

WHO'S AFRAID OF A NON-ADAPTABLE CONSTITUTION?

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Abstract.

Joseph Raz criticizes John Rawls for a procedure supporting a non-adaptable constitution. This paper considers how a non-adaptable constitution can seem not so counterintuitive and also when.

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The political philosopher Joseph Raz, as I understand him, regards non-adaptable constitutions as counterintuitive, using the point in an objection to John Rawls (1986: 126). He does not say that he is afraid of one though and maybe he is not. I confess that I couldn't resist the title! I wish to offer some observations on when people may not find a non-adaptable constitution so counterintuitive.

Arguability. One reason for why people might accept a certain non-adaptable constitution is because its principles are highly general and individuals with widely divergent views can argue for consistency with these principles, in a way that cannot be compellingly rejected. For example, imagine we are going to include Rawls's difference principle in a constitution, according to which we should prefer the economic system which is best for the worst off group. "How can we inflexibly commit ourselves in the constitution to such a principle?" you might worry; but should you? Some people in favour of socialism would of course endorse such a principle but so too might capitalists, who say that it is actually capitalist economics which is best for the worst off. "Capitalism with its drive for profit and competition leads to greater innovation and a trickle-down effect, with wealth and innovations trickling down to the worst off in society." Widely divergent approaches to the economy can be made out to be consistent with the principle: can be argued for as consistent (Reiff 2012; see also Elliot and Thomas 2017: 9).

Last days. A constitution is supposed to last for more than a day, yes? So what is the minimal time that it is worth implementing a certain constitution for? Let us call it "C number of days." And let us suppose that an object from outer space is predicted to hit the country where a constitution is about to be implemented, in C+2 days, destroying the country. All the astronomers agree and they have an excellent track record of predicting these things. In this situation, it is not so counterintuitive to have a constitution with no procedure for revision of its content. (On C+1 day, people are evacuated.)

References

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