawed democracies and authoritarian regimes. However, the vast majority of references to historical events and important dates are still found amongst those of hybrid and authoritarian origin. As shown by Table 4 in the next page, the most common references to historical events include elections, referenda,

¹⁶⁷ Cf. Voermans et al. 2017, 50–56.

¹⁶⁸ Koselleck 2004, 255–275. A preamble is not only written at a specific point in time but also in retrospect, which means that its authors often describe events leading up to constitutional adoption, indeed, as causing the promulgation of a constitution, almost as if the outcome of such events was foreseen or foreseeable at the moment of its writing. This is a common rhetoric in many modern preambles, which shows how constitutional argument is built upon the reassurance that everything that happened in the past, or at least what is described in the preamble, is believed to have led to the present.

revolutions, and war – all of which can be seen as defining in the sense that they represent major turning points in a nation’s history, which explains their inclusion in the preamble’s very limited capacity. This is not to argue that only these four subcategories can be identified within this category: other references to historical events and important dates do occur in the data, but their exclusion from Table 4 is justified on the grounds that such references are too diverse and are better explored individually, which will be done at the end of the analysis.

Table 4: Historical events referenced in constitutional preambles.

Historical event	Preamble category 1 (full democracies)	Preamble category 2 (flawed democracies)	Preamble category 3 (hybrid regimes)	Preamble category 4 (authoritarian regimes)
Elections	0	5	0	4
Referenda	1	3	2	7
Revolutions	0	4	1	13
War	1	3	1	6

Given the fact that most preambles are written from the perspective of entire nations and peoples, as demonstrated by the prevalence of preambles beginning with “We the People”, it is somehow to be expected that the most common references to historical events are also those where nations come together; either to practise their right to vote, as in elections or referenda, or take part in determining the fate of the nation during times of political instability, such as revolution or war. According to Voermans et al., this can be because preambles point at the legitimacy of the body that has adopted the constitution in order to justify that it is representative of the people in question, whilst also referring to the important democratic processes that led to its adoption¹⁶⁹. For example, the Cape Verdean preamble to the 1992 constitution views the results of the country’s first legislative elections as a sign of political change sought by the people, declaring:

¹⁶⁹ Voermans et al. 2017, 26–30.

It was in this context [of Cape Verde's political opening] that the first legislative elections took place in January 1991, followed by presidential elections in February. The participation of the population in these elections demonstrated clearly the country's option in the direction of change of political regime.

Similarly, the Croatian preamble to the 2013 constitution is determined that the "freely expressed will" of the Croatian nation at the first democratic elections in 1990 "reaffirmed its millennial statehood". Compared to Croatia, which is considered a flawed democracy, even authoritarian regimes like Angola make use of the freedom-related phraseology: "We, the people of Angola, through its lawful representatives, the legislators of the nation, freely elected in the parliamentary elections of September 2008," despite the fairness of these elections being somewhat debatable¹⁷⁰.

As shown by Table 4, some hybrid and authoritarian regimes include references to the memory of elections and referenda. The Iraqi preamble commemorates "the millions, men and women, young and old" who "marched for the first time in our history towards the ballot boxes [on 30 January 2005]". Such elections are also sometimes tied to constitutional adoption, as in the Ethiopian preamble to the 1994 constitution: "this constitution [has been adopted on 8 December 1994] through representatives [that] we have duly elected for this purpose as an instrument that binds us in a mutual commitment to fulfil the objectives and the principles set forth above." Many referenda, on the other hand, are almost exclusively related to constitutional adoption or, alternatively, the state's founding and thus often act as a closing statement to the preamble, as observed in the Myanmar preamble to the 2015 constitution: "[We hereby adopt] this Constitution of the Republic of the Union of Myanmar through a nation-wide referendum on the Tenth day of Kasone Waning, 1370 M.E. [on 29 May 2008]."

What is curious here is the number of authoritarian regimes referring to such democratic moments despite their low ranking in the Democracy Index, which can be explained by the conception that having a democratically elected government is perceived to be more legitimate and is generally associated with good governance, even in the absence of *de facto* democratic development. Thus, such preambles may claim that the constitution was adopted through democratic means – such as through free elections or a popular referendum – in order to justify why people should stand behind it. Indeed, Gerschewski argues that this kind of symbolic power is what autocratic regimes rely on for legitimacy instead of bringing attention

¹⁷⁰ Human Rights Watch 2008.

to coercive power and democratic deficiencies¹⁷¹. In constitutional argument, this makes a clear case for authoritarian nation building: the memory of a nation is thus founded on moments when the will of the people was “freely expressed”, or where the “freely elected” representatives of the people drafted the constitution, which, as argued by Tóth, is what many authoritarian regimes use as a legitimization tactic whilst feigning to be constitutional democracies¹⁷².

To briefly return to the discussion of constitutional patriotism, the authoritarian tendency to refer to democratic processes, or moments when nations come together, is indeed what makes such preambles the strongest proponents of constitutional patriotism on paper – even stronger than their democratic counterparts. This, of course, is an ironic statement, given how authoritarian governments have hardly any respect for democratic principles in practice¹⁷³. Yet it reveals the absurdity of their preambles and how they operate within a near-Orwellian realm of information manipulation, claiming democratic memories as their own despite being anything but democratic themselves, or even assuming that citizens do not know what democracy is. As to why authoritarian governments do this would deserve a much more thorough analysis than is possible here, but according to Schedler, it might be because periodic elections help authoritarian governments obtain a semblance of democratic legitimacy, which is expected to satisfy external as well as internal actors¹⁷⁴. Whether such elections are held at all, and if so, whether they are can be described as free and fair, is another concern, but not unprecedented in authoritarian politics¹⁷⁵.

Revolutions, on the other hand, are discussed as very different memories that focus on political change and its impact on society, not to mention people carrying out the revolution and those impacted by it. Judging by the occurrence of references in the data alone, they also receive drastically more attention in modern preambles than democratic processes, especially amongst preambles of authoritarian origin. Revolutions are also often commemorated together with other things and thus constitute one of the most complex references of this study. For example, the Vietnamese preamble to the 2013 constitution commemorates revolution whilst remembering the struggle of the Vietnamese people, stating, “[O]ur people waged a protracted revolutionary struggle full of hardships and sacrifices for the independence and

¹⁷¹ Gerschewski 2013.

¹⁷² Tóth 2017, 1.

¹⁷³ Cf. Belmonte and Rochlitz 2017.

¹⁷⁴ Schedler 2002, 36.

¹⁷⁵ Cf. Levitsky and Way 2020.

freedom of the nation and happiness of the people.” Here the past is referred to as a sacrifice, which will be further explored in Section 5.2.1.

In fact, a number of preambles view revolutions through the lens of struggle and sacrifice, in other words, through their victimhood. They also do so whilst commemorating their respective revolutionaries, which are typically named “martyrs” or “freedom fighters”. Recalling “the long and heroic revolutionary struggle for liberation”, the Eritrean preamble to the 1997 constitution offers an example of this:

With eternal gratitude to the scores of thousands of our martyrs who sacrificed their lives for the causes of our rights and independence, during the long and heroic revolutionary struggle for liberation, and to the courage and steadfastness of our Eritrean patriots; and standing on the solid ground of unity and justice bequeathed by our martyrs and combatants.

The Libyan preamble also commemorates its revolutionaries by being “faithful to the martyrs of this blessed revolution who sacrificed their lives to obtain freedom”, a sentiment shared by the Egyptian preamble’s commitment to remembering “the victims of negligence and the martyrs of the revolution in our time” and to “[relieving] our people of the injustice they have suffered from for long”. Likewise, many preambles frame revolution as a historical turning point towards a more ideal future, describing how it “[eliminated] all forms of exploitation and [achieved] economic, political and social equality”, as declared in the Nicaraguan preamble. A more pompous example of this can be found in the North Korean preamble, which states that the revolution, or Kim Il Sung in particular, established

an ideal mode of politics and an ideal system and ideal methods for administering society, and laid solid foundations for the prosperity of the socialist motherland and for the inheritance and completion of the revolutionary cause of Juche.

Like the North Korean preamble, many preambles of regimes identifying as Communist revere their past leaders whilst remembering their revolutionary struggles, from Mao Zedong in the Chinese preamble to Fidel Castro in the Cuban preamble, to Ho Chi Minh in the Vietnamese preamble. This is hardly surprising because in these political contexts, these leaders gave rise to cults of personality that have a presence much larger than the preambles suggest. Therefore, given how their names are ingrained into the public consciousness, it makes sense why the legal system also commemorates the achievements of their respective revolutionary struggles. As for how such figures, as well as martyrs and freedom fighters, are commemorated in constitutional preambles will be given more attention in the next section.

In related research, commemorative practices involving revolutions have been discussed as an attempt to foster support for the regime¹⁷⁶, which coincides with the conclusions made so far in this section. Indeed, preambles commemorate revolutions because they are perceived as an *annus mirabilis* for the following regime: in constitutional argument, revolutions are depicted as moments when history takes a turn towards the better, which appears to be a common rhetoric amongst authoritarian regimes. This is supported by the fact that virtually all mass-incorporating regimes of the 20th century have relied on the manipulation of such public memory for legitimisation purposes¹⁷⁷. Although not classified as an authoritarian regime and therefore being something of an exception to the rule, the Portuguese preamble to the 2005 constitution recounts the country's revolution as follows:

On the 25th of April 1974 the Armed Forces Movement crowned the long years of resistance and reflected the deepest feelings of the Portuguese people by overthrowing the fascist regime.

Freeing Portugal from dictatorship, oppression and colonialism was a revolutionary change and the beginning of an historic turning point for Portuguese society.

The above preamble refers to the “deepest feelings of the Portuguese people” as a historical basis which justifies overthrowing the previous regime. In a similar manner, the Chinese preamble refers to the “historical task” of the Chinese people:

The Revolution of 1911, led by Dr. Sun Yat-sen, abolished the feudal monarchy and gave birth to the Republic of China. But the Chinese people had yet to fulfil their historical task of overthrowing imperialism and feudalism.

Here public memory is framed so that the legitimacy of the revolution is built upon the historical sentiments of the people, which portrays it as a natural consequence to the events that followed. As argued by Voermans et al., the preamble here acts as a profession of faith in the legal and political reality that ensues¹⁷⁸, the legitimacy of which it attempts to justify to the best of its ability. They also argue that preambles with references to Communist revolutions are also the ones with most ideological content¹⁷⁹, which is based on the fact that technically all such preambles – China, North Korea, Vietnam, Laos and Cuba – refer to their socialist movements and political thinkers as much as they do to their iconic leaders

¹⁷⁶ E.g. Chatterje-Doody and Tolz 2019.

¹⁷⁷ Hobsbawm and Ranger 2012.

¹⁷⁸ Voermans et al. 2017, 150.

¹⁷⁹ Ibid., 59.

(excluding Laos) and revolutionary struggles. This, again, is to show that revolutions are indeed a complex reference, with many overlapping references to other memories.

Besides revolutions, preambles also commemorate war, which is often accompanied by references to past achievements, such as freedom or independence. For example, the Latvian preamble to the 2016 constitution states plainly, “The people of Latvia won their state in the War of Liberation.” The Croatian preamble uses a similar wording, stating that “the foundations of state sovereignty [were established] during the course of the Second World War, by the decisions of the Antifascist Council of National Liberation of Croatia”. Even national armies are mentioned, and occasionally praised, such as in the East Timorese preamble:

The armed front was carried out by the glorious Forças Armadas de Libertação Nacional de Timor-Leste (FALINTIL) whose historical undertaking is to be praised.

The action of the clandestine front, astutely unleashed in hostile territory, involved the sacrifice of thousands of lives of women and men, especially the youth, who fought with abnegation for freedom and independence.

This is also seen in the Nicaraguan preamble, which, apart from referring to the country’s “combative tradition”, refers to individual generals and political leaders as having together with the Nicaraguan people “destroyed the dominion of the foreign adventurers and defeated the North American intervention in the National War”. As can be seen from these examples, preambles tend to focus on triumphs rather than defeats. Perhaps the only exception to this might be the Japanese preamble, which renounces war by stating that “never again shall we be visited with the horrors of war through the action of government”.

The existing subcategories only show the most common historical events referenced and commemorated by modern preambles. However, preambles also refer to a good deal of other events that are as diverse as the data itself. Depending on the context, each preamble with references to such historical events follow the earlier observation of moments that are perceived as defining to the country’s development, such as events that helped shape the country’s identity and how they involved the people in question. For example, the Rwandan preamble recalls “the genocide committed against [the ethnic minority] Tutsi that decimated more than a million sons and daughters of Rwanda” whilst being “conscious of the tragic history of our country”. Whilst this is a somewhat exceptional occurrence, many preambles

recount historical events that contributed to the adoption of a new constitution, or that points at the right to statehood, as seen in the Croatian preamble:

The decision of the Croatian Parliament of 29 October 1918 to dissolve state relations between Croatia and Austria-Hungary and the simultaneous affiliation of independent Croatia, invoking its historical and natural right as a nation, with the state of Slovenes, Croats and Serbs, proclaimed on the former territory of the Habsburg Monarchy; [...]

The Hungarian preamble to the 2016 constitution also describes the country's right to self-determination as a nation, including when it was violated, as follows:

We date the restoration of our country's self-determination, lost on the nineteenth day of March 1944, from the second day of May 1990, when the first freely elected body of popular representation was formed. We shall consider this date to be the beginning of our country's new democracy and constitutional order.

A similar narrative can be found in the Estonian preamble, which describes the country's right to "national self-determination [that] was proclaimed on 24 February 1918". The Polish preamble also reminds about the existence of the Polish state "[w]hich recovered, in 1989, the possibility of a sovereign and democratic determination of its fate". Indeed, as observed by Nyysönen, some preambles in Eastern and Central Europe discuss the past as a "restoration attempt" following the collapse of the Soviet Union¹⁸⁰, even going as far as to describe Soviet rule as an "occupation regime", such as in the Latvian preamble:

The people of Latvia did not recognise the occupation regimes, resisted them and regained their freedom by restoring national independence on 4 May 1990 on the basis of continuity of the state.

Likewise, the Myanmar preamble, in reference to the country's colonial past, describes how Myanmar "lost her sovereign power in 1885", only to be restored when it became a sovereign state again in 1948. As for other references to colonialism, they will be explored in more detail in Section 5.2.1.

Based on the above observations, historical events described in constitutional preambles are by no means coincidental. They are built upon the recognition of collective remembrance, seeking answers to questions such as "who we are and how things came to be; what is traditional and what is an innovation; who has committed wrongs and who has been wronged; what we owe to others and what they owe to us," whilst providing "resources for

¹⁸⁰ Nyysönen 2013, 20.

understanding the world around us and assigning praise and blame”¹⁸¹. Such memories are also frequently revisited when new identities are formed¹⁸². Yet the salient historical “facts” presented in modern preambles reveal that a great number of constitutions define their preambular identity through the use of memory¹⁸³, which is supported by a recent study that states that preambles describe what is thought to be the essence of the people, which is at times achieved through a brief historical account of their past¹⁸⁴. No matter how long or short, such accounts of the past exhibit a great deal of political will in that they reimagine entire communities by drawing upon a carefully crafted narrative, as well as a carefully selected catalogue of national memories. Whenever national history is cited in constitutional preambles, the focus appears to be exclusively on those events that portray the country in the most favourable light, even when their contents are characterised by a sense of national tragedy. In addition, whilst the substance of past events matters, so too does the narrative arc that is chosen. By placing the constitution as an event along a certain arc of time, the shape of a strategically constructed past lends itself to a hopeful future, which has all to do with building constitutional legitimacy.¹⁸⁵

The other category within this section is important dates, which includes occasions such as constitution days, independence days, and other days deemed worthy of public commemoration. In fact, many preambles contain several references to specific dates, ranging from days when a constitution was proclaimed to when a country became independent, which may or may not always be the same date. References to constitution days are typically accompanied by references to historical events and are most commonly found towards the end of the preamble, where the constitution is declared as adopted, enacted, or given – depending on the context – to the people in question. Independence days, on the other hand, tend to have a more varied placement, which applies to other important dates as well.

As shown by Table 5 in the next page, constitution and independence days tend to be commemorated by several preambles regardless of regime type. Based on the occurrence of such references, it appears that flawed democracies refer to constitution days more than authoritarian regimes, which contain more references to independence days. This can be explained by the fact that many countries currently classified as hybrid or authoritarian are, in

¹⁸¹ Balkin 2022, 1–2.

¹⁸² Gillis 1994, 3.

¹⁸³ Cf. Voermans et al. 2017, 50–56.

¹⁸⁴ Addis 2018, 178–181.

¹⁸⁵ Lazar 2021, 1–2.

fact, former colonies and are thus perhaps more likely to commemorate their independence or statehood than their democratic counterparts. In addition, references to other dates are the broadest subcategory here, with many overlapping references to historical events, as can be seen from some of the earlier examples. However, since these references form such a diverse group and cannot be categorised as effectively as constitution and independence days, they are here treated as a separate group, which, of course, does not make them any less worthy of public commemoration.

Table 5: Important dates referenced in constitutional preambles.

Important dates	Preamble category 1 (full democracies)	Preamble category 2 (flawed democracies)	Preamble category 3 (hybrid regimes)	Preamble category 4 (authoritarian regimes)
Constitution days	1	4	3	2
Independence days	0	5	4	8
Other dates	2	11	7	22

With the exception of constitution days, which are more commemorated by flawed democracies by a small margin, references to important dates, including to historical events in general, appears to be a domain of authoritarian regimes. This is hardly surprising given that authoritarian regimes tend to produce the longest preambles and, as far as their preambles are concerned, the most constitutional memory, which makes use of important dates as a public celebration to be remembered and commemorated. In such preambles, the commemoration of constitution and independence days – or any days, for that matter – serve as reminders of pivotal moments in a nation’s history, often surrounded by a brief account of the events of that day.

5.1.3 People: casualties, heroes and leaders

Preambles commemorate mainly three types of people: casualties, heroes, and important figures. This can be further divided into martyrs, prisoners, and victims, but also ancestors, freedom fighters, war heroes, political leaders, military, political movements, and thinkers. A very small number of preambles also commemorate women, especially in relation to their role

as revolutionaries or victims of conflict. An example of this can be found in the Eritrean preamble:

Noting the fact that the Eritrean women's heroic participation in the struggle for independence, human rights and solidarity, based on equality and mutual respect, generated by such struggle will serve as an unshakable foundation for our commitment to create a society in which women and men shall interact on the bases of mutual respect, solidarity and equality; [...]

The occurrence of such references is rare, although women are still consistently referred to in constitutional preambles when they discuss gender equality¹⁸⁶. For consistency's sake, however, they are excluded from this analysis, instead focusing on the groups with the strongest presence in the data, which can be seen in Tables 6, 7 and 8 and will be discussed here, respectively.

Table 6: Casualties referenced in constitutional preambles.

Casualties	Preamble category 1 (full democracies)	Preamble category 2 (flawed democracies)	Preamble category 3 (hybrid regimes)	Preamble category 4 (authoritarian regimes)
Martyrs	0	2	3	9
Prisoners	0	0	0	1
Victims	0	7	1	6

Casualties, which here include martyrs, prisoners, and victims of the past, are mostly commemorated by authoritarian regimes. Some passing references to martyrs were already seen in the earlier examples, which are often mentioned along with past injustices, such as sacrifices and struggles, or revolutions. Indeed, the Tunisian preamble to the 2014 constitution swears loyalty to its martyrs by

[t]aking pride in the struggle of our people for independence, to build the state, for freedom from tyranny, responding to its free will, and to achieve the objectives of the revolution for freedom and dignity, the revolution of December 17, 2010 through January 14, 2011, with loyalty to the blood of our virtuous martyrs, to the

¹⁸⁶ For how preambles discuss gender equality, see Voermans et al. 2017, 47.

sacrifices of Tunisian men and women over the course of generations, and breaking with injustice, inequity, and corruption, [...]

Since Tunisia is classified as a flawed democracy by the Democracy Index, the above extract reminds that the language of public commemoration is not solely a domain of authoritarian regimes, albeit still a dominant characteristic of their preambles in particular. In a recent study by Saloul and van Henten, martyrdom is described as “imagined” in that martyrs become martyrs only because they are remembered and honoured as such, yet who is a martyr to one may be a traitor to another¹⁸⁷. This establishes martyrdom as a highly contentious concept, regardless of whether the country is democratic or not. In a similar manner, the Bolivian preamble to the 2014 constitution declares solemnly, “Honor and glory to the martyrs of the heroic constituent and liberating effort, who have made this new history possible.”

Although more varied across different regime types, prisoners and victims refer to a diverse group of people who are commemorated as victims of war and conflict or, alternatively, who are portrayed as victims of past injustices. To offer an example of the latter, the Iranian preamble refers to women as such:

As a part of this process [of the creation of Islamic social infrastructures], it is only natural that women should benefit from a particularly large augmentation of their rights, because of the greater oppression that they suffered under the taghuti regime.

Being the longest preamble up to date, the public commemoration of past victims in the Iranian preamble is not only saved for women, but also for those died or were wounded during the Islamic Revolution:

After slightly more than a year of continuous and unrelenting struggle, the sapling of the revolution, watered by the blood of more than 60,000 martyrs and 100,000 wounded and disabled, not to mention billions of tumans’ worth of property damage, came to bear fruit amidst the cries of “Independence! Freedom! Islamic government!”

The Sudanese preamble follows a similar wording by honouring “the lives of the martyrs and affirming the rights of the victims of the policies of the former regime”. However, a more typical reference here would simply refer to “those who suffered for justice and freedom in our land”, such as in the South African preamble, which has more to do with acknowledging the suffering and injustices experienced by the people of the past. The Peruvian preamble to

¹⁸⁷ Saloul and van Henten 2020, 11–12.

the 2021 constitution also recalls “the sacrifice of all the preceding generations of our land”, which is here interpreted as a commemorative practice towards victims of war despite not explicitly stating that such people were victims.

To briefly remind of the reliability of results that was discussed in Chapter 2, this part of the analysis shows that the qualitative material of the constitutional texts requires the researcher to engage in a great degree of interpretation, which may be interpreted differently by another researcher. Who is considered a victim here and who is not is based on several notions of victimhood, referring to individuals killed in civic tragedies, those who fought in wars or who are by definition at risk or might be considered victims of misguided national policies, as well as those who died as victims of genocide or in acts of terrorism during the course of their lives¹⁸⁸. With this in mind, the definition of victimhood is quite broad here, referring to “the brave men and women who sacrificed their lives during the Chimurenga / Umvukela and national liberation struggles,” as in the Zimbabwean preamble, as well as “[the people of Sri Lanka’s] heroic and unremitting struggle to regain and preserve their rights and privileges”, which is “humbly acknowledged” in the Sri Lankan preamble. What many of these references to past victims have in common is that they refer to an ambiguous group of people and thus possibly more than only victims of past wars, which is why a broader definition of victimhood is necessary.

Table 7: Heroes referenced in constitutional preambles.

Heroes	Preamble category 1 (full democracies)	Preamble category 2 (flawed democracies)	Preamble category 3 (hybrid regimes)	Preamble category 4 (authoritarian regimes)
Ancestors	1	7	3	12
Freedom fighters	0	3	3	6
War heroes	0	1	0	5

¹⁸⁸ These categories of victims have been drawn from Senie 2016, 112.

Heroes, here understood primarily as references to ancestors, freedom fighters, and war heroes, are also mostly discussed by authoritarian regimes. Out of these three subcategories, ancestors gain the most myth-like characteristics in their descriptions. Indeed, the Russian preamble to the 2014 constitution reveres “the memory of ancestors who have passed on to us their love for the Fatherland and faith in good and justice”. Similarly, the Venezuelan preamble remembers “the heroism and sacrifice of our aboriginal ancestors and the forerunners and founders of a free and sovereign nation”. This is also shared by the Slovakian preamble, which bears “in mind the political and cultural heritage of our ancestors and the centuries of experience from the struggles for national existence and our own statehood”. In a more abstract sense, the South African preamble refers to ancestors by paying “[r]espect [to] those who have worked to build and develop our country”. As can be seen from these examples, ancestors tend to refer to those who are thought to have paved the way for statehood, thus serving as reminders of the nation’s age-old roots and long-established traditions.

Democracies commemorate ancestors in a slightly different way from hybrid and authoritarian regimes. Their descriptions are also notably shorter: the Polish preamble is “beholden to our ancestors for their labours” and the Hungarian preamble “[bears] responsibility for our descendants”. Even the only full democracy here, Ireland, only “[humbly acknowledges] all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial”. This is contrasted with authoritarian regimes stating that “[o]ur people enhanced the heroic and unyielding traditions of their ancestors and continually and persistently fought to gain independence and freedom,” as seen in the Lao preamble. Likewise, the Nicaraguan preamble begins by invoking “[t]he struggles of our indigenous ancestors,” much like the Rwandan preamble, which honours “our valiant ancestors who sacrificed themselves to found Rwanda”. Whilst this cannot be fully generalised, it appears that democracies – and many hybrid regimes, to be sure – lack the language of heroism regarding their ancestors.

Why are the dead commemorated in constitutional argument? This can be answered by examining why societies commemorate the dead in the first place. As observed by Danto, “Very few nations erect monuments to their defeats, but many set up memorials to the defeated dead.”¹⁸⁹ This is because commemoration of the war dead acknowledges the

¹⁸⁹ Danto 1986, 152.

individual and collective efforts to contribute to the highest interest of the community as a whole by portraying it as worth dying for¹⁹⁰. This highest interest can be interpreted here as the preservation of the community, which commonly refers to fighting in wars. Therefore, the war dead are put on a pedestal in constitutional argument for supposedly advancing the highest interest of the community, that is, its own survival. This is because without them, the preamble might point at a different authority as its hero, which explains its devotion to the particular memory of the dead.

Table 8: Important figures referenced in constitutional preambles.

Important figures	Preamble category 1 (full democracies)	Preamble category 2 (flawed democracies)	Preamble category 3 (hybrid regimes)	Preamble category 4 (authoritarian regimes)
Leaders	2	4	3	11
Military	0	3	0	4
Political movements	1	2	2	6
Thinkers	1	0	0	5

Important figures are commemorated by almost all four regime types, yet authoritarian regimes are still the largest group to commemorate its leaders, military, political movements, and thinkers, the last of which includes poets and political philosophers. These references consist of names of individuals, apart from the military subcategory, which mostly includes references to collective nouns. Hellmann argues that, in his research on North Korea, China, Vietnam and Laos, the heroic deeds of the ruling party are often emphasised in such one-party states in order to manipulate collective memory to their own advantage¹⁹¹, which is also supported by the observations here since the preambles of these four countries' constitutions do indeed contain references to not only their political leaders (excluding Laos), but also their past achievements and respective political parties. Out of North Korea, China and Vietnam,

¹⁹⁰ Canevaro 2019, 337.

¹⁹¹ Hellmann 2021.

the North Korean preamble contains by far the most references to its leaders (31), followed by China (4) and Vietnam (2). Indeed, the North Korean preamble evokes the greatness of its rulers to the effect of the Code of Hammurabi:

The great ideas of Comrade Kim Il Sung and Comrade Kim Jong Il and the great achievements made under their leadership are the lasting treasures of the Korean revolution and the basic guarantee for the prosperity of the Democratic People's Republic of Korea, and the Kumsusan Palace of the Sun where Comrade Kim Il Sung and Comrade Kim Jong Il are preserved in their lifetime appearance is a grand monument to their immortality and a symbol of the dignity and eternal sanctuary of the entire Korean nation.

Other preambles commemorate their past leaders much less excessively. The Egyptian preamble, containing the second most references to past leaders (8), describes them as follows:

This [1919] revolution is but an extension to a process of national struggle whose brightest symbols were Ahmed Oraby, Mostafa Kamel, and Mohamed Farid.

References to past leaders have a lot to do with cults of personality. With this particular focus, an increasing body of academic work has established them as a unique phenomenon of 20th century dictatorial regimes¹⁹², which is also seen here, since a majority of references to past leaders are of authoritarian origin. However, this is not to say that all such references, democratic and authoritarian alike, amount to a cult of the same intensity. King Edward I is hardly revered as much in the British preamble as Fidel Castro in the Cuban preamble, who is believed to guide the people of Cuba by his example of “the most advanced revolutionary, anti-imperialist, Cuban-Marxist, Latin American, and universal thought”, along with José Martí.

Military organisations, as well as individual military leaders, are occasionally commemorated in relation to their achievements for the nation. Although also heroes of the past, they are here categorised under important figures because of their perceived authority. Speaking on behalf of the Algerian people, the Algerian preamble takes pride in the country's armed forces as follows:

The Algerian people are proud of their national army and grateful for all the efforts it has exhausted to protect the country from any foreign threat and for its quintessential role in protecting the citizens, institutions and properties from the plague of terrorism; those efforts have contributed to strengthening the

¹⁹² E.g. Dikötter 2019.

nationalistic bond and consecrating the spirit of solidarity between the people and their army.

In a similar manner, the Egyptian preamble states plainly, “Mohamed Ali founded the modern Egyptian state with a national army as its pillar”. On the other hand, individual military leaders are also named, such as in the Dominican preamble, which is “guided by the ideology of our Founding Fathers, Juan Pablo Duarte, Matías Ramón Mella and Francisco del Rosario Sánchez”.

A key observation here is that references to leaders are generally concerned with the commemoration of past leaders, with only few references to current leaders. One such example is found in the Chinese preamble’s, which is guided by “the Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era”, the incumbent General Secretary of the Chinese Communist Party and President of China. This suggests that despite many authoritarian regimes being currently ruled by widely known leaders¹⁹³, their constitutional preambles exclude their names in favour of past leaders, perhaps because the memory of past leaders belongs to the realm of political mythology, in contrast to their current leaders, who are yet to prove their legacy amongst them. However, the exclusion of incumbent leaders, no matter how charismatic or beloved by the constituency, suggests that authoritarian regimes have standards for praising their leaders in the constitutional sense: they must prove themselves in order to earn their constitutional mandate. Yet it may also be that since such leaders are still alive and ruling the country, their names may appear in the preambles of their constitutions after their passing. To be sure, the North Korean preamble, which does not contain a single reference to its current leader Kim Jong Un, may be one such case.

Political movements, which primarily refers to political parties, are referenced in many of the above preambles that commemorate their past leaders and military organisations. The most references to political movements are, expectedly, found in the preambles of one-party states, such as the Party for the Independence of Guinea and Cape Verde in Guinea Bissau (5), the Chinese Communist Party in China (5), the Lao People’s Revolutionary Party in Laos (3), the Communist Party of Cuba in Cuba (3), and the Worker’s Party of Korea in North Korea (1). As can be observed from the names alone, all these preambles with the most references to political parties are countries either historically or currently described as Communist or Marxist-Leninist, which makes their appearance in their preambles hardly a surprise, since

¹⁹³ Tóth 2017, 3–4.

such one-party states have historically placed a great importance on the veneration of their one-party rule and its achievements.

This is contrasted by thinkers, which is a more diverse group, referring to poets and political philosophers. Yet most of these references are still of authoritarian origin and mainly found in the preambles of Egypt (5), Cuba (3) and Nicaragua (3), which are amongst the most likely to refer to historical figures of almost any kind, as seen earlier. Such examples include, but are not limited to, writer Rifa'a at-Tahtawi and entrepreneur Talaat Harb in the Egyptian preamble; Marx, Engels and Lenin in the Cuban preamble, as well as poet Ruben Dario and journalist Pedro Joaquin Chamorro in the Nicaraguan preamble.

5.2 Memorialisation

Traditionally, memorialisation is understood in terms of ceremonies, statues or structures intended to remember historical events that ended in tragedy or sacrifice¹⁹⁴. How this differs from commemoration here is that, unlike commemoration, memorialisation is better defined through acts rather than practices. However, Holloway et al. argue that whilst such forms of memorialisation in which it takes place have received a great deal of scholarly attention, the process of memorialisation has remained somewhat understudied¹⁹⁵. Whilst this study cannot produce a significant contribution to the study of the process of memorialisation, I will regardless attempt to approach constitutional preambles as one such instance with this particular focus in mind.

Memorialisation is closely associated with acknowledging the suffering and injustices experienced by the people of the past¹⁹⁶. Barsalou and Baxter discuss memorialisation in relation to transitional justice and describe it as a means to examine the past and address contemporary issues, which can either promote social recovery after a period of violence and conflict or, alternatively, lead to a sense of victimisation and injustice¹⁹⁷. For this reason, the importance of memorialisation has also been recognised by various truth commission reports, which have endorsed the idea of symbolic reparations in the form of memorials¹⁹⁸. However, the inclusion of constitutional preambles in this endorsement should not be assumed since constitutional preambles hardly count as genuine attempts at promoting social recovery, being

¹⁹⁴ Green et al. 2020, 566.

¹⁹⁵ Holloway et al. 2018.

¹⁹⁶ Light and Young 2015, 233.

¹⁹⁷ Barsalou and Baxter 2007.

¹⁹⁸ Naidu 2006.

rather displays of national greatness and assigning praise and blame, which may also involve narratives of victimhood. Thus, constitutional memory may be used by national governments to advance their political visions in lieu of social recovery, which makes memorialisation more of an instrument of politics than an attempt at reconciliation with the past.

In this thesis, memorialisation will be further divided into two distinct categories of memory: negative and positive memory. This division is mainly based Koselleck's notion of negative memory which is two-fold: either such memory is deemed off-putting or unwelcome, or unavailable to recollection¹⁹⁹. Granted, what is deemed unavailable to recollection cannot be effectively studied in its absence, which is why this aspect of negative memory is here treated as forgetting. In this respect, memory, when and if deemed politically inappropriate, can be altered or erased altogether. However, if deemed appropriate, Koselleck reminds that even negative memories can be reinterpreted as positive²⁰⁰, which is why this section also deals with the notion of positive memory – memory that takes particular pride in things, such as past achievements or cultural heritage. Whilst this division may seem superficial, it is based on the observation that constitutional preambles do also discuss the past with negative associations, in addition to focusing on the greatness of the nation through positive associations. Yet it may be also argued whether all constitutional memory is essentially positive memory given the context of constitutional law, since no constitution would begin by denouncing itself, or at least this would be highly unusual.

5.2.1 Negative memory: sacrifices and struggles

Negative memory refers to past experiences that are deemed disgraceful or inconvenient, which, as will be seen in the coming pages, often involve narratives of victimhood. It is also further divided into two subcategories: sacrifices and struggles. Whilst in general such memory focuses on what went wrong in the past and how it should still be remembered, sacrifices refer to the sacrifices made by the nation in pursuit of freedom and independence, for instance, whereas struggles refer to moments when the nation is undergoing a particularly difficult episode, which can be understood in a more abstract sense than sacrifices. Although these two subcategories can contain references to similar events and historical experiences, the occurrence of such references is here based on how negative memory is invoked in constitutional preambles, rather than whether certain historical events are categorised as

¹⁹⁹ Koselleck 2018, 238–249.

²⁰⁰ Ibid., 239.

solely sacrifices or struggles by the researcher. To be sure, this distinction is built upon the observation that constitutional preambles, in their dealing with the past through negative associations, employ different narrative devices²⁰¹, thus forcing to examine the rhetorical framing of historical time.

Table 9: Sacrifices referenced in constitutional preambles.

Sacrifices	Preamble category 1 (full democracies)	Preamble category 2 (flawed democracies)	Preamble category 3 (hybrid regimes)	Preamble category 4 (authoritarian regimes)
Historical injustices	0	5	0	11
Legacy of colonialism	0	5	2	11

When the past is referred to as a sacrifice endured and carried out by the nation, preambles point at two kinds of experiences: historical injustices and periods of colonialism. As can be seen from Table 9, the language of sacrifice is most common amongst authoritarian regimes, followed by flawed democracies. Indeed, the Egyptian preamble refers to the country's revolution as follows:

We, Egyptians, strived to keep up with the pace of development, and offered up martyrs and made sacrifices in several uprisings and revolutions until our patriotic army delivered victory to the sweeping popular will in the “Jan 25 – June 30” Revolution that called for bread, freedom and human dignity within a framework of social justice, and brought back the homeland's free will.

The above preamble exemplifies the language of sacrifice, not least in the literal sense but also because it frames the memory of the revolution so that the Egyptians paid a heavy price for their freedom and social justice. The Iranian preamble recalls the suffering of the Iranian people in a similar manner:

The despotic regime which had begun the suppression of the Islamic movement with barbaric attacks on the Faydiyyah Madrasah, Tehran University, and all other active centres of revolution, in an effort to evade the revolutionary anger of the people, resorted to the most savage and brutal measures. And in these circumstances, execution by firing squads, endurance of medieval tortures, and long terms of imprisonment were the price our Muslim nation had to pay to prove its firm resolve to continue the struggle. The Islamic Revolution of Iran was

²⁰¹ Lazar 2021, 6–18.

nurtured by the blood of hundreds of young men and women, infused with faith, who raised their cries of “Allahu Akbar” at daybreak in execution yards, or were gunned down by the enemy in streets and marketplaces.

As seen from these examples, the language of sacrifice is often linked to the memory of martyrs and victims of conflict. By referring to “the price the Muslim nation had to pay” in order to continue its struggle, the Iranian preamble treats these losses as instances of historical injustice that resulted in their deaths. However, unlike the Iranian preamble, some preambles merely state what went wrong in the past and how such wrongs contributed to a negative development, such as in the Congolese preamble, which discusses the country’s decline as follows:

Considering that injustice and its corollaries, impunity, nepotism, regionalism, tribalism, clanism and patronage, by their multiple vicissitudes, are at the origin of the general decline of values and of the ruin of the country.

Here, the memory of historical injustices is invoked in more subtle and anonymous terms through the fate of the country, rather than the suffering of the people. Similarly, the Chadian preamble states,

Different successive regimes created and maintained regionalism, tribalism, nepotism, social inequalities, violations of human rights and of fundamental collective and individual freedoms, of which the consequences were war, political violence, hatred, intolerance, and distrust between the different communities which compose the Chadian nation.

The Thai preamble also refers to “constitutional crises” during which “there was still no stability or order due to various problems and conflicts”, pointing at “persons ignoring or disobeying governance rules of the country, being corrupt and fraudulent, abusing power, and lacking a sense of responsibility towards the nation”. As seen here and from the other examples, individual leaders are rarely if ever mentioned in such accounts of the past, yet blame is still assigned collectively to those responsible for the atrocities that followed. The Hungarian preamble follows a similar line of thought, but makes a more explicit attempt at denouncing the former regime as “foreign occupation”:

We do not recognise the suspension of our historical constitution due to foreign occupations. We deny any statute of limitations for the inhuman crimes committed against the Hungarian nation and its citizens under the national socialist and the communist dictatorships.

Although based on a similar historical experience, the Hungarian preamble can be contrasted with that of the Polish constitution, which simply refers to “the bitter experiences of the times

when fundamental freedoms and human rights were violated in our homeland”. These examples show that the notion of historical injustices is based on the memory of eroding human rights, or crimes committed against the nation, which act as a lens through which the present regime is portrayed as a better moral authority than its predecessor. An almost textbook example of this can be found in the Lao preamble:

Since the 1930’s, under the correct leadership of the former Indochinese Communist Party and the present Lao People’s Revolutionary Party, the multi-ethnic Lao people have carried out difficult and arduous struggles full of great sacrifices until they managed to crush the yokes of domination and oppression, tumble the colonial and feudal regimes, completely liberate the country and establish the Lao People’s Democratic Republic on 2 December 1975, thus opening a new era - an era of genuine independence for the country and true freedom for the people.

In fact, a number of preambles of authoritarian origin draw upon such an eschatological narrative characterised by a pivotal moment after which change becomes unnecessary and time stops because, according to the preamble’s framing of historical events, the country has already reached a sufficient level of freedom and democracy after a period of political instability. In such preambles, the constitution’s promulgation marks a break from the past and serves as a promise to change the trajectory of public life.²⁰² In constitutional argument, this is done for legitimisation purposes²⁰³ as well as to construct a post-authoritarian identity²⁰⁴, even in the conspicuous absence of *de facto* democratic development. Therefore, I argue that historical injustices are highlighted particularly in the preambles of authoritarian regimes because they rely on such experiences for their constitutional and political legitimacy.

What can be observed in the discussion of historical injustices in constitutional preambles is that, apart from only referring to past victims, many such experiences are also narrated with a sense of victimhood. Indeed, studies show that narratives of victimhood are commonplace in authoritarian regimes because they allow them to foster support for the regime through the use of collective memory²⁰⁵. Authoritarian regimes are also more likely to use accounts of ill-remembered events whose reliability is less of a given²⁰⁶. Perhaps for this reason, historical injustices are recounted in constitutional preambles with great ambiguity and controversy in

²⁰² Ibid., 10–11.

²⁰³ Balkin 2022; Siegel 2022.

²⁰⁴ Marszałek-Kawa 2017.

²⁰⁵ E.g. Xu and Zhao 2023.

²⁰⁶ Kneuer 2017, 206.

order to appeal to a certain political sensitivity, which is aided by the fact that constitutional politics tends to view such events as a contest between good and evil²⁰⁷.

On the other hand, legacies of colonialism are also often referred to as a sacrifice in that they depict a national struggle for liberation and are thus viewed as a price that had to be paid for freedom and independence. Indeed, the Angolan preamble refers to the country's colonial past as an instance of the historical struggle of the Angolan people:

Noting that the constitution of the Republic of Angola is linked to, and a direct part of, the long and enduring struggle of the Angolan people, first to resist colonial occupation, then to achieve the independence and the dignity of a sovereign state, and later to build a democratic state based on the rule of law and a just society in Angola; [...]

Likewise, the Nicaraguan preamble invokes the memory “[t]he generations of heroes and martyrs who forged and carried forward the liberation struggle for national independence” in the constitution that is adopted in the name of “[t]hose who offer their lives in fighting against imperialist aggression to guarantee happiness for new generations”. The Cuban preamble also states being inspired

by the patriots that started and participated in our struggles for independence against Spanish colonization beginning in 1868 as well as those whose final efforts of 1895 were denied victory with the beginning of the military intervention and occupation of Yankee imperialism in 1898; [...]

References to colonialism are, as expected, primarily found in the preambles of those countries that have undergone such periods in their history, but as can be seen from Table 9, only few such countries – of which 80 have gained their independence since the creation of the United Nations²⁰⁸ – refer to their colonial past in their preambles. Yet, perhaps not surprisingly, many of these references discuss the country's colonial past within a trajectory of historical progression, viewing the end of colonial rule as a pivotal moment for the development of the nation. The memory of the colonial past is thus reduced to the experiences of systemic oppression, such as in the Bolivian preamble, which states that “we never knew racism until we were subjected to it during the terrible times of colonialism”, followed by the declaration:

We, the Bolivian people, of plural composition, from the depths of history, inspired by the struggles of the past, by the anti-colonial indigenous uprising, and

²⁰⁷ Lazar 2021, 13.

²⁰⁸ As established at <https://www.un.org/en/global-issues/decolonization/>.

in independence, by the popular struggles of liberation, by the indigenous, social and labor marches, by the water and October wars, by the struggles for land and territory, construct a new State in memory of our martyrs.

As seen from many of the above preambles, sacrifices are treated as a price that nations had to pay so that they could finally realise their visions of freedom and independence. Indeed, the Chinese preamble reminds of the similar heroic deeds of the Chinese people throughout the 19th century, also known as the “century of humiliation”²⁰⁹ in China, as follows:

Feudal China was gradually reduced after 1840 to a semi-colonial and semi-feudal country. The Chinese people waged wave upon wave of heroic struggles for national independence and liberation and for democracy and freedom.

In this thesis, sacrifices in constitutional argument are understood as an important aspect of preambular discourse that emphasises not how nations fell from grace, but rather how they survived an existential crisis after a period when their fundamental freedoms and right to statehood were severely compromised. This is because, as argued by Renan, a nation is “constituted by the sentiment of the sacrifices one has made and of those one is yet prepared to make”²¹⁰. A cultural analysis of the phenomenon of sacrifice suggests that it is ultimately rooted in love, which is embodied in certain social institutions such as family and church that emerge out of an emotional attachment²¹¹. In constitutional preambles – particularly those of authoritarian origin – the emotional attachment to the constitutional and political order of the state is founded on such “acts of love”, which is most commonly expressed through the heroic deeds of the people in their quest for freedom and liberation. Therefore, the memory of past sacrifices, or a heavy price paid, in constitutional preambles serves as a reminder of how invested the people of the past were in determining the fate of the nation and how future generations should remember their heroism.

Like sacrifices, struggles are remembered by a great number of preambles of authoritarian origin. In fact, a vast majority of these references are exclusively found in the preambles of authoritarian regimes: out of the 30 preambles referring to historical struggles in general, 18 of them are authoritarian²¹². Since this category is diverse and proved to be a challenge to turn

²⁰⁹ Xu and Zhao 2023, 2–3.

²¹⁰ Renan 2018, 261.

²¹¹ Goldoni 2023, 647–651.

²¹² Whilst 18 of the 30 preambles referring to historical struggles are of authoritarian origin, 6 are hybrid regimes and 4 are flawed democracies, followed by only two full democracies. This means that the more undemocratic the country is, the more likely it is to refer to such memories in its preamble. Since these references could not be effectively categorised due to their uniqueness, despite their high occurrence, the contents of Table 10 will be discussed as a separate observation in the next page.

into distinct subcategories, Table 10 only shows some of these references, which is acknowledged as being an inadequate description of the qualitative data. However, this does not mean that the struggles excluded from Table 10 will not be discussed here. Rather, given the high occurrence of such references, they will be dealt with a strong focus on why authoritarian regimes, in particular, remember historical struggles as opposed to democracies, which do not refer to such experiences much at all.

Table 10: Struggles referenced in constitutional preambles.

Struggles	Preamble category 1 (full democracies)	Preamble category 2 (flawed democracies)	Preamble category 3 (hybrid regimes)	Preamble category 4 (authoritarian regimes)
Civil war	0	0	0	1
Resistance	0	2	1	7

Since both focus on what went wrong in the past, struggles contain some overlapping with sacrifices. However, unlike sacrifices, struggles are defined more in terms of forceful or violent efforts to achieve something, such as freedom or independence, and less in terms of how such things were historically compromised. This is seen in the Eritrean preamble, which begins: “We, the people of Eritrea, united in a common struggle for our rights and common destiny.” Like sacrifices, struggles typically refer to the memory of existential crises, as in the Macedonian preamble to the 2011 constitution:

Taking as the points of departure the historical, cultural, spiritual and statehood heritage of the Macedonian people and their struggle over centuries for national and social freedom as well as for the creation of their own state, [...]

These references may also refer to historical injustices without necessarily assigning blame, which is seen in the Ugandan preamble that recalls “our history which has been characterised by political and constitutional instability”. A similar reference is found in the Cambodian preamble, which refers to the “suffering and destruction and [...] a tragic decline in the course of last two decades” endured by the people of Cambodia. Indeed, many of these references are characterised by a sense of national tragedy, which, unlike the Cambodian preamble, may be even used to describe hundreds of years of historical events. As an extreme example, the Algerian preamble goes back over thousands of years and states that the entire history of the

Algerian people “is marked by a progression of exertion and struggle that has turned Algeria into an everlasting seedbed of freedom and a land of glory and dignity” because they “have always been struggling for freedom and democracy and [...] are resolved to uphold their national sovereignty and independence.”

Several preambles cited earlier in relation to other categories referred to historical struggles, which, much like revolutions, shows that many categories described here are highly related to each other. For this reason, they are perhaps most effectively studied together because doing so would not only allow a more complete understanding of negative memory, but also how the meaning of constitutional memory in certain preambles is constructed around such memories. This can be seen in the Palestinian preamble, which declares:

The birth of the Palestinian National Authority in the national homeland of Palestine, the land of their forefathers, comes within the context of continuous and vigorous struggle, during which the Palestinian people witnessed thousands of their precious children sacrificed as martyrs, injured persons and prisoners of war, all in order to achieve their people’s clear national rights, the foremost of which are the right of return, the right to self-determination and the right to establish an independent Palestinian state, with Jerusalem as a capital, under the leadership of the Palestine Liberation Organization, the sole, legitimate representative of the Arab Palestinian people wherever they exist.

In the above preamble, the past is referred to not only as a struggle but also as a sacrifice, through what is described as the Palestinians’ struggle for statehood, with the lives of thousands of Palestinians – “their precious children” – as its price.

Despite most references to struggles being uncategorised, the purpose of Table 10 is still to describe a certain pattern in the data, which establishes historical struggles as a form of resistance. This is seen in the Afghanistan preamble, which remembers

the sacrifices, historical struggles, jihad and just resistance of all the peoples of Afghanistan, [whilst] admiring the supreme position of the martyrs of the country’s freedom.

Similarly, the Algerian preamble refers to “[t]he Algerian people’s resistance to violent attempts that threaten the unity and stability of the state”, much like the Cuban preamble, which is inspired by “the indigenous peoples who resisted submission” as well as “the slaves that rebelled against their masters”. This can be contrasted with the North Korean preamble, in its particular emphasis on Kim Il Sung and his personal involvement in the country’s development, which recounts the events of the Second World War in a similar manner:

Comrade Kim Il Sung authored the immortal Juche idea and, by organizing and leading the anti-Japanese revolutionary struggle under its banner, created the glorious revolutionary traditions and achieved the historic cause of national restoration.

Resistance is also described in terms of collective efforts to protect the political community against a common enemy, which is usually left unnamed in the preamble. However, one such example where the enemy is explicitly named can be found in the Syrian preamble – apart from North Korea’s implicit reference to Japan as such – which uses the term “Zionist enemy” in reference to Israel:

Syria has occupied an important political position as it is the beating heart of Arabism, the forefront of confrontation with the Zionist enemy and the bedrock of resistance against colonial hegemony on the Arab world and its capabilities and wealth. The long struggle and sacrifices of our people for the sake of its independence, progress and national unity has paved the way for building the strong state and promoting cohesion between the people and their Syrian Arab army which is the main guarantor and protector of the homeland’s sovereignty, security, stability and territorial integrity; thus, forming the solid foundation of the people’s struggle for liberating all occupied territories.

Why do authoritarian regimes specifically refer to such memories in their preambles? This can be explained in multiple ways. First, they may do so because the memory of their collective suffering is fundamental to their conception of national identity, such as in the above examples. Second, it may also be viewed as an attempt to further legitimise their rule, where the state is portrayed as having rightfully defended its national interests in times of crisis. To be sure, most struggles in constitutional preambles are those involving existential threats, which, as was discussed in relation to sacrifices, calls for political action to advance the highest interest of the community, which is its own survival.

Koselleck’s discussion of negative memory was heavily focused on who and what should be remembered about the Holocaust – in particular, how a nation of perpetrators was to position itself vis-à-vis its victims²¹³. This is why this section has examined namely, but not exclusively, who and what is remembered with negative associations in constitutional preambles and why such associations with the past are primarily found amongst those of authoritarian origin. Since the phenomenon of struggle in contemporary authoritarian politics has been analysed only to a very limited degree in related studies – one of the first attempts

²¹³ Koselleck 2018, 243–249.

being this thesis – the lack of literary references reveals the limitations of this analysis, which is mostly built upon my own conclusions drawn from the data.

5.2.2 Positive memory: achievements and cultural heritage

In contrast to negative memory, positive memory refers to past experiences that are recalled with positive associations, such as past achievements and cultural heritage. Such things are what preambles treat with pride and prestige, regardless of whether they are true achievements or not. To be sure, constitutional memory is first and foremost concerned with the greatness of the nation, describing how the ideals of freedom and democracy prevailed over a period of war and tyranny, or how a historical struggle was eventually followed by an age of prosperity. This is often narrated in almost eschatological terms, where the event of a constitution's promulgation marks a rupture that will bring about long-lasting peace and justice, culminating in an end that is beyond degeneration and decay²¹⁴. Of course, not all preambles hold out this "promise of salvation"²¹⁵, but as will be seen in the coming pages, a surprising number of preambles do end on such a note, particularly those of authoritarian origin.

Although this section defines positive memory primarily through Koselleck's view of negative memory, this does not mean that all positive memory described here is simply a form of negative memory reinterpreted as positive. Rather, when historical events are recounted with positive associations, they can be considered positive on their own, such as when constitutional memory recounts historical events leading up to freedom or independence. On the other hand, when negative memory is indeed reinterpreted as positive, this is when preambles typically describe victory achieved by defeat, such as in the Ethiopian preamble, which refers to "the peace and the prospect of a democratic order which our struggles and sacrifices have brought about". This is also why the analysis of negative memory is just as important as the analysis of positive memory because many triumphs of the past are recounted with a sense of national tragedy, as seen in the previous example. However, this again raises the question as to whether true negative memory in constitutional preambles exists at all since constitutional memory tends to exclusively focus on the highs rather than the lows of national

²¹⁴ Lazar 2021, 54.

²¹⁵ Todorov 2003, 18.

history²¹⁶. In other words, it could be argued that true negative memory is only what is perceived to be absent in the data, referring to memories that are forgotten or made forgotten.

Table 11: Achievements referenced in constitutional preambles.

Achievements	Preamble category 1 (full democracies)	Preamble category 2 (flawed democracies)	Preamble category 3 (hybrid regimes)	Preamble category 4 (authoritarian regimes)
Democracy	1	4	3	14
Freedom	0	9	4	16
Independence	2	13	9	19
Liberation	0	2	2	13
Prosperity	0	0	2	18

As can be observed from Table 11, references to past achievements – here defined as democracy, freedom, independence, liberation, and prosperity – are most commonly found in the preambles of authoritarian regimes, followed by those of flawed democracies and hybrid regimes, respectively. However, with the exception of Cape Verde (5), a flawed democracy, the five most democracy-referencing preambles are all still authoritarian, which includes Guinea Bissau (3), Laos (2), Angola (2), Cuba (2) and China (2), with the rest containing only one reference.

As for why authoritarian regimes contain the most references to democracy – including other past achievements – is a peculiar observation deserving of proper analysis. This was also established earlier in relation to democratic processes: authoritarian regimes produce preambles that contain the most references to elections and referenda. Indeed, why do countries that are recognised as least free claim democratic memories as their own? An example of this is found in the Guinean preamble, which begins as follows:

²¹⁶ Cf. Nyssönen and Metsälä 2019.

The Party for the Independence of Guinea and Cape Verde (PAIGC), founded on September 19th, 1956, has accomplished in an exemplary manner its Minimum Plan [Programa Mínimo], which consisted in the liberation of the people of Guinea and Cape Verde, winning the sovereignty of the respective States and, at the same time, launching the foundations for the construction of a free, democratic and socially just nation in each country.

Meanwhile, Guinea Bissau is ranked 147th in the 2020 Democracy Index, making it one of the twenty most authoritarian states in the world. This also includes Laos, which refers to the preservation of the country's "democratic regime" in the preamble to the 2015 constitution:

During the years since the country has been liberated, under the leadership of [the] Lao Revolutionary Party, our people have together been implementing the two strategic tasks of defending and building the country, especially the undertaking of reforms on every side, guided by the principles of mobilizing the resources within the nation and the era to preserve the people's democratic regime, the people's wealth, prosperity, social harmony, democracy, justice and civilization, creating conditions to move towards socialism.

References to democracy are often accompanied by references to freedom, although the preambles containing the most references to freedom are, in fact, not all the same as those referring to democracy. Whilst democracy is often described as a future aspiration, freedom is typically described as a result of regime change, as in the Egyptian preamble, which remembers the country's revolution and "its peacefulness and ambition to achieve freedom and social justice together". Likewise, the Algerian preamble that has been cited multiple times throughout this thesis – also of authoritarian origin – refers to its people as "pioneers of freedom, unity and progress, as well as builders of prosperous democratic states" who

made the ultimate sacrifice in order to assume their collective destiny under the banner of their recovered freedom and national cultural identity and to build their authentic people's constitutional institutions.

As can be seen from the Egyptian and Algerian examples, here freedom is not necessarily understood as a pillar of democracy, but as rather something that was recovered along with independence. The Mozambican preamble traces back to a time when "national independence was won on the 25th of June 1975, [and] the Mozambican people were given back their fundamental rights and freedoms." The Portuguese and Latvian preambles also state, respectively, that the revolution "restored [the] fundamental rights and freedoms to the people of Portugal" and how "[t]he people of Latvia [...] regained their freedom by restoring national independence". Of course, the last two examples – Portugal and Latvia – are classified as flawed democracies, meaning that their claims to freedom have perhaps more substance than

those of authoritarian regimes, which can be contradicted with the findings of international freedom indices, such as Freedom House or the Democracy Index. Needless to say, this does not make such claims any less significant, but only emphasises how certain claims about the past in constitutional preambles can be politically contentious.

Many of the previous examples show how independence is remembered as a significant achievement in constitutional memory, not to mention those honoured as having brought about it. The preamble with the most references to independence is that of Croatia (5), which begins with the description of “[t]he millennial identity of the [Croatian] nation and the continuity of its statehood [...] founded on the historical right of the Croatian nation to full sovereignty,” then declaring,

The new Constitution of the Republic of Croatia (1990) and the victory of the Croatian nation and Croatia’s defenders in the just, legitimate and defensive war of liberation, the Homeland War (1991-1995), wherein the Croatian nation demonstrated its resolve and readiness to establish and preserve the Republic of Croatia as an independent and autonomous, sovereign and democratic state.

For such countries, gaining independence forms an integral part of their national identity, perhaps because their road to independence – as in the Croatian case – was perceived to be rocky, hence its position amongst the greatest national achievements. In fact, this sentiment appears to be shared by several preambles, both democratic and authoritarian alike, regarding independence: the Cameroonian preamble expresses “jealousy” of the country’s “hard-won independence”; the Indonesian preamble remembers “the moment of rejoicing [...] in the struggle of the Indonesian independence movement to guide the people safely and well to the gate of the independence of the state of Indonesia”; and the Surinamese preamble is “guided by the centuries-long struggle of our people against colonialism, which was terminated by the establishment of the Republic of Suriname on 25 November 1975.”

Given what else is remembered in constitutional preambles, the remembrance of independence is by no means unexpected: like revolutions, the moment of independence is the *annus mirabilis* of a newly founded state, commemorated annually in the form of independence and constitutions days, the former of which are celebrated as the most significant national days in many countries. This also builds upon the argument of “defining moments” in that constitutional memory does not necessarily revolve around the memories that are in the closest proximity, but that are rather the closest to their conception of national

identity, which is why preambles can refer to historical events from twenty years ago as effortlessly as those from hundreds if not thousands of years ago.

Similar to freedom and independence, preambles also discuss liberation as an achievement, which is often defined in terms of struggle. An example of this is the Nicaraguan preamble, which remembers “those Christians who inspired by their belief in God have joined and committed themselves to the struggle for the liberation of the oppressed”; or the Mozambiquan preamble, which refers to the “the armed struggle for national liberation, whose purpose was to liberate the land and Man”; or the East Timorese preamble as it recounts the events of “the liberation of the Timorese people from the colonization and occupation of the Maubere Motherland by foreign powers”. To be sure, liberation is often discussed as liberation from a foreign power – and also involving war, as in the Vietnamese preamble, which reads as follows:

With the will and the power of [the] entire nation, and with the assistance of friends across the world, our people have gained great victories in national liberation wars, unified the country, defended the Fatherland, fulfilled international duties, attained historic great achievements in the task of renovation, leading the nation to socialism.

Apart from referring to what could be effectively viewed as negative memory reinterpreted as positive, as in some of the above examples, preambles contain a great deal of references to prosperity as a past achievement, which can range from the remembrance of social progress to sometimes outright “bliss”. An example of the former is found in the Togolese preamble, which states plainly that the country “has been marked by profound socio-political mutation on its march towards progress” following its independence. However, what is meant by the latter is a more radical statement, being exemplified in the much-cited Algerian preamble, which describes the country as having turned into “an everlasting seedbed of freedom and a land of glory and dignity”. Another example of this is found in the Lao preamble, which refers to the “ancestors [who] founded the unified Lane Xang country and built it into a prosperous land”.

Prosperity here, no matter how recent or distant, is defined first and foremost as references to historical progress. As in the above Togolese preamble, sometimes this is established through plain statements about the past, which are presented as mere “historical facts”. However, in the Chadian preamble, the determination to achieve social progress is claimed as a historical sentiment of the people and thus as a process that is still ongoing:

This institutional and political crisis that has destabilized Chad for more than four decades has only fueled the determination of the Chadian people to achieve the building of one nation, of dignity, of freedom, of peace and of prosperity.

Similarly, the Swazi preamble refers to past attempts “in the last thirty years in search of a sustainable home-grown political order”, which almost acts as a promise, much like the Chadian preamble’s acknowledgment of the determination of the Chadian people. On the other hand, the Iranian preamble seeks “fulfilment” following the Islamic Revolution, declaring,

This basic aspiration was made explicit by the very nature of the great Islamic Revolution of Iran, as well as the course of the Muslim people's struggle, from its beginning until victory, as reflected in the decisive and forceful slogans raised by all segments of the populations. Now, at the threshold of this great victory, our nation, with all its being, seeks its fulfilment.

To be sure, the promise of “fulfilment” – whether defined in terms of peace, welfare, or social justice – following a revolution is not only limited to the Iranian preamble. The Libyan preamble also refers to the country’s revolution as a pivotal moment when the democratic aspirations of the Libyan people were acknowledged:

Based on the legitimacy of this revolution, and in response to the desire of the Libyan people and their aspirations for achieving democracy and promoting the principles of political pluralism and statehood based on institutions, and aspiring to a society enjoying stability, tranquility and justice which develop through science and culture, achieves prosperity and sanitary well-being and works on educating the future generations in the spirit of Islam and love of the good and of the country; [...]

As can be seen from these examples, most references to past achievements are indeed of authoritarian origin, which can be explained in multiple ways. One explanation is offered by Marszałek-Kawa that, in order to advance the reconstruction of the state during a democratic transition, remembrance is crucial in constructing a post-authoritarian identity²¹⁷. However, since her analysis focuses on countries that achieved a genuine degree of democracy following an authoritarian episode, it does not fully apply as such to the constitutional preambles here because their authoritarian episodes are still anything but in the past. This, again, points at a democratic façade, which is something of a peculiarity in authoritarian politics. Of course, these preambles do not admit to being authoritarian, either; they portray themselves as having already achieved freedom and equality, or still working towards those

²¹⁷ Marszałek-Kawa 2017, 2–3.

goals. What Marszałek-Kawa might help see, then, is that such regimes may attempt to create a post-authoritarian identity based on false achievements so that critical assessment of whether freedom and equality have been truly achieved, is effectively discouraged or even criminalised. To quote Schedler, perhaps authoritarian regimes boast about their false past achievements of freedom and, in particular, democracy “to reap the fruits of electoral legitimacy without running the risks of democratic uncertainty”²¹⁸. To be sure, if constitutional memory states that the country has become “an everlasting seedbed of freedom and a land of glory and dignity”, as was discussed in relation to the Algerian preamble, what does it mean for statements to the contrary?

Todorov supports the above conclusions in his statement that the “hope of plenitude, harmony, and happiness” belongs to the realm of authoritarian politics because democracies offer no such prospect, instead allowing individuals to seek their own plenitude, harmony, and happiness – as also seen from Table 11 – whereas autocrats tend to hold out the “promise of salvation”²¹⁹. This is also reflected in the language of their preambles. Voermans et al. have observed that whilst constitutions are typically written in legal language, many preambles deviate from this ideal by having a somewhat solemn character²²⁰, which can be seen in the examples cited throughout this chapter. Given the high word count of their preambles, authoritarian regimes use such language the most to articulate their constitutional memories, which can be particularly observed in their references to prosperity and how they perceive historical progress.

The other aspect of positive memory consists of references to cultural heritage, which is here further divided into the following subcategories: civilisation, identity, land, nation, and tradition. Whilst not past achievements per se, these subcategories represent memories that reinforce a desirable sense of continuity with a real or mythical past, operating somewhere between the realms of historical and ideological fiction. Out of all the subcategories, however, civilisation might do so the most. For example, this can be observed in the Cambodian preamble to the 2008 constitution, which describes the Cambodian nation pompously as “the heirs of a great civilization, a prosperous, powerful, large and glorious nation whose prestige

²¹⁸ Schedler 2002, 37.

²¹⁹ Todorov 2003, 18.

²²⁰ Voermans et al. 2017, 83–85.

radiated like a diamond”. Similarly, the Vietnamese preamble focuses on the achievements of Vietnamese civilisation throughout their “millennia-old history”, beginning as follows:

In the course of their millennia-old history, the Vietnamese people, working diligently, creatively, and fighting courageously to construct and defend their country, have forged a tradition of patriotism, solidarity, humaneness and righteousness, perseverance and indomitableness, and have created Vietnamese civilization and culture.

As can be seen from Table 12 below, civilisation is one of the two least common references in this section. Identity, on the other hand, is much more commonly referenced across multiple regime types, with the exclusion of full democracies. To be sure, preambles establish a nation’s identity and describe what is thought to be their essence²²¹, which explains the frequency of such references, regardless of their regime type. As such, the Albanian preamble to the 2016 constitution refers to the “the centuries-old aspiration of the Albanian people for national identity and unity”. Likewise, the Georgian preamble defends the right to statehood by referring to “the centuries-old traditions of the statehood of the Georgian nation and the historical and legal legacy of the Constitution of Georgia of 1921”. The Hungarian preamble, by contrast, refers to the birth of the Hungarian state and “[King Saint Stephen who] made our country a part of Christian Europe one thousand years ago”, which establishes not only Hungary’s identity as a part of Christian Europe, but also that the country’s identity – as well as the Hungarian state – was already established one thousand years ago.

Table 12: Cultural heritage referenced in constitutional preambles.

Cultural heritage	Preamble category 1 (full democracies)	Preamble category 2 (flawed democracies)	Preamble category 3 (hybrid regimes)	Preamble category 4 (authoritarian regimes)
Civilisation	0	3	3	5
Identity	0	11	11	11
Land	0	0	0	5
Nation	0	12	11	26

²²¹ Addis 2018, 178–181.

Tradition	0	8	10	15
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Given the above examples, preambles do much more than merely describe the essence of the people: they locate the historical origins of statehood and discuss national identity by drawing upon centuries-old aspirations of the people in a way that brings to mind Appiah’s “lies that bind”²²², which represents a fixation with an imagined concept of sovereignty that is rooted in the need for certainty during times of great uncertainty. For example, the Malagasy preamble to the 2010 constitution states explicitly that “the Malagasy society [is convinced of the necessity] to recover its originality, its authenticity and its Malagasy character”. In another reference to identity, the Ukrainian preamble to the 2019 constitution confirms “the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine”, which, given the recent developments in Ukraine, may be viewed as an attempt to shape the constitutional memory of Ukraine so that it supports the prevailing notion of Ukraine as being part of the West²²³.

Some preambles also contain references to land, all of which are of authoritarian origin. For example, the Egyptian preamble, containing the most references to land (7), pompously describes “the immortal homeland” as follows:

Egypt is the gift of the Nile and the gift of Egyptians to humanity.

Blessed with a unique location and history, the Arab nation of Egypt is the heart of the whole world. It is the meeting point of its civilizations and cultures and the crossroads of its maritime transportation and communications. It is the tip of Africa on the Mediterranean and the estuary of its greatest river: the Nile.

This is Egypt, an immortal homeland to Egyptians, and a message of peace and love to all peoples.

The memory of a land is here described with an utmost sense of nostalgia. In a similar manner, the Lao preamble also refers to how “[t]he multi-ethnic Lao people have existed and developed on this beloved land for thousands of years”. On the other hand, the Chinese and North Korean preambles refer to their respective reunification attempts with the Republic of

²²² Appiah 2018.

²²³ See Kuleba 2021.

China (Taiwan) and the Republic of Korea (South Korea), respectively. The Chinese preamble addresses this issue by declaring:

Taiwan is part of the sacred territory of the People's Republic of China. It is the lofty duty of the entire Chinese people, including our compatriots in Taiwan, to accomplish the great task of reunifying the motherland.

Likewise, the North Korean preamble also regards “the reunification of the country as the supreme national task [of Kim Il Sung and Kim Jong Il]” who have “devoted all their efforts and care for its realization”.

In contrast to the other subcategories in this section, nation combines some aspects of the commemoration of historical events with the memorialisation of how such events led to the formation of national consciousness. To be sure, preambles are typically written in the first-person plural and use collective nouns such as “people” or “nation” to address the entire constituency, which evokes a sense of togetherness and thus contributes to the language of collective remembrance. For this reason, such references are many and varied across multiple regime types. However, it may come as no surprise that the most references to nation are found in the longest preambles of this study, such as Iran (9), Egypt (7), China (7), North Korea (5), Laos (4), Syria (4) and Palestine (4), to name a few. Out of the 20 preambles referencing nation the most, 15 are also authoritarian, which means that despite nation being a common reference shared by all but one regime types, authoritarian regimes rely on collective remembrance much more than democracies. This is also supported by the fact that most hybrid regimes and flawed democracies contain only one reference to the collective remembrance of nation, with the exception of Fiji (4), Hungary (4), Macedonia (2), Bolivia (2) and Croatia (2).

Like the other subcategories, authoritarian regimes also contain the most references to tradition in their preambles. These references range from the Myanmar preamble’s opening statement that “Myanmar is a nation with magnificent historical traditions” to that of the Chinese preamble, which refers to the country’s revolutionary tradition as follows:

China is one of the countries with the longest histories in the world. The people of all nationalities in China have jointly created a splendid culture and have a glorious revolutionary tradition.

Surprisingly, however, it is not the longest preambles, nor even those of authoritarian origin, that include the most references to tradition in a single preamble. For example, the Polish preamble describes how “our culture [is] rooted in the Christian heritage of the nation and in

universal human values” whilst “recalling the best traditions of the First and the Second Republic” and “[bequeathing] to future generations all that is valuable from our over one thousand years’ heritage”; the Fiji preamble recognises the country’s two indigenous groups and their traditions, as well as the descendants of foreign-born individuals and their culture and traditions; and the Slovakian preamble is “mindful of the spiritual heritage of Cyril and Methodius and the historical legacy of Great Moravia”.

Hobsbawm and Ranger have discussed “invented traditions” as to how such traditions are used to foster social cohesion between an imagined past and a present that is perceived to be threatened or faltering, which can occur even in the absence of historical evidence for their existence²²⁴. Such attempts to reinforce a desirable sense of continuity between the cultural practices of the past with those of the present can be viewed as a response to a very real fear of social amnesia or forgetfulness²²⁵, without which people would struggle to form meaningful relationships between themselves and their ancestors. Indeed, since the meaning of the past appears to be ever more uncertain in the modern world, the search for its meaning can be as intense as the debate over its meaninglessness²²⁶.

²²⁴ Hobsbawm and Ranger 2012.

²²⁵ Arnold-de Simine 2013, 14.

²²⁶ Cf. Nora 2002.

6 Conclusions

In his famous essay on Faulker's conception of time, the French philosopher and writer Jean-Paul Sartre remarks,

It would be wrong to think that when the present is past it becomes our closest memory. Its metamorphosis can cause it to sink to the bottom of our memory, just as it can leave it floating on the surface.²²⁷

This same idea was expressed in Chapter 1 – and arguably throughout the thesis – that the past is indeed never dead because it is kept alive whenever the needs and conceptions of the present demand so, which, as seen here, is sometimes aided by the authority of constitutional law. Building upon this assumption, this thesis has now attempted to describe the phenomenon of constitutional memory as accurately as possible, arguing that a new form of public and institutional memory emerges from constitutional law with profound implications within the realm of constitutional politics. Here, in Chapter 6, I will return to the conclusions and remarks made earlier and reflect on the research process, most importantly the limitations and shortcomings of this study, as well as discuss the future of memory in the light of the conclusions of this study.

The discussion in the preceding chapters reveals that constitutional memory deals with such contentious topics and themes that their effective analysis requires a comprehensive understanding of law, history, and politics altogether. Despite having only limited legal value, which has been the primary focus of legal research on constitutional preambles so far, the significance of constitutional preambles as a political resource, particularly for authoritarian governments, cannot be stressed enough. By dictating all other areas of law, constitutions speak with a voice of authority incomparable to other state institutions, which, thanks to its particular prestige, lends a considerable degree of credibility to its contents – including its preamble, which is not to be dismissed merely as a ceremonial introduction of no further significance. When constitutional memory makes a claim about the past, no matter how long or short, it is speaking with the same voice of authority granted by its legal and political context, thus ingraining such claims into the public consciousness.

Although the exact definition of constitutional memory has not been agreed upon and is still in need of further conceptualisation, this thesis has attempted to describe it by examining the

²²⁷ Sartre 1955.

preambles of the 134 constitutions, which are here understood as lieux de mémoire akin to monuments and memorials. This is because constitutional preambles are perceived to capture the same sense of permanence characterised by such physical sites of memory, where memory at once crystallises and has occurred at a particular historical moment. Therefore, constitutional memory is conceived narrowly through the lens of the preambles, which explains the exclusion of the other sections in favour of a clear and concise research problem for a master's thesis. Whilst this is acknowledged as somewhat problematic, it is justified on the grounds that recent academic endeavours have already examined how judicial decisions both rely on and produce constitutional memory²²⁸, which, to the advantage of this study, excludes the analysis of constitutional preambles. With this in mind, the current study at hand represents one of the few attempts to compare constitutional preambles around the world as to how they invoke and construct memory²²⁹.

As has been demonstrated throughout this thesis, authoritarian regimes make use of constitutional memory more than democracies, which is also reflected in their significantly higher word count. They contain by far the most references to historical events, leaders, and political movements, including what went wrong in the past and what was considered an achievement. Based on the discussion in the preceding chapters, I argue that this is because authoritarian regimes use collective memory for legitimation purposes by discussing their victimhood and past achievements in a way that can be interpreted as persuasive: their accounts of the past attempt to portray the country in the most favourable light without betraying their authoritarian aspirations. To be sure, there is no doubt that modern preambles can effectively function as a legitimation tactic using the art of persuasion²³⁰, much like their historical counterparts from the times of Plato, Diocletian, Justinian, Rotary, Leo VI, or Louis XVI²³¹.

Despite authoritarian regimes producing longer preambles than their democratic counterparts and therefore forming an important part of this research process, constitutional memory is not to be taken exclusively as a domain of authoritarian regimes. Many regime types – even some full democracies – reference the past in much the same way as authoritarian regimes, which suggests that constitutional memory should not be studied only in relation to authoritarian

²²⁸ Balkin 2022; Balkin 2020; Siegel 2022.

²²⁹ Cf. Nyysönen and Metsälä 2019.

²³⁰ Lazar 2021.

²³¹ Fögen 1995, 1620.

regimes and how they use it as a legitimation tactic. Whether consisting of “imagined communities”²³², “invented traditions”²³³, or “lies that bind”²³⁴, the meaning of constitutional memory is different across different constitutions. Although, according to Plato, preambles are used to motivate citizens to obey the law, the analysis of the 134 preambles reveals that legislators may have varying motivations regarding their historical value judgments. This is because constitutional memory, despite here being treated as one and the same phenomenon in every legal and political context, is actually a more complex phenomenon than is possible to discuss here. Further research on constitutional memory should be conducted to come to a more complete understanding of its meaning, which in this context is merely described as politically significant given its use of contentious concepts.

Since the completion of this thesis has taken several years, new studies have emerged during the writing process that have explored similar topics or yielded similar results. For example, a recent study by Kaplan et al. uses metanarratives as a theoretical framework for comparing and analysing constitutional preambles, which ultimately yielded similar results to those of this study²³⁵. However, given their particular focus on metanarratives, the similarities are primarily shared regarding the conclusions of the research, not the method: they conclude that constitutional preambles serve as means of symbolising and shaping national identity, which are meticulously crafted and approved by the elites who lead the political system. However, since their analysis excludes the study of memory altogether, this is where the two studies diverge. As for their method, they analysed the most common characteristics of each preamble and made classifications based on such characteristics, rather than using pre-existing classifications, which was done here using the Democracy Index. With this in mind, whilst the results are somewhat similar, both studies ultimately focus on different aspects of constitutional politics and are thus mostly related in their common interest in the political analysis of constitutional preambles.

As shown by several studies cited throughout this thesis, constitutional preambles can be compared and analysed despite their vastly different legal and political contexts. However, I must still concur that a more regional approach, or a historical analysis of how constitutional politics have shifted in a given country, could delve deeper into the phenomenon of

²³² Anderson 2006.

²³³ Hobsbawm and Ranger 2012.

²³⁴ Appiah 2018.

²³⁵ Kaplan et al. 2022.

constitutional memory locally and explore what constitutional memory means to a particular legal and political system. For a regional approach, two research strategies from comparative political research can be helpful in this endeavour: most similar systems design (MSSD) and most different systems design (MDSO), the applicability of which are determined by the features of the research task²³⁶. For a more case-oriented approach, the knowledge of the original language would certainly facilitate the discussion of the cultural meaning of constitutional memory, as well as eliminate the challenge of navigating the constitutional texts through translations. By establishing a meaningful time frame through which a constitution of one time can be compared to that of another, a case-oriented approach would also allow a more in-depth analysis of the socio-political factors that influenced constitutional politics over time, which was not possible here due to the sheer volume of data²³⁷.

I should also like to point out that the conclusions of this study only reflect what the current constitutional preambles deem worthy of remembrance, meaning that in 20 years or so, the results of this research are likely to be outdated. Any revisions to constitutional preambles can have a drastic impact on the shape of constitutional memory, which, again, shows how such memory is to be understood through its permanence as well as mutability. As for which of these two characterises the essence of constitutional memory more than the other, is unfortunately beyond the scope of this thesis and perhaps even irrelevant. Regardless, it can be established that whilst constitutions are generally written for the *longue durée*, their preambles are still lieux de mémoire, containing memories that at once crystallise and have occurred at a particular historical moment. To be sure, when enough time has passed, what do constitutional preambles then have to say about the last 20 years, which is now still yet to occur? How will they construct the meaning of historical events then and, if these texts are compared with their historical versions, what will it reveal about the mutability of memory in general?

Considering qualitative data as diverse as this, it cannot be overstated how much the constitutional texts require engagement in a great degree of interpretation – so much so that it could be viewed as an issue when it comes to the reliability of the results. When constitutional memory assigns praise or blame, or when it deals with highly contentious concepts such as victimhood or martyrdom, this requires the researcher to be aware of such concepts and

²³⁶ See Anckar 2008.

²³⁷ Cf. Miklóssy and Nyssönen 2018.

address them accordingly – not to mention when memory is interpreted as either negative or positive memory, which itself is a significant historical value judgment made by the researcher. As stated earlier in Chapter 5, what I have discussed here as negative memory builds upon Koselleck's work. However, I do acknowledge that all constitutional memory can be essentially interpreted as positive because constitutional preambles often describe victory by defeat, rather than what resulted in a complete fall from grace. Yet given the complexity of the phenomenon at hand, whether constitutional memory is interpreted as solely negative or positive depends on the socio-political and cultural context of each constitution, meaning that the normative power of such memory is deeply tied to the legal, cultural and political landscape of the country. However, as the author of this thesis, I argue that constitutional memory can still be interpreted as negative if conceived through the lens of struggle and sacrifice: when the past is described as a historical reality associated with compromised freedom and happiness, no matter what came thereafter, the written word still stands as a monument or memorial to what can be ultimately perceived as a defeat.

With hindsight, it can be said that the high volume of data posed certain challenges during the analysis phase, which mainly had to do with turning the qualitative data, that is, interpreting and classifying it, into a coding frame that adequately represented the most important themes and concepts of the research. Constitutional memory is such a complex phenomenon that it can be difficult to turn into distinct categories. When classifying historical events related to struggles, for instance, this proved to be a challenging task due to the high occurrence of such references, not to mention their diversity. For this reason, they were merely coded as “struggles” instead of having a unique node. If this was not for a master's thesis, such generic nodes could be further analysed and classified, which would also make the current coding frame more detailed and representative of the qualitative data. However, given the sheer volume of data and what is possible within the scope of a master's thesis, I ultimately decided to leave the task of analysing such references for further research, which can focus on whether there are additional patterns in the data that went unnoticed here.

Given the many contentious topics and themes that have been discussed throughout this thesis, I also acknowledge that this study, due to its limitations as a master's thesis, is incapable of discussing them all with the same depth and detail. For example, as for why authoritarian regimes appear as stronger proponents of constitutional patriotism on paper but not in practice is an observation deserving of further elaboration, but since constitutional patriotism is not the primary focus of this study, it was here treated only as a relevant concept

to the study of constitutional texts in general. The implications of this observation, however, are still significant, especially when the findings of Chapter 4 and 5 are considered. To be sure, when authoritarian regimes claim democratic memories as their own in the absence of *de facto* democratic development, it certainly forms a peculiarity in authoritarian politics and raises several questions about the intentions of such statements, not to mention whether their authors assume that citizens do not know what democracy is. This is also significant because competitive authoritarianism has not so much promoted itself as an alternative model for liberal democracy²³⁸, which is also seen in the language of preambles and how most constitutional preambles would still identify as democratic rather than something else, even if this enterprise reveals itself to be a mere façade.

The above discussion is further complicated by the fact that constitutional preambles, despite first only appearing in their original language and therefore needing to be translated for them to become accessible to an international readership, are ambiguous as to whom they are intended for. On the one hand, they serve as introductory statements or opening provisions to constitutions, which points at them primarily serving a domestic interest in a manner suggested by Plato.²³⁹ On the other hand, the contents of constitutional preambles often appear as window dressing, for instance, depicting undemocratic systems as being more democratic on paper in order to project a more favourable image to the outside world. They are also generally more concerned with the greatness of the nation rather than its disgraceful or inconvenient episodes, which makes them an optimised presentation of a country's past akin to a sales pitch – but why? To speak with Plato, who are they trying to convince besides their own constituency? With this in mind, constitutional preambles may be written with the international community in mind, even when there is no official English translation of the current constitution available, but the extent to which this happens is unclear and would require a different approach to be analysed effectively. Nevertheless, it appears that the role of constitutional preambles is still to be much more than a dormant reference²⁴⁰.

Even John Quincy Adams once remarked, “Democracy has no monuments. It strikes no medals. It bears the head of no man on a coin.”²⁴¹ Although he was only half right at best, in the light of the conclusions of this study, there is still more than a grain of truth to it: as seen

²³⁸ Levitsky and Way 2020, 55–59.

²³⁹ See Roach 2001.

²⁴⁰ Cf. Ummareddy and Alam 2021.

²⁴¹ Adams 1874/1877, 433.

from their preambles, democracies do not indeed need monuments to defend their political legitimacy, nor do they need to hold out the promise of salvation because they allow individuals to forge their own such promises. Autocrats, on the other hand, have long relied on monuments as a legitimation tactic because memory is what such regimes can effectively deploy for survival; whether it be through tragedy or triumph, the former of which can sometimes be of more political value than the latter.

Given the limitations and shortcomings addressed here, this thesis has been a personal learning process of trial and error, and as such, it has revealed how many choices, if made differently, could have dramatically altered the results of the research: a smaller volume of data, a different approach, more analysis of the primary sources, and so on. If anything, this undertaking has proved that research is always guided by the researcher's perception of the material and that every great research endeavour is rooted in the researcher's awareness of their limitations and shortcomings, which is why all faults and potential errors here are solely acknowledged as my own.

References

- Adams, Charles. *Memoirs of John Quincy Adams, Comprising Portions of His Diary from 1795 to 1848. Vol. III.* Philadelphia: J.B. Lippincott & Co, 1874/1877.
- Addis, Adeno. “Constitutional Preambles as Narratives of Peoplehood.” *ICL Journal*, 2/2018, 125–181.
- Anckar, Carsten. “On the Applicability of the Most Similar Systems Design and the Most Different Systems Design in Comparative Research.” *International Journal of Social Research Methodology*, 5/2008, 389–401.
- Anderson, Benedict. *Imagined Communities: Reflections on the Origin and Spread of Nationalism.* London & New York: Verso, 2006.
- Appiah, Anthony. *The Lies That Bind: Rethinking Identity.* New York: W.W. Norton, 2018.
- Arendt, Hannah. *On Revolution.* New York: Penguin Books, 1990.
- Arnold-de Simone, Silke. *Mediating Memory in the Museum: Trauma, Empathy, Nostalgia.* Houndmills: Palgrave MacMillan, 2013.
- Ashplant, Timothy, Graham Dawson and Michael Roper. *The Politics of War Memory and Commemoration.* London: Routledge, 2000.
- Assmann, Jan. “Collective Memory and Cultural Identity.” *New German Critique*, Spring/Summer 1995, 125–133.
- Autry, Robyn. *Desegregating the Past: The Public Life of Memory in the United States and South Africa.* New York: Columbia University Press, 2017.
- Balkin, Jack. 2022. “Constitutional Memories.” *William & Mary Bill of Rights Journal*, 2022, 1–58.
- Balkin, Jack. *Cultural Software: A Theory of Ideology.* New Haven: Yale University Press, 1998.
- Balkin, Jack. “Lawyers and Historians Argue about the Constitution.” *Constitutional Commentary*, 3/2020, 345–400.
- Barsalou, Judy and Victoria Baxter. “The Urge to Remember: The Role of Memorials in Social Reconstruction and Transitional Justice.” *United States Institute of Peace*, January 1, 2007. <https://www.usip.org/publications/2007/01/urge-remember-role-memorials-social-reconstruction-and-transitional-justice/>. [Accessed October 12, 2023].
- Bazeley, Patricia and Kristi Jackson. *Qualitative Data Analysis with NVivo.* 2nd ed. London: Sage, 2013.

- Beck, Colin, Gili Drori and John Meyer. "World Influences on Human Rights Language in Constitutions: A Cross-National Study." *International Sociology*, 4/2012, 483–501.
- Beck, Colin, John Meyer, Ralph Hosoki and Gili Drori. "Constitutions in World Society: A New Measure of Human Rights." *SSRN Electronic Journal*, 1/2017, 1–22.
<https://ssrn.com/abstract=2906946>. [Accessed October 23, 2023].
- Belmonte, Alessandro and Michael Rochlitz. "Collective Memories, Propaganda and Authoritarian Political Support." *SSRN Electronic Journal*, 1/2017, 1–44.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2914275. [Accessed 4 November, 2023].
- Bernhard, Michael and Jan Kubik. *Twenty Years After Communism: The Politics of Memory and Commemoration*. New York: Oxford University Press, 2014.
- Bodnar, John. *Remaking America: Public Memory, Commemoration, and Patriotism in the Twentieth Century*. Princeton: Princeton University Press, 1992.
- Bowen, Glenn. "Document Analysis as a Qualitative Research Method." *Qualitative Research Journal*, 2/2009, 27–40.
- Browne, Stephen. "Remembering Crispus Attucks: Race, Rhetoric, and the Politics of Commemoration." *Quarterly Journal of Speech*, 2/1999, 169–187.
- Butleritchie, David. "The Confines of Modern Constitutionalism." *Pierce Law Review*, 1/2004, 1–32.
- Canevaro, Mirko. "Conclusive Remarks." In *Commemorating War and War Dead: Ancient and Modern*, edited by Maurizio Giangliulo, Elena Franchi and Giorgia Proietti. Stuttgart: Franz Steiner Verlag, 2019, 337–343.
- Casey, Edward. "Public Memory in Place and Time." In *Framing Public Memory*, edited by Kendall Phillips. Tuscaloosa: University of Alabama Press, 2004, 17–43.
- Chatterje-Doody, Precious and Vera Tolz. "Regime Legitimation, not Nation-Building: Media Commemoration of the 1917 Revolution in Russia's Neo-Authoritarian State." *European Journal of Cultural Studies*, 2/2019, 335–353.
- Chen, Jidong and Yiqing Xu. Information Manipulation and Reform in Authoritarian Regimes. *Political Science Research and Methods*, 1/2015, 1–16.
- Corbin, Juliet and Anselm Strauss. *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*. 4th ed. Thousand Oaks: Sage, 2015.
- Creswell, John. *Educational Research: Planning, Conducting, and Evaluating Quantitative and Qualitative Research*. Boston: Pearson, 2015.
- Cubitt, Geoffrey. *History and Memory*. Manchester: Manchester University Press, 2012.

- Danto, Arthur. "The Vietnam Veterans Memorial." *The Nation*, 31 August 1986, 152–155.
- Delbecke, Bram. "Modern Constitutionalism and Legal Transfer: The Political Offence in the French Charte Constitutionnelle (1830) and the Belgian Constitution (1831)." In *Entanglements in Legal History: Conceptual Approaches*, edited by Thomas Duve. Frankfurt: Max Planck Institute for Legal History and Legal Theory, 2014, 427–459.
- Dikötter, Frank. *How to Be a Dictator: The Cult of Personality in the Twentieth Century*. London: Bloomsbury Publishing, 2019.
- Dippel, Horst. "Modern Constitutionalism: An Introduction to a History in Need of Writing." *The Legal History Review*, 1/2005, 153–169.
- Elkins, Zachary, Tom Ginsburg and James Melton. "Constitute: The World's Constitutions to Read, Search, and Compare." *The Constitute Project*, 2013.
<https://www.constituteproject.org/?lang=en/>. [Accessed 6 September, 2021].
- Faulkner, William. *Requiem for a Nun*. New York: Random House, 1951.
- Flick, Uwe. "Mapping the Field." In *The SAGE Handbook of Qualitative Data Analysis*, edited by Uwe Flick. London: Sage, 2014, 3–18.
- Fögen, Marie. "The Legislator's Monologue: Notes on the History of Preambles." *Chicago-Kent Law Review*, 4/1995, 1593–1620.
- Frosini, Justin. *Constitutional Preambles. At a Crossroads between Politics and Law*. Santarcangelo di Romagna: Maggioli, 2012.
- Fukuyama, Francis. *The End of History and the Last Man*. New York: The Free Press, 1992.
- Gerschewski, Johannes. "The Three Pillars of Stability: Legitimation, Repression, and Co-Optation in Autocratic Regimes." *Democratization*, 1/2013, 13–38.
- Gillis, John. "Memory and Identity: The History of a Relationship." In *Commemorations: The Politics of National Identity*, edited by John Gillis. Princeton: Princeton University Press, 1994, 3–24.
- Ginsburg, Tom and Alberto Simpser. *Constitutions in Authoritarian Regimes*. Cambridge: Cambridge University Press, 2014.
- Ginsburg, Tom, Nick Foti and Daniel Rockmore. "We the Peoples: The Global Origins of Constitutional Preambles." *George Washington International Law Review*, 2/2014, 101–136.
- Goldoni, Marco. "Beyond Victimization: On the Lasting Relevance of Political Sacrifice." *German Law Journal*, 4/2023, 646–656.

- Green, Simon, Katherine Kondor and Alicia Kidd. "Story-Telling as Memorialisation: Suffering, Resilience and Victim Identities." *Oñati Socio-legal Series*, 3/2020, 563–583.
- Greenwald, John. "The World: A Gift to All Nations." *TIME*, July 6, 1987.
<https://content.time.com/time/subscriber/article/0,33009,964901,00.html>. [Accessed January 15, 2023].
- Grinchenko, Gelinada and Eleonora Narvselius. *Traitors, Collaborators and Deserters in Contemporary European Politics of Memory*. Basingstoke: Palgrave Macmillan, 2018.
- Guriev, Sergei and Daniel Treisman. "Informational Autocrats." *The Journal of Economic Perspectives*, 4/2019, 100–127.
- Habermas, Jürgen. *Between Facts and Norms. Contribution to a Discourse Theory of Law and Democracy*. Translated by William Rehg. Cambridge: MIT Press, 1996.
- Hellmann, Olli. "The Dictator's Screenplay: Collective Memory Narratives and the Legitimacy of Communist Rule in East Asia." *Democratization*, 4/2021, 659–683.
- Hobsbawm, Eric and Terence Ranger. *The Invention of Tradition*. Cambridge: Cambridge University Press, 2012.
- Holloway, Margaret, Mirka Hukelova and Louis Bailey. "Displaying Self: Memorialisation in Contemporary Society." *University of Hull*, 2018.
<https://pure.hud.ac.uk/en/publications/displaying-self-memorialisation-in-contemporary-society>. [Accessed 10 November, 2023].
- Human Rights Watch. *Angola: Doubts Over Free and Fair Elections*. August 13, 2008.
<https://www.hrw.org/news/2008/08/13/angola-doubts-over-free-and-fair-elections/>. [Accessed October 26, 2023].
- Jacoby, Russell. *Social Amnesia: A Critique of Contemporary Psychology*. Piscataway: Transaction Publishers, 1997.
- Jelin, Elizabeth. *State Repression and the Labors of Memory*. Translated by Judy Rein and Marcial Godoy-Anativia. Minneapolis: University of Minnesota Press, 2003.
- Jowett, Garth and Victoria O'Donnell. *Propaganda & Persuasion*. London: Sage, 2018.
- Kaasik-Krogerus, Sigrid, Viktorija Ceginskas and Nina Säaskilahti. "Politics of Memory and Oblivion. An Introduction." *European Politics and Society*, 3/2020, 271–276.
- Kansteiner, Wulf. "Finding Meaning in Memory: A Methodological Critique of Collective Memory Studies." *History and Theory*, 2/2002, 179–197.

- Kaplan, Yael, Tamir Sheafer and Shaul Shenhav. “Do We Have Something in Common? Understanding National Identities Through a Metanarrative Analysis.” *Nations and Nationalism*, 4/2022, 1152–1172.
- Kelley, Thomas. “Maintaining Power by Manipulating Memory in Rwanda.” *Fordham International Law Journal*, 1/2017, 79–134.
- Kildea, Paul. “Balancing Symbolism and Function in Constitutional Preambles: A Reply to Twomey.” *Australian Indigenous Law Review*, 2/2011, 23–25.
- Kissane, Bill and Nick Sitter. “National Identity and Constitutionalism in Europe: Introduction.” *Nations and Nationalism*, 1/2010a, 1–5.
- Kissane, Bill and Nick Sitter. “The Marriage of State and Nation in European Constitutions.” *Nations and Nationalism*, 1/2010b, 46–67.
- Kneuer, Marianne. “Legitimation Beyond Ideology: Authoritarian Regimes and the Construction of Missions.” *Zeitschrift für Vergleichende Politikwissenschaft*, 2/2017, 181–211.
- Koposov, Nikolay. *Memory Laws, Memory Wars: The Politics of the Past in Europe and Russia*. Cambridge: Cambridge University Press, 2017.
- Koselleck, Reinhart. *Futures Past: On the Semantics of Historical Time*. Translated by Keith Tribe. New York: Columbia University Press, 2004.
- Koselleck, Reinhart. *Sediments of Time: On Possible Histories*. Translated by Sean Franzel and Stefan-Ludwig Hoffman. Stanford: Stanford University Press, 2018.
- Kuleba, Dmytro. “Ukraine Is Part of the West.” *Foreign Affairs*, August 2, 2021. <https://www.foreignaffairs.com/ukraine/ukraine-part-west/>. [Accessed 20 November, 2023].
- Kumm, Matias. “On the History and Theory of Global Constitutionalism.” In *Global Constitutionalism from European and East Asian Perspectives*, edited by Takao Suami, Anne Peters, Dimitri Vanoverbeke and Mattias Kumm. Cambridge: Cambridge University Press, 2018, 168–199.
- Lazar, Nomi. “Time Framing in the Rhetoric of Constitutional Preambles.” *Law & Literature*, 1/2021, 1–21.
- Levitsky, Steven and Lucan Way. “Elections Without Democracy: The Rise of Competitive Authoritarianism.” *Journal of Democracy*, 2/2002, 51–65.
- Levitsky, Steven and Lucan Way. “The New Competitive Authoritarianism.” *Journal of Democracy*, 1/2020, 51–65.

- Lebow, Richard. "The Future of Memory." *The Annals of the American Academy of Political and Social Science*, 1/2008, 25–41.
- Lebow, Richard. "The Memory of Politics in Postwar Europe." In *The Politics of Memory in Postwar Europe*, edited by Richard Lebow, Wulf Kansteiner and Claudio Fogu. Durham & London: Duke University Press, 2006, 1–39.
- Light, Duncan and Craig Young. "Public Memory, Commemoration, and Transitional Justice: Reconfiguring the Past in Public Space." In *Post-Communist Transitional Justice*, edited by Lavinia Stan and Nadya Nedelsky. New York: Cambridge University Press, 2015, 233–248.
- MacMillan, Margaret. *The Uses and Abuses of History*. London: Profile Books, 2010.
- Marszałek-Kawa, Joanna. "Introduction." In *The Politics of Memory in Post-Authoritarian Transitions, Volume One - Case Studies*, edited by Joanna Marszałek-Kawa, Joanna Piechowiak-Lamparska, Anna Ratke-Majewska and Patryk Wawrzyński. Newcastle upon Tyne: Cambridge Scholars Publishing, 2017, 1–7.
- McCombs, Maxwell. *Setting the Agenda: Mass Media and Public Opinion*. 2nd ed. Cambridge: Polity Press, 2014.
- Megill, Allan. *Historical Knowledge, Historical Error: A Contemporary Guide to Practice*. Chicago & London: University of Chicago Press, 2007.
- Meyer, Erik. "Memory and Politics." In *Cultural Memory Studies: An International and Interdisciplinary Handbook*, edited by Astrid Erll and Ansgar Nünning. Berlin & New York: De Gruyter, 2010, 173–180.
- Miklóssy, Katalin and Heino Nyysönen. "Defining the New Polity: Constitutional Memory in Hungary and Beyond." *Journal of Contemporary European Studies*, 3/2018, 322–333.
- Müller, Jan-Werner. *Constitutional Patriotism*. Princeton: Princeton University Press, 2007.
- Müller, Jan-Werner. "Introduction: The Power of Memory, the Memory of Power and the Power over Memory." In *Memory and Power in Post-War Europe*, edited by Jan-Werner Müller. Cambridge: Cambridge University Press, 2002, 1–35.
- Müller, Jan-Werner and Kim Scheppelle. "Constitutional Patriotism: An Introduction." *Princeton School of Public and International Affairs*, 1/2008, 67–71.
- Naidu, Ereshnee. "The Ties That Bind: Strengthening the Links Between Memorialisation and Transitional Justice." *The Centre for the Study of Violence and Reconciliation*, August 2006. <https://restorativejustice.org/rj-archive/the-ties-that-bind-strengthening->

- the-links-between-memorialisation-and-transitional-justice/. [Accessed 10 November, 2023].
- Nascimento Araújo, Maria Paula and Myrian Sepúlveda dos Santos. "History, Memory and Forgetting: Political Implications." *RCCS Annual Review*, 2009, 77–92.
- Nora, Pierre. "Between Memory and History: Les Lieux de Mémoire." *Representations*, 1/1989, 7–24.
- Nora, Pierre. "Preface to the English-Language Edition." In *Realms of Memory - The Construction of the French Past, Volume 1 - Conflicts and Divisions*, edited by Pierre Nora and Lawrence Kritzman. New York: Columbia University Press, 1996, xv–xxiv.
- Nora, Pierre. "The Reasons for the Current Upsurge in Memory." *Eurozine*, April 19, 2002. <https://www.eurozine.com/reasons-for-the-current-upsurge-in-memory/>. [Accessed 6 February, 2023].
- Nyysönen, Heino. "Muisti ja perustuslait." *Idäntutkimus*, 4/2013, 12–24.
- Nyysönen, Heino and Jussi Metsälä. "Highlights of National History? Constitutional Memory and the Preambles of Post-Communist Constitutions." *European Politics and Society*, 3/2019, 1–18.
- Orgad, Liav. "The Preamble in Constitutional Interpretation." *International Journal of Constitutional Law*, 4/2011, 714–738.
- Orwell, George. *Nineteen Eighty-Four*. London: Penguin, 1988.
- Phillips, Kendall. 2004. "Introduction." In *Framing Public Memory*, edited by Kendall Phillips. Tuscaloosa: University of Alabama Press, 2004, 1–14.
- Plato. *Plato in Twelve Volumes: Laws*. Edited and translated by Robert G. Bury. Cambridge: Harvard University Press, 1967/1968.
- Renan, Ernest. "What Is a Nation?" In *What Is a Nation? and Other Political Writings*, edited by Ernest Renan and translated by M. F. N. Giglioli. New York: Columbia University Press, 2018, 247–263.
- Richards, Lyn. *Handling Qualitative Data: A Practical Guide*. 3rd ed. London: Sage, 2015.
- Ricœur, Paul. *Memory, History, Forgetting*. Translated by Kathleen Blamey and David Pellauer. Chicago: University of Chicago Press, 2004.
- Roach, Kent. "The Uses and Audiences of Preambles in Legislation." *McGill Law Journal*, 1/2001, 129–159.
- Sajó, András. *Limiting Government: An Introduction to Constitutionalism*. Budapest: CEU Press, 1999.

- Saloul, Ihab and Jan Willem van Henten. "Introduction." In *Martyrdom: Canonisation, Contestation and Afterlives*, edited by Ihab Saloul and Jan Willem van Henten. Amsterdam: Amsterdam University Press, 2020, 11–32.
- Sartre, Jean-Paul. "On The Sound and the Fury: Time in the Work of Faulkner." In *Literary and Philosophical Essays*, translated by Annette Michelson. London: Ride and Company, 1955.
- Senie, Harriet. "The Conflation of Heroes and Victims: A New Memorial Paradigm." In *A Companion to Public Art*. Chichester: Wiley-Blackwell, 2016, 107–118.
- Schedler, Andreas. "Elections Without Democracy: The Menu of Manipulation." *Journal of Democracy*, 2/2002, 36–50.
- Scheppele, Kim. "A Constitution Between Past and Future." *William & Mary Law Review*, 4/2008, 1377–1407.
- Schmitt, Carl. *Political Theology: Four Chapters on the Concept of Sovereignty*. Translated by George Schwab. Chicago: University of Chicago Press, 2005.
- Schreier, Margrit. *Qualitative Content Analysis in Practice*. London: Sage, 2012.
- Schwartz, Barry. "The Social Context of Commemoration: A Study in Collective Memory." *Social Forces*, 2/1982, 374–402.
- Siegel, Reva. "The Politics of Constitutional Memory." *Georgetown Journal of Law & Public*, 1/2022, 21–58.
- Spillman, Lynette. *Nation and Commemoration: Creating National Identities in the United States and Australia*. Cambridge: Cambridge University Press, 1997.
- Sturken, Marita. *Tangled Memories: The Vietnam War, the AIDS Epidemic, and the Politics of Remembering*. Berkeley: University of California Press, 1997.
- The Avalon Project. *The Code of Hammurabi*. Translated by L. W. King. New Haven: Lillian Goldman Law Library, 2008. <https://avalon.law.yale.edu/ancient/hamframe.asp/>. [Accessed February 7, 2023].
- The Avalon Project. *Declaration of the Rights of Man - 1789*. New Haven: Lillian Goldman Law Library, 2008. https://avalon.law.yale.edu/18th_century/rightsof.asp/. [Accessed February 15, 2023].
- The Economist Intelligence Unit. *Democracy Index 2020: In Sickness and in Health?* <https://www.eiu.com/n/campaigns/democracy-index-2020/>. [Accessed November 13, 2021].
- The United Nations. "Decolonization." *UN Global Issues*. <https://www.un.org/en/global-issues/decolonization/>. [Accessed 13 November, 2023].

- Todorov, Tzvetan. *Hope and Memory: Lessons from the Twentieth Century*. Translated by David Bellos. London: Atlantic Books, 2003.
- Todorov, Tzvetan. "The Uses and Abuses of Memory." In *What Happens to History: The Renewal of Ethics in Contemporary Thought*, edited by Howard Marchitello. London: Routledge, 2001, 11–22.
- Torpey, John. "Introduction: Habermas and the Historians." *New German Critique*, Spring/Summer 1998, 5–24.
- Tóth, Gábor Attila. "The Authoritarian's New Clothes: Tendencies Away from Constitutional Democracy." *The Foundation for Law Justice and Society*, May 15, 2017. <http://www.fljs.org/content/authoritarians-newclothes-tendencies-away-constitutional-democracy/>. [Accessed September 27, 2023].
- Tudor, Maya and Dan Slater. "Nationalism, Authoritarianism, and Democracy: Historical Lessons from South and Southeast Asia." *Perspectives on Politics*, 3/2021, 706–722.
- Ummareddy, Neha and Anikem Alam. "What Do Preambles Do? A Study of Constitutional Intent and Reality." *Studies in Indian Politics*, 2/2021, 221–238.
- Varga, Csaba. "The Preamble: A Question of Jurisprudence." In *Law and Philosophy: Selected Papers in Legal Theory*, edited by Csaba Varga. Budapest: Lorand Eotvos University, 1994, 141–167.
- Voermans, Wim, Maarten Stremmer and Paul Cliteur. *Constitutional Preambles: A Comparative Analysis*. Cheltenham: Edward Elgar, 2017.
- Wallace, Jeremy. *Seeking Truth and Hiding Facts: Information, Ideology, and Authoritarianism in China*. Oxford: Oxford University Press, 2023.
- Wang, Zheng. *Never Forget Humiliation: Historical Memory in Chinese Politics and Foreign Relations*. New York: Columbia University Press, 2014.
- Webber, Jeremy. "Constitutional Poetry: The Tension Between Symbolic and Functional Aims in Constitutional Reform." *Sydney Law Review*, 2/1999, 260–277.
- Winckel, Anne. *The Constitutional and Legal Significance of the Preamble to the Commonwealth Constitution, Past, Present and Future*. Melbourne: University of Melbourne, 2000.
- Winter, Jay. "The Generation of Memory: Reflections on the 'Memory Boom' in Contemporary Historical Studies." *Archives & Social Studies: A Journal of Interdisciplinary Research*, 1/2007, 363–397.
- Xu, Yiqing and Jiannan Zhao. "The Power of History: How Victimization Narrative Shapes National Identity and Public Opinion in China." *Research & Politics*, 2/2023, 1–8.

Appendices

Appendix 1 Coding frame

(Based on coding and node structure created using NVivo.)

Level 0	Level 1	Level 2	Level 3	Level 4
Constitutional memory	Commemoration	Documents	Agreements	Charters
				Constitutions
				Declarations
				Treaties
		Events	Defining moments	Elections
				Referendums
				Revolutions
				War
			Important dates	Constitution days
				Independence days
				Other dates
			People	Casualties
		Prisoners		
		Victims		
		Heroes		Ancestors
				Freedom fighters
				War heroes
		Important figures		Leaders
				Military

	Memorialisation	Negative memory	Sacrifices	Political movements	
				Thinkers	
			Struggles	Historical injustices	
				Legacy of colonialism	
			Positive memory	Achievements	Civil war
					Resistance
		Cultural heritage		Democracy	
				Freedom	
				Independence	
				Liberation	
				Prosperity	
				Civilisation	
		Identity			
		Land			
Nation					
Tradition					

Appendix 2 Full democracies

	Overall score (max 10.00)	Rank	Electoral process and pluralism (max 10.00)	Functioning of government (max 10.00)	Political participation (max 10.00)	Political culture (max 10.00)	Civil liberties (max 10.00)
<i>Norway</i>	9.81	1	10	9.64	10	10	9.41
<i>Iceland</i>	9.37	2	10	8.57	8.89	10	9.41
<i>Sweden</i>	9.26	3	9.58	9.29	8.33	10	9.12
<i>New Zealand</i>	9.25	4	10	8.93	8.89	8.75	9.71

<i>Canada</i>	9.24	5	9.58	8.93	8.89	9.38	9.41
<i>Finland</i>	9.2	6	10	8.93	8.89	8.75	9.41
<i>Denmark</i>	9.15	7	10	8.93	8.33	9.38	9.12
<i>Ireland</i>	9.05	8	10	7.86	8.33	9.38	9.71
<i>Australia</i>	8.96	9=	10	8.57	7.78	8.75	9.71
<i>Netherlands</i>	8.96	9=	9.58	9.29	8.33	8.75	8.82
<i>Taiwan</i>	8.94	11	10	9.64	7.22	8.13	9.71
<i>Switzerland</i>	8.83	12	9.58	8.57	7.78	9.38	8.82
<i>Luxembourg</i>	8.68	13	10	8.57	6.67	8.75	9.41
<i>Germany</i>	8.67	14	9.58	8.21	8.33	8.13	9.12
<i>Uruguay</i>	8.61	15	10	8.57	6.67	8.13	9.71
<i>United Kingdom</i>	8.54	16	10	7.5	8.89	7.5	8.82
<i>Chile</i>	8.28	17	9.58	8.21	6.67	8.13	8.82
<i>Austria</i>	8.16	18=	9.58	7.5	8.33	6.88	8.53
<i>Costa Rica</i>	8.16	18=	9.58	6.79	7.22	7.5	9.71
<i>Mauritius</i>	8.14	20	9.17	7.86	6.11	8.75	8.82
<i>Japan</i>	8.13	21	8.75	8.57	6.67	8.13	8.53
<i>Spain</i>	8.12	22	9.58	7.14	7.22	8.13	8.53
<i>South Korea</i>	8.01	23	9.17	8.21	7.22	7.5	7.94

Source: The Economist Intelligence Unit, Democracy Index 2020.

Appendix 3 Flawed democracies

	Overall score (max 10.00)	Rank	Electoral process and pluralism (max 10.00)	Functioning of government (max 10.00)	Political participation (max 10.00)	Political culture (max 10.00)	Civil liberties (max 10.00)
<i>France</i>	7.99	24	9.58	7.50	7.78	6.88	8.24
<i>United States of America</i>	7.92	25	9.17	6.79	8.89	6.25	8.53
<i>Portugal</i>	7.90	26	9.58	7.50	6.11	7.50	8.82
<i>Estonia</i>	7.84	27=	9.58	7.86	6.67	6.88	8.24
<i>Israel</i>	7.84	27=	9.17	7.50	9.44	7.50	5.59
<i>Italy</i>	7.74	29	9.58	6.43	7.22	7.50	7.94
<i>Malta</i>	7.68	30	9.17	6.79	6.11	8.13	8.24
<i>Czech Republic</i>	7.67	31	9.58	6.07	6.67	7.50	8.53

<i>Cabo Verde</i>	7.65	32	9.17	7.00	6.67	6.88	8.53
<i>Botswana</i>	7.62	33	9.17	6.79	6.11	7.50	8.53
<i>Cyprus</i>	7.56	34	9.17	5.36	7.22	7.50	8.53
<i>Slovenia</i>	7.54	35	9.58	6.43	7.22	6.25	8.24
<i>Belgium</i>	7.51	36	9.58	7.86	5.00	6.88	8.24
<i>Greece</i>	7.39	37	9.58	5.21	6.11	7.50	8.53
<i>Latvia</i>	7.24	38	9.58	6.07	6.67	5.63	8.24
<i>Malaysia</i>	7.19	39	9.58	7.86	6.67	6.25	5.59
<i>Panama</i>	7.18	40	9.58	6.43	7.22	5.00	7.65
<i>Trinidad and Tobago</i>	7.16	41	9.58	7.14	6.11	5.63	7.35
<i>Jamaica</i>	7.13	42=	8.75	7.14	5.00	6.25	8.53
<i>Lithuania</i>	7.13	42=	9.58	6.07	5.56	5.63	8.82
<i>Timor-Leste</i>	7.06	44	9.58	5.93	5.56	6.88	7.35
<i>South Africa</i>	7.05	45	7.42	7.14	8.33	5.00	7.35
<i>Colombia</i>	7.04	46	9.17	6.43	6.67	5.00	7.94
<i>Slovakia</i>	6.97	47	9.58	6.43	5.56	5.63	7.65
<i>Argentina</i>	6.95	48	9.17	5.36	6.67	5.63	7.94
<i>Brazil</i>	6.92	49	9.58	5.36	6.11	5.63	7.94
<i>Poland</i>	6.85	50	9.17	5.71	6.67	5.63	7.06
<i>Suriname</i>	6.82	51	9.58	6.07	6.11	5.00	7.35
<i>Bulgaria</i>	6.71	52	9.17	5.71	7.22	4.38	7.06
<i>India</i>	6.61	53	8.67	7.14	6.67	5.00	5.59
<i>Tunisia</i>	6.59	54	9.17	5.36	7.22	5.63	5.59
<i>Philippines</i>	6.56	55=	9.17	5.00	7.78	4.38	6.47
<i>Hungary</i>	6.56	55=	8.33	6.43	5.00	6.25	6.76
<i>Peru</i>	6.53	57	8.75	5.36	5.56	5.63	7.35
<i>Namibia</i>	6.52	58	7.00	5.36	6.67	5.63	7.94
<i>Croatia</i>	6.50	59=	9.17	6.07	6.11	4.38	6.76
<i>Ghana</i>	6.50	59=	8.33	5.36	6.67	6.25	5.88
<i>Mongolia</i>	6.48	61	8.75	5.71	5.56	5.63	6.76
<i>Romania</i>	6.40	62	9.17	5.36	6.67	3.75	7.06
<i>Dominican Republic</i>	6.32	63	9.17	4.29	6.11	5.00	7.06
<i>Lesotho</i>	6.30	64=	9.17	4.14	6.11	5.63	6.47
<i>Indonesia</i>	6.30	64=	7.92	7.50	6.11	4.38	5.59
<i>Serbia</i>	6.22	66	8.25	5.36	6.67	3.75	7.06
<i>Paraguay</i>	6.18	67	8.75	5.71	5.00	4.38	7.06

<i>Sri Lanka</i>	6.14	68	7.00	5.71	5.56	6.25	6.18
<i>Ecuador</i>	6.13	69	8.75	5.00	6.67	3.75	6.47
<i>Papua New Guinea</i>	6.10	70	6.92	6.07	3.33	6.25	7.94
<i>Albania</i>	6.08	71	7.00	5.36	4.44	6.25	7.35
<i>Mexico</i>	6.07	72	7.83	5.71	7.78	3.13	5.88
<i>Thailand</i>	6.04	73	7.00	5.00	6.67	6.25	5.29
<i>Singapore</i>	6.03	74	4.83	7.86	4.44	6.25	6.76
<i>Guyana</i>	6.01	75	6.50	5.36	6.11	5.00	7.06

Source: The Economist Intelligence Unit, Democracy Index 2020.

Appendix 4 Hybrid regimes

	Overall score (max 10.00)	Rank	Electoral process and pluralism (max 10.00)	Functioning of government (max 10.00)	Political participation (max 10.00)	Political culture (max 10.00)	Civil liberties (max 10.00)
<i>Bangladesh</i>	5.99	76	7.42	6.07	6.11	5.63	4.71
<i>El Salvador</i>	5.90	77	9.17	4.29	6.11	3.75	6.18
<i>North Macedonia</i>	5.89	78	7.42	5.71	6.11	3.13	7.06
<i>Ukraine</i>	5.81	79	8.25	2.71	7.22	5.00	5.88
<i>Moldova</i>	5.78	80	7.00	4.64	6.11	4.38	6.76
<i>Montenegro</i>	5.77	81	7.42	5.71	6.11	3.13	6.47
<i>Malawi</i>	5.74	82	7.00	4.29	5.00	6.25	6.18
<i>Fiji</i>	5.72	83	6.58	5.00	6.11	5.63	5.29
<i>Bhutan</i>	5.71	84	8.75	6.79	3.33	5.00	4.71
<i>Madagascar</i>	5.70	85	7.92	3.57	6.67	5.63	4.71
<i>Senegal</i>	5.67	86	6.08	5.71	4.44	6.25	5.88
<i>Hong Kong</i>	5.57	87	3.17	3.64	5.00	7.50	8.53
<i>Honduras</i>	5.36	88	7.83	4.29	4.44	4.38	5.88
<i>Armenia</i>	5.35	89	7.50	5.00	6.11	3.13	5.00
<i>Liberia</i>	5.32	90	7.42	2.71	5.56	5.63	5.29
<i>Georgia</i>	5.31	91	7.83	3.57	6.11	3.75	5.29
<i>Nepal</i>	5.22	92	4.83	5.36	5.00	5.63	5.29
<i>Tanzania</i>	5.10	93	4.83	5.00	5.00	6.25	4.41
<i>Bolivia</i>	5.08	94	6.08	3.57	6.11	3.75	5.88
<i>Kenya</i>	5.05	95	3.50	5.36	6.67	5.63	4.12
<i>Morocco</i>	5.04	96	5.25	4.64	5.56	5.63	4.12

<i>Guatemala</i>	4.97	97	6.92	3.93	5.00	3.13	5.88
<i>Uganda</i>	4.94	98	4.33	3.21	5.00	6.88	5.29
<i>Zambia</i>	4.86	99=	4.75	2.93	3.89	6.88	5.88
<i>Sierra Leone</i>	4.86	99=	6.58	2.86	3.33	6.25	5.29
<i>Bosnia and Hercegovina</i>	4.84	101	7.00	2.93	5.56	3.13	5.59
<i>Benin</i>	4.58	102	3.33	5.36	3.89	5.63	4.71
<i>Gambia</i>	4.49	103	4.00	4.29	4.44	5.63	4.12
<i>Turkey</i>	4.48	104	3.50	5.36	5.56	5.63	2.35
<i>Pakistan</i>	4.31	105	5.67	5.36	3.33	2.50	4.71
<i>Haiti</i>	4.22	106	4.75	1.71	2.78	6.25	5.59
<i>Kyrgyz Republic</i>	4.21	107	4.75	2.93	5.56	3.13	4.71
<i>Lebanon</i>	4.16	108	3.50	1.50	6.67	5.00	4.12
<i>Côte d'Ivoire</i>	4.11	109	4.33	2.86	3.89	5.63	3.82
<i>Nigeria</i>	4.10	110	5.17	3.57	3.89	3.75	4.12

Source: The Economist Intelligence Unit, Democracy Index 2020.

Appendix 5 Authoritarian regimes

	Overall score (max 10.00)	Rank	Electoral process and pluralism (max 10.00)	Functioning of government (max 10.00)	Political participation (max 10.00)	Political culture (max 10.00)	Civil liberties (max 10.00)
<i>Mali</i>	3.93	111	5.17	0.00	4.44	5.63	4.41
<i>Mauritania</i>	3.92	112	3.50	3.57	5.00	3.13	4.41
<i>Palestine</i>	3.83	113	3.33	0.14	7.78	4.38	3.53
<i>Kuwait</i>	3.80	114	3.58	3.93	3.89	4.38	3.24
<i>Algeria</i>	3.77	115	3.08	2.50	4.44	5.00	3.82
<i>Burkina Faso</i>	3.73	116	3.00	2.36	4.44	5.00	3.82
<i>Angola</i>	3.66	117	2.25	2.86	5.56	5.00	2.65
<i>Iraq</i>	3.62	118=	5.25	0.00	6.67	5.00	1.18
<i>Jordan</i>	3.62	118=	2.67	3.93	3.89	4.38	3.24
<i>Nicaragua</i>	3.60	120	0.42	2.86	5.00	5.63	4.12
<i>Gabon</i>	3.54	121	2.58	1.86	4.44	5.00	3.82
<i>Mozambique</i>	3.51	122	2.58	1.43	5.00	5.00	3.53
<i>Ethiopia</i>	3.38	123	0.42	3.57	5.56	5.00	2.35
<i>Russia</i>	3.31	124	2.17	2.14	5.00	3.13	4.12
<i>Niger</i>	3.29	125	2.92	1.14	3.33	4.38	4.71

<i>Qatar</i>	3.24	126	0.00	4.29	2.78	5.63	3.53
<i>Zimbabwe</i>	3.16	127	0.00	2.50	4.44	5.63	3.24
<i>Kazakhstan</i>	3.14	128	0.50	3.21	5.00	3.75	3.24
<i>Congo (Brazzaville)</i>	3.11	129	2.17	2.50	3.89	3.75	3.24
<i>Cambodia</i>	3.10	130=	0.00	3.93	3.89	5.63	2.06
<i>Rwanda</i>	3.10	130=	1.42	4.29	2.78	4.38	2.65
<i>Comoros</i>	3.09	132	2.08	2.21	3.89	3.75	3.53
<i>eSwatini</i>	3.08	133=	0.92	2.86	2.78	5.63	3.24
<i>Guinea</i>	3.08	133=	3.50	0.43	4.44	4.38	2.65
<i>Myanmar</i>	3.04	135	1.75	3.93	2.78	4.38	2.35
<i>Oman</i>	3.00	136	0.08	3.93	2.78	4.38	3.82
<i>Vietnam</i>	2.94	137	0.00	2.86	3.89	5.63	2.35
<i>Egypt</i>	2.93	138	1.33	3.21	3.33	5.00	1.76
<i>Afghanistan</i>	2.85	139	3.42	0.64	3.89	2.50	3.82
<i>Cuba</i>	2.84	140	0.00	3.57	3.33	4.38	2.94
<i>Togo</i>	2.80	141	0.92	1.79	3.33	5.00	2.94
<i>Cameroon</i>	2.77	142	1.67	2.14	3.33	4.38	2.35
<i>Venezuela</i>	2.76	143	0.00	1.79	5.00	4.38	2.65
<i>Djibouti</i>	2.71	144	0.42	1.29	3.89	5.63	2.35
<i>United Arab Emirates</i>	2.70	145	0.00	3.93	2.22	5.00	2.35
<i>Azerbaijan</i>	2.68	146	0.50	2.86	3.33	3.75	2.94
<i>Guinea- Bissau</i>	2.63	147	4.92	0.00	2.78	3.13	2.35
<i>Belarus</i>	2.59	148	0.00	2.00	3.89	5.00	2.06
<i>Sudan</i>	2.54	149	0.00	1.79	4.44	5.00	1.47
<i>Bahrain</i>	2.49	150	0.83	2.71	2.78	4.38	1.76
<i>China</i>	2.27	151	0.00	4.29	2.78	3.13	1.18
<i>Iran</i>	2.20	152	0.00	2.50	3.89	3.13	1.47
<i>Eritrea</i>	2.15	153	0.00	2.14	0.56	6.88	1.18
<i>Burundi</i>	2.14	154	0.00	0.00	3.33	5.00	2.35
<i>Uzbekistan</i>	2.12	155	0.08	1.86	2.78	5.00	0.88
<i>Saudi Arabia</i>	2.08	156	0.00	3.57	2.22	3.13	1.47
<i>Libya</i>	1.95	157=	0.00	0.00	3.33	3.75	2.65
<i>Yemen</i>	1.95	157=	0.00	0.00	3.89	5.00	0.88
<i>Tajikistan</i>	1.94	159	0.00	2.21	2.22	4.38	0.88
<i>Equatorial Guinea</i>	1.92	160	0.00	0.43	3.33	4.38	1.47
<i>Laos</i>	1.77	161	0.00	2.86	1.67	3.75	0.59
<i>Turkmenistan</i>	1.72	162	0.00	0.79	2.22	5.00	0.59

<i>Chad</i>	1.55	163	0.00	0.00	1.67	3.75	2.35
<i>Syria</i>	1.43	164	0.00	0.00	2.78	4.38	0.00
<i>Central African Republic</i>	1.32	165	1.25	0.00	1.11	1.88	2.35
<i>Democratic Republic of Congo</i>	1.13	166	0.00	0.00	1.67	3.13	0.88
<i>North Korea</i>	1.08	167	0.00	2.50	1.67	1.25	0.00

Source: The Economist Intelligence Unit, Democracy Index 2020.

Appendix 6 Preamble word count in modern constitutions

Country	Last revised	Preamble word count (in English)	Regime type according to the EIU's Democracy Index
<i>Iran</i>	1989	3249	Authoritarian regime
<i>Algeria</i>	2020	1319	Authoritarian regime
<i>Egypt</i>	2019	1288	Authoritarian regime
<i>China</i>	2018	1224	Authoritarian regime
<i>Thailand</i>	2017	1176	Flawed democracy
<i>North Korea</i>	2016	911	Authoritarian regime
<i>Cameroon</i>	2008	862	Authoritarian regime
<i>Bahrain</i>	2017	723	Authoritarian regime
<i>Palestine</i>	2005	705	Authoritarian regime
<i>Hungary</i>	2016	703	Flawed democracy
<i>Croatia</i>	2013	678	Flawed democracy
<i>Chad</i>	2018	630	Authoritarian regime
<i>Cabo Verde</i>	1992	611	Flawed democracy
<i>Central African Republic</i>	2016	586	Authoritarian regime
<i>Angola</i>	2010	583	Authoritarian regime
<i>Morocco</i>	2011	580	Hybrid regime
<i>Iraq</i>	2005	566	Authoritarian regime
<i>Syria</i>	2012	548	Authoritarian regime
<i>Cuba</i>	2019	538	Authoritarian regime
<i>Madagascar</i>	2010	498	Hybrid regime
<i>Tunisia</i>	2014	495	Flawed democracy
<i>Laos</i>	2015	474	Authoritarian regime
<i>Timor-Leste</i>	2002	468	Flawed democracy
<i>Myanmar</i>	2015	463	Authoritarian regime
<i>Côte d'Ivoire</i>	2016	457	Hybrid regime

<i>Benin</i>	1990	455	Hybrid regime
<i>Senegal</i>	2016	441	Hybrid regime
<i>Turkey</i>	2017	440	Hybrid regime
<i>Pakistan</i>	2018	425	Hybrid regime
<i>Eritrea</i>	1997	407	Authoritarian regime
<i>Papua New Guinea</i>	2016	406	Flawed democracy
<i>Guinea-Bissau</i>	1996	363	Authoritarian regime
<i>Burundi</i>	2018	359	Authoritarian regime
<i>Mauritania</i>	2012	357	Authoritarian regime
<i>Comoros</i>	2018	345	Authoritarian regime
<i>Burkina Faso</i>	2015	340	Authoritarian regime
<i>Bolivia</i>	2009	338	Hybrid regime
<i>Latvia</i>	2016	338	Flawed democracy
<i>Nicaragua</i>	2014	329	Authoritarian regime
<i>eSwatini</i>	2005	323	Authoritarian regime
<i>Poland</i>	2009	318	Flawed democracy
<i>Niger</i>	2017	317	Authoritarian regime
<i>Guyana</i>	2016	316	Flawed democracy
<i>Democratic Republic of Congo</i>	2011	299	Authoritarian regime
<i>Congo (Brazzaville)</i>	2015	298	Authoritarian regime
<i>Japan</i>	1946	298	Full democracy
<i>Sri Lanka</i>	2015	289	Flawed democracy
<i>Sudan</i>	2019	289	Authoritarian regime
<i>United Arab Emirates</i>	2009	280	Authoritarian regime
<i>Lebanon</i>	2004	272	Hybrid regime
<i>Rwanda</i>	2015	270	Authoritarian regime
<i>Togo</i>	2007	266	Authoritarian regime
<i>Trinidad and Tobago</i>	2007	265	Flawed democracy
<i>Namibia</i>	2014	261	Flawed democracy
<i>Afghanistan</i>	2004	255	Authoritarian regime
<i>Haiti</i>	2012	255	Hybrid regime
<i>North Macedonia</i>	2011	253	Hybrid regime
<i>Ethiopia</i>	1994	249	Authoritarian regime
<i>Nepal</i>	2016	247	Hybrid regime
<i>Indonesia</i>	2002	224	Flawed democracy
<i>South Korea</i>	1987	220	Full democracy
<i>Vietnam</i>	2013	217	Authoritarian regime
<i>Gambia</i>	2020*	214	Hybrid regime
<i>Libya</i>	2012	212	Authoritarian regime

<i>Zimbabwe</i>	2017	209	Authoritarian regime
<i>Bangladesh</i>	2014	208	Hybrid regime
<i>Zambia</i>	2016	197	Hybrid regime
<i>Venezuela</i>	2009	195	Authoritarian regime
<i>United Kingdom</i>	2013	194	Full democracy
<i>Azerbaijan</i>	2016	188	Authoritarian regime
<i>Bosnia and Hercegovina</i>	2009	188	Hybrid regime
<i>Liberia</i>	1986	186	Hybrid regime
<i>Mozambique</i>	2007	186	Authoritarian regime
<i>Suriname</i>	1992	185	Flawed democracy
<i>Portugal</i>	2005	184	Flawed democracy
<i>Ecuador</i>	2021	183	Flawed democracy
<i>Moldova</i>	2016	183	Hybrid regime
<i>South Africa</i>	2012	182	Flawed democracy
<i>Montenegro</i>	2013	176	Hybrid regime
<i>Czech Republic</i>	2013	166	Flawed democracy
<i>Kuwait</i>	1992	166	Authoritarian regime
<i>Fiji</i>	2013	160	Hybrid regime
<i>Guatemala</i>	1993	157	Hybrid regime
<i>Canada</i>	2011	155	Full democracy
<i>Uganda</i>	2017	155	Hybrid regime
<i>Gabon</i>	2011	153	Authoritarian regime
<i>Kenya</i>	2010	153	Hybrid regime
<i>Ukraine</i>	2019	151	Hybrid regime
<i>Tanzania</i>	2005	149	Hybrid regime
<i>Dominican Republic</i>	2015	142	Flawed democracy
<i>Spain</i>	2011	138	Full democracy
<i>Djibouti</i>	2010	134	Authoritarian regime
<i>Cambodia</i>	2008	132	Authoritarian regime
<i>Estonia</i>	2015	129	Flawed democracy
<i>Equatorial Guinea</i>	2012	127	Authoritarian regime
<i>Ireland</i>	2019	122	Full democracy
<i>Ghana</i>	1996	121	Flawed democracy
<i>Kyrgyz Republic</i>	2006	121	Hybrid regime
<i>Russia</i>	2014	118	Authoritarian regime
<i>Slovakia</i>	2017	118	Flawed democracy
<i>Lithuania</i>	2019	117	Flawed democracy
<i>Albania</i>	2016	114	Flawed democracy
<i>Honduras</i>	2013	114	Hybrid regime

<i>Turkmenistan</i>	2016	113	Authoritarian regime
<i>Bhutan</i>	2008	112	Hybrid regime
<i>Belarus</i>	2004	108	Authoritarian regime
<i>Uzbekistan</i>	2011	106	Authoritarian regime
<i>France</i>	2008	101	Flawed democracy
<i>Argentina</i>	1994	100	Flawed democracy
<i>Switzerland</i>	2014	98	Full democracy
<i>El Salvador</i>	2014	95	Hybrid regime
<i>Serbia</i>	2006	95	Flawed democracy
<i>Nigeria</i>	2011	94	Hybrid regime
<i>Bulgaria</i>	2015	89	Flawed democracy
<i>Germany</i>	2014	85	Full democracy
<i>India</i>	2016	85	Flawed democracy
<i>Colombia</i>	2015	84	Flawed democracy
<i>Mongolia</i>	2001	81	Flawed democracy
<i>Taiwan</i>	2005	81	Full democracy
<i>Georgia</i>	2018	79	Hybrid regime
<i>Armenia</i>	2015	78	Hybrid regime
<i>Brazil</i>	2017	77	Flawed democracy
<i>Malawi</i>	2017	77	Hybrid regime
<i>Philippines</i>	1987	75	Flawed democracy
<i>Tajikistan</i>	2016	70	Authoritarian regime
<i>Slovenia</i>	2016	68	Flawed democracy
<i>Kazakhstan</i>	2017	59	Authoritarian regime
<i>Paraguay</i>	2011	55	Flawed democracy
<i>United States of America</i>	1992	52	Flawed democracy
<i>Jordan</i>	2016	43	Authoritarian regime
<i>Panama</i>	2004	43	Flawed democracy
<i>Costa Rica</i>	2020	33	Full democracy
<i>Peru</i>	2021	33	Flawed democracy
<i>Greece</i>	2008	11	Flawed democracy
<i>Australia</i>	1985	N/A	Full democracy
<i>Austria</i>	2013	N/A	Full democracy
<i>Belgium</i>	2014	N/A	Flawed democracy
<i>Botswana</i>	2016	N/A	Flawed democracy
<i>Chile</i>	2021	N/A	Full democracy
<i>Cyprus</i>	2013	N/A	Flawed democracy
<i>Denmark</i>	1953	N/A	Full democracy
<i>Finland</i>	2011	N/A	Full democracy

<i>Guinea</i>	N/A	N/A	Authoritarian regime
<i>Hong Kong</i>	N/A	N/A	Hybrid regime
<i>Iceland</i>	2013	N/A	Full democracy
<i>Israel</i>	2013	N/A	Flawed democracy
<i>Italy</i>	2020	N/A	Flawed democracy
<i>Jamaica</i>	2015	N/A	Flawed democracy
<i>Lesotho</i>	2018	N/A	Flawed democracy
<i>Luxembourg</i>	2009	N/A	Full democracy
<i>Malaysia</i>	2007	N/A	Flawed democracy
<i>Mali</i>	N/A	N/A	Authoritarian regime
<i>Malta</i>	2016	N/A	Flawed democracy
<i>Mauritius</i>	2016	N/A	Full democracy
<i>Mexico</i>	2015	N/A	Flawed democracy
<i>Netherlands</i>	2008	N/A	Full democracy
<i>New Zealand</i>	2014	N/A	Full democracy
<i>Norway</i>	2016	N/A	Full democracy
<i>Oman</i>	2011	N/A	Authoritarian regime
<i>Qatar</i>	2003	N/A	Authoritarian regime
<i>Romania</i>	2003	N/A	Flawed democracy
<i>Saudi Arabia</i>	2013	N/A	Authoritarian regime
<i>Sierra Leone</i>	2013	N/A	Hybrid regime
<i>Singapore</i>	2016	N/A	Flawed democracy
<i>Sweden</i>	2012	N/A	Full democracy
<i>Uruguay</i>	2004	N/A	Full democracy
<i>Yemen</i>	2015	N/A	Authoritarian regime

* Draft constitution.