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Time Framing in the Rhetoric of Constitutional Preambles

Nomi Claire Lazar

Abstract, Constitutional preambles grow ever longer, more complex, and more present in public debate. Extant theories note their descriptive or symbolic roles, but leave key elements, such as the use of historical recitation, untouched. A core purpose of such elements is *legitimation*. Because constitutions are not just legal documents but when promulgated, contentious events, leaders must sell a constitution to a sometimes sceptical or fractured citizenry. To sell the constitutional future, preambles cite the past. While the substance of past events matters, the arc of time traced out by joining the dots between events, also does rhetorical work. These narrative arcs have familiar shapes: progressive, cyclical, or eschatological. We recognize this type of story, and we know what type of thing happens next. By situating the new constitution as an event along such a recognizable arc of time, citizens can infer a hopeful future from the shape of a strategically constructed past. While not all historical preambles use “temporal framing” as a rhetorical strategy, the technique is common, and, here, illustrated through in-depth engagements with China’s and Hungary’s constitutional preambles.

Keywords, preamble, rhetorical framing, China, Hungary, constitution, temporality, legitimacy, history, time

What purpose do constitutional preambles serve? Among modern, written constitutions, preambles are a near-ubiquitous element. While normally not justiciable, preambles have acquired increasing importance not only in recent constitutional interpretation but also in public debate, suggesting that their significance is not just legal but political.¹ Indeed, many constitutional preambles are profoundly rhetorical, aiming not just to describe but to persuade. This paper argues that, whatever other rhetorical and political uses constitutional preambles may serve, they are often deployed as a legitimation tactic. How? Nearly half of recent constitutional preambles include references to the historical past.² And while these references may seem descriptive, merely recounting the events which led up to, or “caused” the promulgation of a constitution, I will show that the events are not just described in causal and substantive relationship but instead chosen and

called out in such a way that they create a narrative arc. The purpose of this arc is not just to help tell a story. Rather, the story serves to trace out a shape of time in one of several standard forms, what we might call conceptions of the flow of time. These may be linear or grand cyclic, progressive or eschatological: temporal shapes that draw from universal human experience of growth, decline, nature's cycles, etc. These conceptions of the flow of time serve as rhetorical framing devices. Once we know where we are situated along the arc, what time it is, so to speak, we know what comes next. Regardless of the substantive content, we know what happens in narratives *with this shape*. By situating the promulgation of a new constitution at a point along this arc of time, drafters lend it substantive meaning: a turning point, situated between a strategically constructed past and assurances for the future. This constructed turning point I will call the "constitution as event." Because constitutions are not solely law but also contentious events, this rhetorical construction of their pivotal role in bringing about a hopeful future aims to contribute to a constitution's legitimacy.

Below, I begin with an overview of a range of roles preambles play. Existing legal and political explanations for the ubiquity of preambles, including their increasing importance to courts, paint part of the picture. But these accounts focus on the roles of preambles in their legal context or make reference to their symbolic roles without unpacking what those roles mean. Preambles often contain speech act language such as "proclaim" and "hereby" which seems to point to the pivotal nature of a constitution as a political *event*. Framing a constitution is a bold act, and leaders must persuade the people that it is in their future interest. But how could we know the future? Through the use of temporal-rhetorical framing, leaders can imply that the constitution is the necessary mechanism of bringing that desirable future about. The act of making the constitution is partly for this reason, legitimate.

But how can a leader just change perceptions of events in time? In the second part, I argue that experience of time is always mediated through marks and measures. In addition to clocks and calendars, conceptions of the flow of time, like progress, eschatology, or grand cyclicity, are some among these mediating tools. They lend meaning to events in sequential, but non-causal context. Our natural ease and familiarity with these stock temporal shapes allows political agents to pick a frame which conveys the desired meaning of a specific political event. This lends legitimacy because it suggests a pattern of future events that, because we recognize the type of temporal structure, we know to expect. Once we understand constitutions not just as documents or frameworks for government, but also as political events, the temporal framing so commonly found in preambles can be understood as helping to address the legitimacy challenge any such event must generate.

While not all historical preambles are of this kind, many are, and I end with two in-depth illustrations. Both China's and Hungary's constitutional preambles

illustrate the use of temporal framing to create the perception of a pivot point toward a desirable future. Public comments made by the drafters of these preambles suggest temporal framing was a conscious strategy. Whatever other purposes it may serve, time-talk in preambles is a rhetorical tool, framing the event of a constitution's promulgation in the service of legitimation.

THE PUZZLE OF PREAMBLES

A preamble is an introductory statement to a law. In common law regimes, preambles have featured in legislation at least since the Magna Carta, and we find something like a preamble in international treaties as far back as the 13th century BCE.³ While they have become increasingly rare in certain jurisdictions, preambles have enjoyed a commensurate resurgence of popularity elsewhere, which accompanies a politicization of law.⁴ As legislative preambles' popularity has waxed and waned worldwide, constitutional preambles have steadily spread. Perhaps ultimately inspired by the American example, 80% of written, historical constitutions have had one. Indeed, of the 141 constitutions produced since 1990, 125 have a preamble.⁵

Yet preambles are a peculiar legal fixture. In most cases, they have no clear legal purpose, since they frame laws and constitutions inconsistently and are normally non-justiciable. As Sanford Levinson cautions in the American case, "no law professor teaches students that citing the preamble [of the American constitution] as a principal support for one's argument would be a smart move."⁶ As a result, some scholars consider preambles little more than window dressing, or else as primarily descriptive. For example, according to Canada's preeminent scholars of the legislative craft, the purpose of a (legislative) preamble is "to state the general object or purpose of a law"⁷ or "to recite the circumstances and considerations that give rise to the need for legislation or the mischief the legislation is designed to cure."⁸ Similarly the Chinese constitutional scholar Zhang Qianfan, in his critique of China's 1982 preamble, argued that a preamble ought to be a brief description which, in as few words as possible, states "the subjects formulating the constitution... the objective of formulating the constitution ... the constitutional principles and the nature of the body politic ... and other basic elements..."⁹ Yet the language of preambles is often performative, laudatory, and exhortatory, so it seems unlikely that they serve a descriptive function alone. In fact, preambles may make grandiose claims with no possible basis and sometimes seem wildly out of place in the normally dry context of the law. The style and content of preambles, especially of more recent preambles, are thus discordant with a descriptive core purpose. What else, then, are preambles for?

Preambles in jurisdictions like Australia, the European Union, and China have recently generated much attention and debate, as though the stakes were

high, and this suggests a more substantive role. And, in a few jurisdictions outside the US, preambles have begun to impact interpretation.¹⁰ In Canada, the Supreme Court has undergirded a variety of decisions by reference to the Constitution Act (1867) preamble, which states that Canada shall have a constitution “similar in principle” to that of the United Kingdom.¹¹ In India, the preamble has been an enforceable element of the constitution since 1973, when in *Kesavanada Bharati v. State of Kerala*,¹² the Indian Supreme Court held that the basic structure of the constitution (and hence, one might argue, of the political society the constitution shapes) was not subject to amendment, and that this structure was to be understood in part through statements in the preamble. In France, also, the preamble to the 1946 constitution, to which the 1958 constitution makes reference, has been recognized since a *Conseil constitutionnel* decision of 1971, as conferring legally enforceable rights.¹³ In the 1950 Irish case, *Buckley v. Attorney General*, the Court explicitly endorsed the role of the preamble in interpretation: “In the enacting portion of the Constitution, contained in the Preamble, the people of Ireland, seeking, amongst other things, ‘to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured ... adopt, enact and give’ to themselves the Constitution. These most laudable objects seem to us to inform the various Articles of the Constitution, and we are of opinion that, so far as possible, the Constitution should be so construed as to give to them life and reality.”¹⁴ But interpretive guidance cannot constitute the core purpose of preambles because this interpretive function is both relatively new and relatively rare.

Some scholars have claimed that preambles also serve a symbolic function. Orgad has argued that the ...

... preamble’s purpose is not only—perhaps not mainly—to guarantee rights or provide legal arguments but to set down the basic structure of the society and its constitutional faith. In no other place than the preamble is the constitutional understanding of the founding fathers and the national creed so clearly reflected... They reflect and affect social and political norms. They encourage cohesion or exacerbate divisions, express the constitutional identity, and are called upon to serve as a device of national consolidation or to reconcile past wrongs.¹⁵

Similarly, in her advice to the Government of Fiji, the prominent comparative constitutionalist Cheryl Saunders pointed out that “[l]egal operation or effect is not... the only yardstick by which to measure the significance of a constitutional preamble. Even a preamble which has no legal effect at all, because of the generality of its wording or the approach which the courts have taken towards its

interpretation, may be highly symbolic and thus have a real influence on national life.”¹⁶ And Zhang argued that the right preamble for China “would give the people a solemn and serious impression, and let the people believe that the [constitution which follows] is a legal duty that the country will earnestly implement.”¹⁷

These symbolic purposes may be intensely political, even violent. While preambles have the capacity to inspire, they are also an attempt at symbolic domination of a diverse populace. As Levinson notes “the writing of preambles is more a testament to a yearning for homogeneity ...but if one does not share the visions instantiated in a particular preamble, then it is surely permissible to view it as exemplifying simply one more power play in the struggle to establish the legitimacy of institutions of coercion that we call ‘law.’”¹⁸

Here is a foundational but rarely acknowledged role for constitutional preambles. Even as they describe, symbolize, and guide interpretation, they are means of persuasion in the service of legitimation. Persuasion is precisely the purpose Plato argued preambles should serve. In Book 4 of *The Laws*, he advocates the lawgiver judiciously use preambles in order to “create goodwill in the person whom he addressed, in order that, by reason of this good-will, he might more intelligently receive his command, that is to say, the law.”¹⁹ By exercising persuasion in advance of diktat, the lawgiver eases compliance in this largely unidirectional relationship. But in the midst of the fraught political event of a constitution’s promulgation, when the very authority to make law is itself at issue, radical disorientation calls for a more radical form of persuasion. For, while constitutions are normally understood to be the source of legitimacy for political action going forward, consider how audacious is the act of making a constitution.

Who makes the constitution claims the authority to bestow legitimacy on the source of political legitimacy itself. The drafters purport to bring the state into being, to shape the people, and to endow, from their own power, the political authority that may use force with justification. Rousseau once claimed, with an eye to his audience, that only a God (or one who called on the authority of God) could give institutional form to the people.²⁰ And, outside of war, there is, perhaps, no negotiation more fraught with peril and significance. The result, which cements the power relations of a moment, creates path dependency for future generations.²¹ Everything is at stake.

Moreover, constitutional change involves substantial uncertainty. Even where we have ample experience of institutional forms and rigorous study of their effects, it is impossible to predict precisely how institutions will function in different cultural contexts in part because political climate changes through time. As one delegate to Australia’s 1998 constitutional convention noted with respect to the preamble proposed there: “we cannot blindly say that yes, the High Court will ... never look at the preamble and say that it just means what it says there

on the paper ... *We cannot predict what the High Court will do in 50, 60 or 100 years' time.*"²² Everything about a new constitution or amendment - from the symbolic politics of status it invokes and cements to the risk involved in trying on new institutions - is fraught and contentious.²³ When states are unstable and in times of crisis, constitutional change poses further problems: without uptake, the constitution can have little hope of settling the crisis or creating stability. Where factions and violence are involved, the cost of failing, or of some opposing party then taking the lead, can be vitally high.

Much thus hangs not only on the perceived legitimacy of the constitution itself, but also on peoples' willingness to accept the audacious act of drafting and promulgating it. This requires an exercise in persuasion which extends beyond usual arguments over constitutional legitimacy in Western liberal traditions. These are often temporally and conceptually binary, dependent on either the document's normative content (e.g. does the constitution conform with some reasonable conception of the rule of law?) or the fairness of the process through which it was created (e.g. was there sufficient consultation and a consent process?). But empirically, the criteria people use for judging the legitimacy of a constitution go well beyond these factors, which is to say the reasons citizens might give to accept a constitution *as* legitimate. Legitimacy does not describe an objective observable state of the world, after all. It is instead best understood as a dynamic entente between leaders and people, as I have argued elsewhere.²⁴ Constitutions form part of this entente but are not inherently legitimate or able to confer legitimacy directly on law or political action. Rather, constitutions serve to stabilize power by acting as a sort of legitimacy bank from which leaders can draw. But this does not guarantee public acceptance of law or action over time. Thus, to facilitate this constitutional function, leaders need to gather and bank legitimacy from as many sources as possible when the constitution is promulgated.

Of course, there are normative elements that relate to the document itself, whether procedural or substantive, on the basis of which citizens may accept or reject a new constitution. But people may want to know why a new constitution is needed, what kind of performative outcome it might have, and what future it might bring. In other words, it is not just the content of the constitution but the *fact* the constitution has been proposed or promulgated that may stand in need of legitimation. It is not just the legal document, but the event that may suffer a legitimacy deficit. To legitimize a constitution as event requires particular forms of persuasion, and common among these is a technique I have called temporal-rhetorical framing.²⁵

TEMPORAL-RHETORICAL FRAMING

Contention and uncertainty necessitate persuasion. A rhetor wins over listeners by effectively offering one narrative representation of reality in place of others. To construct differing narratives around the same facts requires skill

in rhetorical framing. Frames are “schemata of interpretation” used “to locate, perceive, identify, and label” tokens of experience, whether event or object.²⁶ Frames enable tokens to be sorted by type. That is to say, they are technologies that enable us to understand what an action, object, or event signifies beyond itself. If one were to see a particular woman in a lab coat (a token) and look for clues of who she was, one could glean little from the lab coat itself (as a type). Its significance is radically different, for instance, when worn in a hospital, or on a stage, or at a Halloween party. We know what it means not only by the thing itself but crucially by means of the setting or frame in which we find it.

In political rhetoric, as Gitlin explains, such frames constitute “principles of selection, emphasis and presentation composed of little tacit theories about what exists, what happens, and what matters.”²⁷ A thing’s meaning in itself is always partial, and it only has social, political, or ontological significance for us by drawing on *frames*, cognitive structures through which we perceive it. Since all meaning is frame-dependent, persuasion takes place through a process of frame construction. Rhetors can use framing to align their claims with resonant beliefs and assumptions in the target audience. To change the meaning of an event, object, etc., we need only resituate it.²⁸ As Garsten notes, “When we persuade, we want to change our listeners’ minds by linking our position to their existing opinions and emotions.”²⁹ After Benford and Snow, this technique is called frame alignment.³⁰

To create frame alignment in the context of constitutional legitimacy, rhetors make use of narrative but not in a straightforward fashion. The stories we tell about things, the accounts we give of them, enable us to process their significance. But narrative imparts meaning not only by relating sequences of events but also by situating them in a series of frames. Some of these are highly specific cultural frames that inflect our understanding of objects, their use and misuse, behaviors, their normative or social significance, etc. These help signal, for example, character within a narrative. But others reflect more fundamental cognitive technologies. These include a frame of intentionality or its absence, of causality or its absence which enable us to make sense of action in narrative. Here, too, stand familiar structures of temporality which help us determine what the events in the narrative mean beyond themselves. A narrative may provide information or serve as entertainment. And in these respects, the *substance* of events within the narrative is of primary importance. But it is only through their situation in a temporal-rhetorical frame that a narrative can come to have meaning beyond itself.

Events can only be understood in terms of narrative sequence. That is to say, the meaning of an occurrence is given partly by the context of proximate occurrences, whether or not the connections between them are understood to be causal. Narrative

sequence depends both on the apprehension of causal chains and on the temporal frame which gives an expected shape to a series of events. Do these kinds of events repeat? Do they have an upward slope? Can their course be corrected? Our tacit theories about time's shape (and these are multiple) suggest what a story means beyond itself. Since immense complexity limits the predictive capacity of social science, confident causality is largely the backward-looking province of historians. To look to the future, political leaders have to invoke ideas about how events move in time, about the shape of events in time beyond their causal relations. When a political agent invokes a temporal frame, whatever else she does, she seeks to lend confidence in the expectation of future events.

With this in mind, we can return to the question of the purposes of preambles. We noted above that preambles can serve as descriptive or introductory statements, as they do, for example, in the legislation of various commonwealth states. In certain jurisdictions, particularly recently, constitutional preambles serve as keys to interpretation. And many preambles play symbolic or communicative roles, or they signal the symbolic and communicative (non-legal) functions of law. But note how constitutional preambles' texts burst with the punctuating language of 'now' and 'hereby' and 'proclaim'.³¹ A preamble announces a constitution not only as a legal document but also as a political event. Here, preambles are not just descriptive or instructive, and not just exhortative and expressive in the abstract with respect to the *content of the constitution as law or the symbolic self of the state*. Instead, they are often *persuasive* by means of the narrative situation of the constitution as a political event.

The texts of constitutional preambles often describe and then claim to resolve political disorientation through a decisive reorientation, a new direction. A number of historical events in the people's history are carefully selected from the plethora of all events, called out, placed in sequence. The event of the constitution is then situated in this sequence, to mark a punctuating moment, a pivot point around which the events of the past are made to settle into a new arc. The constitution, as an event, creates a turn, and the familiarity of the temporal pattern cues our expectations for the future because we are familiar with this 'type' of story and know what type of ending it will have. So, we know the future this constitution will make possible. There is evidence of this technique in many – but certainly not all – constitutional preambles. It is one tool among others. But this tool illuminates an element of the purpose of constitutional preambles: an attempt at legitimation of the constitutional *event*.

But can political leaders just change the perceived temporal structure of reality? Indeed, they can. And this is because, as I have argued at length in *Out of Joint: Power, Crisis, and the Rhetoric of Time*, our perceptions of time are multiple and overlapping, and we move with ease between them.³² The experience of time is always constructed. Where we are in time can be no objective, natural

fact, because our only gauge would be some mark or measure that we picked out or constructed ourselves. Consider how we know that time has passed. Introspection shows that such experience of time passing is dependent on marks and measures. Often, these are shared points of reference like clocks and calendars: the artificial 12- or 24-hour clocks in digital and mechanical-cyclical manifestations, or our artificial 30- and 31-day months. Sometimes, marks and measures are more individual: time may be marked by a baby's feedings for a nursing mother, or by tides, by market days, or by the sound of the bus along its route. Even where we use seemingly more objective measures than the arbitrary hours of a clock, like tying a 'month' to lunar cycles, that cycle is itself a measure with marks chosen for reasons of ease, not by reference to any objective criterion beyond: it, too, becomes the definition of accuracy, not a manifestation of it. The moon makes a handy means of tracking time, but it does not define the objective measure of passage of time beyond *stipulation*.

Without any such marks or measures, we cannot experience time at all. In cave experiments, researchers found that when all such external marks of time were removed, leaving only bodily signals driving sleeping, waking, and eating, those activities themselves became the only markers of experience of time, and they diverged radically by the clock. While they retained their cyclicity, one "day" (defined by a sleep-wake cycle) underground might last 40 hours, then the next, only 26.³³ The spelunkers involved in these studies reported no awareness that the length of their days had varied with respect to clock- or solar-time. Not only introspection, but this empirical evidence shows that the experience of time is mark- and measure-dependent, with those marks and measures objective by stipulation only.

When we stipulate, when we construct or pick out tools for measuring and marking time, we do so to meet a particular aim. And because we do a lot of things with time, we mark and measure with multiple time tools simultaneously. This shows we are open to a variety of modes of experiencing time. We may use atomic-clock-enabled GPS to land planes at busy airports, but sundown for children's curfew. We may use an app to accurately coordinate our arrival at the station with the train's actual anticipated arrival time, and student affect to gauge when it's time for a seminar break. Many people use religious, academic, and Gregorian calendars simultaneously to arrange and coordinate families' lives. We move fluidly between these different kinds of clocks and calendars, often without noticing. And this is true not just of clocks and calendars, but of longer scale time tools too. Our conceptions of time's more general flow are also aim-dependent, also multiple.

Like clocks and calendars, a conception of the flow of time is a tool, a heuristic scheme for organizing events by placing them in an expected sequence. These schemata take a number of familiar forms. Progress, which scholars sometimes

mistakenly assume is the dominant conception in modernity, prompts us to understand events in a linear forward-moving fashion. We use a progressive conception of the flow of time when, for instance, we (falsely) assume that living conditions for each generation will be better than those of the previous generation. One might see the process of one's education or the course of 20th century equality initiatives as progressive, or hold an expectation that communist or authoritarian countries will grow toward democracy. Simultaneously, we may employ a cyclic conception of the flow of time: the turning of seasons and the human rituals accompanying them, or the historical rise and fall of imperial powers may be understood through a cyclical frame. We may also make sense of the course of human lives in the family context through this conception of the flow of time. Eschatology, another common frame, invokes a future moment of rupture, after which everything will be different and time will stop. Devoutly eschatological means of understanding time may come from religion or ideology, as some await or work for the second coming of Christ, for some version of eternal heaven in the wake of death, or for a communist utopia. After this rupture, change (and hence time) stops. And primitivism, invoked by the left and right in equal measure, is a conception of the flow of time that interprets events in terms of decay from some past golden age. We hear this conception invoked when media or politicians hearken back to a time when parents raised their children right or kids played outside or we had less fear of crime. This theme of decaying innocence often arises wherever, historically, there are large cities and complex civilizations.

Each conception inflects the meaning of any specific event within that narrative, beyond the substantive causal sequence. Through such temporal-rhetorical frames "communicators consciously or unconsciously, act to construct a point of view that encourages the facts of a given situation to be interpreted by others in a particular manner."³⁴ The sequence itself, above and beyond the intrinsic content of the event, frames it and suggests what it means for the future. And because there is no objective fact of the matter, and because our time tools are task-dependent and multiple, political agents can construct the meaning of a given event, such as the promulgation of a new constitution, through the narrative construction of a temporal frame. Change the sequence by changing the events one chooses to highlight, and one changes the significance of the event too. For example, if the temporal frame is cyclic, we are to expect the event-sequence *type* the narrative depicts to repeat. The constitution, in this case, may serve to set the nation off on a new rise to glory. Populists, playing on the disappointments of progressive expectations, often use this frame as I will illustrate further on. If progressive, the narrative points the way to a bright future, and the constitution may serve as a means of keeping the state on track, or correcting a wobble or wrong turn in affairs. If primitivist, the narrative events are

symptoms of decay, with the implication, perhaps, that the constitution will stall this decline through some reactionary measure. If the frame is eschatological, the constitution may provide for a holding position or aim to speed an anticipated rupture. In decisively reorienting the state and its actors, constitution-making marks a pivotal moment, which promises to change the trajectory of public life.

This is how temporal framing helps legitimate the audacious action of promulgating a constitution. The shape of an event-sequence, not just the substance of those events determines their meaning. And because the event of a new constitution has no objective meaning itself, it cannot serve as an *objective* mark that, having left T1, a new constitution shows a polity has reached T2 on the way to T3. The meaning of the constitution as event must be constructed. In constructing a temporal frame through the foregrounding of some event-sequence, a political leader is able to recast events' meaning. With this technique, she implies what is possible and what is inevitable, and tells us what an event means *for the future*. She can argue for the legitimacy not only of the constitutional innovation, but can, through her role in bringing it into being, bolster her or her party's legitimacy too. In this way, among others, preambles can serve as tools in a dynamic toolkit of political legitimation. Here is a significant non-legal purpose of law. And here is an additional element to aid in our understanding of the purposes of preambles.

This will become clearer through the following examples: first, the shift from the 1978 to the 1982 preamble in China, and second, the preamble to the 2012 Hungarian Basic Law.³⁵ My intention, by means of these examples, is to provide dramatic illustrations of how this technique is put to work. It is not my claim that this technique is in use in every preamble, nor do I claim to establish a causal link between any specific circumstance and the presence of the technique, though that would make for useful further study. These cases are intended to illustrate how temporal-rhetorical framing in many preambles serves the task of legitimation.

ILLUSTRATIONS

In the tumultuous years surrounding the end of the Cultural Revolution, China was subject to three constitutions in quick succession. From 1954 until the start of the Cultural Revolution in 1966, China had more or less adhered to a constitution that emphasized a variety of rights and duties, and a decision structure characterized by at least nominal checks and balances. To institutionalize the Cultural Revolution's radical left gains, a new constitution came into force in 1975, which dramatically curtailed rights and checks on power. At this time, Mao's wife Jiang Qing, who together with Zhang Chunqiao, Yao Wenyuan, and Wang Hongwen formed a radical left power locus known as the Gang of Four,

stepped into the power vacuum left by absence of Mao and Zhou Enlai, both of whom were dying. These figures became the chief power brokers and guardians of the Cultural Revolution against the gathering forces of opposition who sought economic reform to counteract accumulating material hardships. The radical left held the balance of power, but precariously.

Mao had tapped the relatively unknown Hua Guofeng to assume the Premiership after his death and the Gang of Four respected this wish, for Hua had been a very loyal supporter of Mao personally and a leader of the Cultural Revolutionary forces in Hunan. The Gang of Four were thus surprised when, immediately upon ascending to power, Hua had them and many of their associates arrested. Hua favored Soviet style industrial planning to improve economic and food security. But even this level of reform was difficult in the political environment in which Hua was operating. He thus undertook another constitutional revision that aimed to strike a balance between radical left revolutionary ideals and reformist necessities. The 1978 constitution, passed by the fifth National People's Congress, was the result.

Many elements of this constitution echoed the 1954 version. Power was at least nominally moderated through a variety of checks and balances, and certain rights and duties were restored. But consider the moment: A contentious and highly charged political atmosphere in which a leader with precarious authority tried to balance competing pulls for reform and continued radical agitation. The existing constitution, only 3 years old, had been drafted under Mao's own authority, with Mao's wife now imprisoned. Then, there was the dramatic performance legitimacy deficit in the aftermath of the Cultural Revolution. The event of the constitution, the act of creating it, cried out for legitimation, as did Hua's leadership in turn.

The text of the preamble to the 1978 constitution is evidently no neutral introductory statement. Rather, several textual elements work together to suggest a more proactive rhetorical function.

First, the preamble uses a temporal frame to construct a 'We', an identity for the Chinese people. It constructs this frame by calling out specific events. Through the struggle against feudalism, the Chinese people gained a sense of themselves politically, and "[t]he founding of the People's Republic of China [in 1949] marked the beginning of the historical period of socialism in our country."³⁶ The text then nods to "great victories" along the way and notes that the "dictatorship of the proletariat in [China] has been consolidated and strengthened," but in a context of continuing "struggle in unity [to] carry the proletarian revolution through to the end."³⁷ This struggle frames the cultural revolution as a form of rejuvenation propelling China forward. That energy must now be maintained, China must "persevere in continuing the revolution" and "persevere in the struggle of the proletariat against the bourgeoisie and in the

struggle for the socialist road against the capitalist road.”³⁸ This is the moment in which the constitution is offered. Its purpose is to propel China through a period of rupture and upheaval so that, on the other side, it may ultimately become “a great and powerful socialist country with modern agriculture, industry, national defense and science and technology by the end of the century.”³⁹

Together, this series of events constructs a narrative arc, a shape for time’s arrow that suggests, by means of the pattern traced out from past events, what the future will hold. It is not just an account of a causal succession of events that explains the origin of the constitution, but rather presents an abstracted pattern within which to understand those events and the pivotal function of the constitution. The pattern in question is eschatological.

Eschatology is a cross-culturally common conception of the flow of time, with the following essential structure. The world, once set in motion by some version of the Fall from Eden, is characterized by action, change, politics and events. These vie with each other to construct and reconstruct modes of order which, to preserve themselves, require violent enforcement. An eschatological conception of the flow of time generally anticipates a worsening of conditions until the continuum is interrupted by a radical break, yielding a climax of frenzied violence with a purifying function. This enables redemption: an end to alienation and suffering, an end of history. Enforced order, which always involves violent domination, will be replaced by a spontaneous and just, harmony, a rule of love, not law. In that condition there will be no more events, no more politics, since any event after this condition of self-enforcing peace and harmony has been achieved is necessarily decay.

Versions of eschatology appear in early Vedic texts, and in Jewish and later Christian and Islamic apocalyptic texts. As moral character decays, so approaches the final battle between the forces of good and the forces of evil. In many versions, there is mass death, and a remnant is saved and given a new mode of life in a condition of purity and grace. But a version of eschatology clearly also animates many 20th century Marxist texts and speeches.⁴⁰ Here, violent political struggle takes the place of a final battle between good and evil, promising an earthly paradise.

An eschatological frame is clearly at work in the narrative preamble to the 1978 constitution. The frame situates the event of the constitution at a pivotal moment in China’s movement along this pre-set course. After launching a decisive break from the past, China is in the midst of this violent rupture, the struggle to achieve communism. The temporal-rhetorical frame situates the constitution in this familiar structure. The eschatological frame tells Chinese people what the current constitution, as a moment, an event in political time, means for their future. The constitution will restore necessary but fractious political and economic tools for stability, and justify them by implicitly tying them to the

overall goal of radical revolution. This helps legitimate the constitution as an innovation, as an event. Concurrently, as the person who will help bring about this stability partly by means of the constitution, it helps bolster Hua's own political legitimacy.

We see here how a conception of the flow of time can provide a ready rhetorical frame that implies what the future holds. The ease with which these frames can be transposed one for another rests in part on their familiarity. Versions of these conceptions of the flow of time are at work across cultures and in different elements of life. This ease of transposition is evident in the move to the 1982 constitution, whose preamble, drafted in distinctly different but temporally proximate circumstances, is framed distinctively differently too.

Not long after Hua came to power, he made a grave political error: he brought Deng Xiaoping back from political exile. Deng had been repeatedly repudiated and restored, in part due to his reformist sympathies. But with Mao gone, Deng had an opportunity to regain a foothold in the center, where he siphoned support toward market reform. Deng was the better politician, more experienced, more astute, and his power increased rapidly at Hua's expense.

Following the promulgation of the 1978 constitution, Deng marshalled his forces and ejected Hua from the halls of power. This brought China into a new era where the influence of the radical left faction was greatly diminished. In a dramatic about-face, China would now focus on economic growth. This required investment in technical and managerial competence alongside a loosening of social restrictions. Its radicality constituted "an ideological crisis" which, if "not backed by clarity and consistency could be very disorienting."⁴¹ While Deng's charisma and stature were such that there was less question around the legitimacy of his own power, the move toward a market economy was so radical that it certainly required steady forces. The constitution was a tool for enabling and legitimating this shift, and the preamble, like its 1978 predecessor, used temporal-rhetorical framing to this end. Again, the rhetorical frame aimed to justify the event of the constitution by clarifying what the moment in political time meant for China's future.

While the 1978 constitution had made some moves to restore checks and balances, the 1982 constitution went much further, devolving powers to local government, instituting term limits, etc. The new constitution also paved the way for economic growth. For example, Article 15 restored the right to inherit property, and Article 11 notes that individual property rights are a "complement to the socialist sector of the economy owned by the public." This stood in stark contrast to the 1978 version which guaranteed "that the absolute predominance of the collective economy of the people's commune is ensured."⁴²

This about-face is dramatically reflected in the 1982 preamble. Where the 1978 preamble situated the event of the constitution at a moment of continuing struggle with final rupture its ultimate aim, and framed economic reforms as an

element of that struggle, the new preamble does away with this eschatological frame entirely. By picking out and highlighting different event series, the 1982 preamble constructs a different overarching temporal structure, and hence a different political moment, a different kind of constitutional event that points to a different, promised future.

The new preamble has a progressive frame. It draws out a long steady arc which, in contrast to the 1978 preamble, begins long before the overthrow of feudalism: “China is one of the countries with the longest histories in the world ...”⁴³ If China, as a political entity, existed long into the past, long before Mao’s victory, long before the Cultural Revolution, then the shift to the market economy and away from radical left policies is not a radical pivot, but instead a course correction. It is interesting to note that Augustus used a similar technique as Rome moved from a republican form of government to the Principate. During the republican period, Romans had employed the practice of naming the year not numerically, sequentially, but instead with reference to the year’s elected consuls. Time itself was thus marked out by republican offices, republican practices, and Roman time, Rome as an entity *in* time, was defined by the series of these offices. This implied that Rome was coextensive with the Republic. But as Augustus moved toward consolidating and centralizing his power, while maintaining the veneer of republican institutions, he also changed the method of dating. The Roman year would now be counted consecutively beginning with the year of Rome’s founding *ad urbe condita*.⁴⁴ In this way, the idea of Rome could be made to extend back before the dawn of the Republic, implying that it would remain Rome after the Republic’s functional demise. This is precisely the technique employed in China’s 1982 preamble. Chinese are now defined as constituting a people during feudalism too, long before the Communist period, and can thus be understood to persist beyond it – beyond the radical left conception of it – too. China is still China in an age of market reform.

Indeed, the shift marked by the constitution, framed as it is, enables the restoration of a more genuine China, the preamble implies. This new temporal-rhetorical frame allows for the cultural revolution to be resituated too. “The people of all nationalities in China have jointly created a splendid culture,”⁴⁵ the preamble reads. In this long arc the Cultural Revolution is a minor deviation, not a decisive moment of rupture, a correctable, wrong turn on a much longer narrative journey. This reframing also enables the Party under Deng’s leadership to cast itself as visionary, and hence Deng as charismatic, as the person able to detect this deviation and correct it.

“The Chinese people waged wave upon wave of heroic struggles for national independence and liberation and for democracy and freedom,” reads the preamble, and in 1949 they were victorious. But within the progressive frame, there is still work to be done and this work the preamble suggests will

be “effected step by step,” and will, in the spirit of progress “follow the socialist road, steadily improve socialist institutions, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defense and science and technology *step by step* to turn China into a socialist country with a high level of culture and democracy.”⁴⁶

The language of violent struggle leading toward a definitive rupture point has faded. This Constitution is an event of restoration to a progressive path which has, in this frame and with some deviations, characterized China’s history as a whole. Through this rhetorical frame, the drafters are able to suggest to the people what the Constitution, the event of the Constitution, means for their future. The promised future bolsters the Constitution’s legitimacy. People are made to understand *why* the promulgation of a new Constitution should be accepted. Whatever other purposes the preamble might serve, it is to this extent a rhetorical tool in the politics of legitimation.

This was explicit and intentional, as the Constitutional scholar Zhang Youyu, assistant-secretary of the constitutional drafting committee, made clear when he noted that the preamble heralded a new “progressive orientation, principles and policies, etc.”⁴⁷ As he wrote, “[t]he reason why we must have a preamble is because we are in a transitional period, some things that should be provided in the Constitution cannot be written into its text. The basic task of the country during the transitional period and the conditions for implementing the Constitution ... can all not be written into articles, and if they were written into articles, they could not be written as clearly and incisively as if they would have been put into the preamble.”⁴⁸

While, given the temporal proximity of these two constitutions, this contrast in temporal-rhetorical framing is especially dramatic, it is hardly unique. Other recent, striking examples include Hungary’s 2012 Basic Law. Like China’s constitutional framers in 1978 and 1982, both the Hungarian constitution and its drafters, Victor Orbán and the leaders of his Fidesz party, faced a legitimation challenge. And Hungary’s new preamble, too, is rife with temporal rhetoric.

In line with many populists, Orbán’s temporal frame of choice is grand-historical cyclicity: rise, decline, and glorious rebirth. This frame facilitates the identification of an external threat and positions a populist leader as the means to combat that threat. It thereby legitimates the institutionalization of more authoritarian forms of power. Orbán has been using versions of this rhetoric consistently since his emergence as a force on the political scene in the late 1990’s. “After the Second World War,” he wrote in 1999, “slowly we became grey. One country among Eastern Europe’s unfortunate, occupied, socialist states. The best proof of how grey we became comes if we quickly look around, then we will see roughly where we managed to sink into the greyness, what kind of buildings,

what kind of material culture, and generally what kind of things we were capable of creating in the past period ... I think, before accession to the European Union, it would be good to formulate a picture of Hungary in which there is life, in which that life pulsates, which has colours and a particular flavor ...”⁴⁹

This temporal frame – a rise to power, then a fall into decay – also drove the political writings of thinkers like Plutarch and Machiavelli, who took decline as inevitable, and hence finding means of stalling, of lingering longer at the top, as the primary task of political thought. But populists like Orbán cast decline not as a natural process that can perhaps be gloriously stalled, but as the result of corruption, of external interference. Empirical work on receptivity to populist messages suggests the importance of a popular need to displace responsibility for perceived personal or state failures, so it is clear why this form of rhetoric would be resonant.⁵⁰ Orbán, in this political context, thus places himself in a position to claim – where for ancient writers and their modernizers like Plutarch and Machiavelli it would have been impossible – that he has the kairoic vision to detect the cause of decay and can intervene to remove it. Such a leader could restore and renew the state for a second run at glory. Along these lines, Orbán has been at pains to associate the new millennium with the dawn of the last one, his own party with Hungary’s founder, St. Stephen, around the year 1000. He returned St. Stephen’s Crown to Parliament from its usual home in the National Museum, restoring it from an artefact, to a symbol of power. He made reference to this millennial coincidence in speeches. Then, after his reelection in 2010, he set about replacing the interim constitution, which was functionally the same as the 1959 Soviet document under which Hungary had been governed during the period of gray and decay. Through the new Basic Law, he was able to harness this narrative of cleansing Hungary, reinvigorating its national spirit and enabling its millennial renewal.

The preamble to the 2012 constitution notes the constitutional moment “at the beginning of the new millennium,” and its correspondence with the first founding of Hungary: “We are proud that our king Saint Stephen built the Hungarian State on solid ground and made our country a part of Christian Europe one thousand years ago.” The preamble notes “that our people have over the centuries defended Europe in a series of struggles and enriched Europe’s common values with its talent and diligence. ... [and] promise[s] to preserve the intellectual and spiritual unity of our nation torn apart in the storms of the last century ...” Again, noting the continuity with St. Stephen, “We honor the achievements of our historical constitution and we honor the Holy Crown, which embodies the constitutional continuity of Hungary’s statehood and the unity of the nation.” The preamble then marks out the era of Communist rule as a period of illegitimate power, of foreign corruption, which “led to a state of moral decay,” and thence to “an abiding need for spiritual and intellectual renewal.” Now, this constitutional moment will meet that need for regeneration and renewal. It “shall be a covenant among Hungarians past, present and future; a living framework which expresses the nation’s will ...”⁵¹

The preamble's statement that the constitution "expresses the nation's will" both generates and serves as a response to a legitimation challenge. Certainly, if the constitution *did* express the will of the people, that would provide some ready legitimacy for the event of constitution making. But in fact, the process of drafting and ratifying the constitution involved very little by way of consultation.⁵² In making this claim, these leaders cast themselves as the avatar of the nation, able to know and express its true will. For this to be 'true' it would imply charismatic power. Through the audacity of taking upon themselves the task of drafting this new constitution for the people, by calling out the corruption and decay and thus recognizing the *need* for renewal, they are able to claim to have saved Hungary. The nation can now set out on a new rise. This, they imply, is what the constitution means for the future, what makes it legitimate.

Insofar as Orbán and Fidesz enabled this future, they bolster their own performative legitimacy as the force by means of which this future is made possible. This is especially important because the new constitution, in its illiberalism, its limits on checks and balances, its populism and nationalism, flouted so many European norms.⁵³ And while the constitution claims to be of and for the people, it is not *by* the people. Fidesz uses the preamble to claim to serve as the popular voice for an artificially unified people through the narrative construction of grand cyclic rebirth. This conception of the flow of time, in serving as the preamble's rhetorical frame, supports Fidesz legitimation project.

CONCLUSION

Preambles serve both legal and political purposes. I have been arguing that among these purposes is legitimation. Legitimation is critical, because constitutions are contentious events, and not just legal documents. While several elements of preambles speak to this function, I have focused here on what I call temporal-rhetorical framing. Some constitutions, such as those of China and Hungary, use the preamble to situate the event of the constitution's promulgation in a temporal arc. The arc is constructed by the calling out of a past event series to give shape to a projected future, changing expectations of a state's trajectory. These temporal arcs, joining a constructed past to an imagined future, create a pivot point, the identification of which serves to legitimate the constitution by helping to establish the meaning of the event of its promulgation. That is to say, the meaning of an event is always partly given by its place in a temporal arc, a conception of the flow of time which suggests not just how the event is causally related to other events, as, for example, a simple history would, but how those events *must* be related and understood by virtue of time's shape.

Temporally framed preambles thus provide a tool to attempt to persuade denizens that, for them or for their country, the constitution is a good thing.

Time talk in constitutional preambles seems to attempt to impact the *resonance* of constitutional change. It provides a rhetorical frame that helps to turn the promulgation of the constitution as occurrence into a political event by implying the meaning of the new constitution in the overall narrative of political events.

Of course, this framework for thinking about a common aspect of constitutional preambles does not exhaust their meaning or provide a full account of their purposes. Preambles are diverse and complex pieces of writing. However, the temporal-rhetorical thesis illuminates one piece of the puzzle, which can help us understand not only contentious contemporary politics around preambles, drawing attention to the close ties between problems of legitimation and the preamble in particular, but also, following Kent Roach, to our fledgling understanding of the non-legal purposes of law more generally.⁵⁴

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- grateful to Geoff Gordon of the Free University of Amsterdam for bringing You’s work to my attention.
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22. Julian Leaser in *Report of the Constitutional Convention, Old Parliament House*, Canberra, 2-13 February 1998, 496-7. My italics.
23. See Jennifer Widner, "Constitution Writing in Post-Conflict Settings: An Overview," *William and Mary Law Review* 49, no. 4 (2008): 1515.
24. Nomi Claire Lazar, "Constitutional Legitimacy," in *The Cambridge Handbook of Constitutional Theory*, ed. Richard Bellamy and Jeff King (Cambridge University Press, 2021).
25. Jennifer Widner has argued that one important element of success with respect to constitution making, particularly in the wake of violent crises, is that buy-in encourages those who have used violence to displace conflict into an institutional setting, and their willingness through the constitution-making process, to do so, is a key measure of the success of constitution making. Jennifer Widner, "Constitution Writing in Post-Conflict Settings," 1515. It is also worth noting that, while a majority may accept a constitution in the first instance, for any minority who did not, the legitimacy challenge may persist over decades. This has certainly been the case in Canada.
26. Erving Goffman, *Frame Analysis: An Essay on the Organization of Experience* (New York: Harper & Row, 1974), 10.
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28. We have ample evidence of the elasticity of policy preferences when framed in terms of differing risk calculations. Daniel Kahneman and Amos Tversky, "Prospect Theory: An Analysis of Decision under Risk," *Econometrica* 47, no. 2 (1979): 263-91.
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31. There are dozens of constitutions which employ such declaratory language in their preambles,

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32. Nomi C. Lazar, *Out of Joint: Power, Crisis, and the Rhetoric of Time* (New Haven: Yale University Press, 2019), 25.
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 36. Preamble, *Constitution of the People's Republic of China* (1978).
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