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Prohibiting Amendment: The Use of Absolute Rigidity in the Constitutions of the Countries of the World

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ABSTRACT
Constitutional amendments are as a rule enacted by special procedures that are more stringent than the procedure required of ordinary legislation. Some constitutions even make use of entrenched clauses which restrict in full the use of amendment; such constitutions, then, introduce what is called in this study "absolute rigidity" (AR). Mapping the use of AR in the constitutions of the countries of the world, this study shows that about one third of the countries have introduced for defined issues and principles a ban on amendment, the differences between regions of the world being fairly small and the overall pattern therefore being global rather than territorial. However, more than countries in other regions, African countries are frequent AR-users. In regards to the question why some states resort to AR whereas others do not, findings are that democracies are not as frequent AR-users as are non-democracies; furthermore, diffusion stands out as an important explanatory factor, as evident from an inserted case study of former British colonies which indicates that a distaste of Britain for AR has indeed been transformed to the colonies, almost all of which have avoided the method. Concerning matters that enjoy AR-protection, territorial integrity, fundamental rights and freedoms, and republican and democratic forms of government are among the most frequent. A fair amount of the AR-entrenchments are in an empty-words category, as they are violated, even flagrantly, by the very states that have installed them.

KEY WORDS:
Comparative law, constitution-making, constitutional rigidity, democratic politics

Introduction

Most constitutions of the countries of the world require for the enactment of constitutional amendments that these are passed by special procedures that are more stringent than the procedure required of ordinary legislation. The special procedures are different in type – indeed, "democracies use a bewildering array of devices to give their constitutions different degrees of rigidity", Arend Lijphart writes in his well-known study of Patterns of Democracy (Lijphart 1999, 218). In some cases the requirement is perhaps for a two thirds or equivalent majority in the legislature, in others the prescribed threshold may be even higher, in still other cases it may be further required that the amendment is approved by the electorate in a referendum, in federal countries amendments may require endorsement by the states (e.g. Hague and Harrop 2004, 211). The task of bringing order and clarity to this multitude is challenging, and several attempts have been made in the literature to develop and systematize valid rigidity measures (e.g. Lorenz 2005).

While this study certainly falls in the area of rigidity research, it is about one method and one type of rigidity only. The focus is on what is called here by the term "absolute rigidity" (AR for short), which denotes the use in constitutions of entrenched clauses which restrict in full the use of amendment. The formulations and language for introducing AR in constitutions may differ. At times it is said about certain issues that they are "unchangeable" (Tajikistan, article 100); other formulations are that the amendment of certain issues "shall be prohibited" (Thailand, section 291); that "no amendment procedure shall be accepted" if it undermines certain values and principles (Burundi, article 299); that "none of the following shall be the object of constitutional amendment" (Algeria, article 178); that "no amendment may be made" of certain clauses (Dominican Republic, article 119), and that certain provisions "may not be the subject to a request for amendment" (Qatar, article 145). If no restrictions of this kind can be found in the constitutional texts, the conclusion is here in the following that AR-systems are not used. It should be noted that explicit statements in constitutions to the effect that amendments are always permissible are rare. However, interestingly, the Constitution of India declares (article 368) "for the removal of doubts" that there are no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of the constitution.

Two research questions, both of which are empirical and descriptive in nature, are in this essay posed and answered about the AR institution, which has hitherto remained largely unexplored in the literature (see, however, Duchacek 1973 b, 33-5). The first question is about the countries which make use of the institution – how many and which are they; where on the globe, in terms of regions, can they be found? Are there occurrence patterns, or is the use of AR rather a random thing? The second question is about the material use of the institution: why and for the protection of what characteristics and values are AR-devices installed? Which issues, political, social or religious, are considered sacrosanct to an extent that renders amendment impossible, even when and if the amendments in question were supported by overwhelming majorities? The answers to these questions are derived from a close reading of the amendment sections or other relevant passages of the constitutions of the world, and the main data source in this respect is the series Constitutions of the Countries of the World (Blaustein and Flanz, various years), published by Oceana Publications, which gives updated editions of the constitutions and constitution-like texts from all parts of the globe. For all countries, the particular release that has been studied here is the one latest published up to the year 2013. Let it be added that the editors of this high-ranking series in quite many cases provide expert commentaries as well as historical reviews and annotated bibliographies.

One final note in this introduction is about a group of restrictions that are of a special nature and come rather close to constituting an AR-direction. In this group are stipulations that define exceptional circumstances and events during which amendments are non-permissible. Quite often such circumstances are about violent and abnormal patterns that render impossible the conduct of normal political life - one example is found in the Constitution of Kyrgyzstan (article 114), which states that "the adoption of a law introducing changes to the Constitution shall be prohibited during a state of emergency or a state of martial law". Similar restrictions appear in the constitutions of some hereditary rule countries – the Constitution of Jordan (article 126) provides one example as it states that "No amendment of the Constitution affecting the rights of the King and the succession to the Throne may be passed during the period of Regency". In a few cases restrictions are laid down in regards to the time limit for submitting repeated proposals. For instance, the constitution of Albania prescribes (article 177) that proposals for a "revision of the Constitution for the same issue cannot be done before a year from the day of the rejection of the draft law by the Assembly and 3 years from the day of its rejection by the referendum". In the following, this group of bans is omitted from analysis. The stipulations in question are not about the prohibition once and for all of certain amendments; they are rather about the exclusion of amendment during given specific and exceptional circumstances and times.

Democracy, Diffusion and Absolute Rigidity

To what extent, then, do the countries of the world make use of absolute rigidity formulas? And what differences, if any, are there between geographies? Table 1 provides empirical answers to these basic questions; as evident from the Table, barely one third of the countries have introduced absolute rigidity amendment measures. The institution is thus much used, but not by far in a majority of cases. Concerning the profiles of geographies, a division of the world into nine regions comes to use. This classification is borrowed from the exposition of the nation-states of the world in the much-used textbook by Denis and Ian Derbyshire on the political systems of the world (Derbyshire and Derbyshire 1999, 5-7); the placing of individual countries into specific regions is likewise borrowed from the same source. While the Derbyshire classifications appear non-problematic in the great majority of cases, a few objections perhaps remain. For instance, it is not clear why Estonia and Greece are classified as belonging in the Central, Eastern and Southern Europe hemisphere, whereas Italy and San Marino are parts of Northern and Western Europe.

Table 1. The Use of Absolute Rigidity in the Constitutional Amendment Formulas of the Countries of the World. Region-wise Distributions.

Absolute Rigidity? Number of Countries:			
Regions:	**Yes**	**No**	**Percentages**
Asia	5	22	19 – 81
Central America & Caribbean	6	15	29 – 71
Central, Eastern & Southern Europe	8	18	29 – 71
Central & Southern Africa	25	24	49 – 51
Middle East & North Africa	6	12	30 – 70
North America	0	2	0 – 100
Northern & Western Europe	6	17	26 – 74
Oceania	1	14	7 – 93
South America	2	10	17 – 83
Total	59	134	31 – 69

Anyway, an examination of the frequencies reveals that the general pattern of about one third operating and about two thirds rejecting absolute rigidity re -appears in some regions but not in others. Among the former regions are Central America and the Caribbean, Central, Eastern and Southern Europe, Middle East and North Africa, and Northern and Western Europe. In contrast, countries in Central and Southern Africa are comparatively frequent AR-users, whereas, on the other hand, countries in Asia, North America, Oceania and South America make sparing use only of AR-prohibitions. In general, the differences between regions remain fairly small, which suggests that the pattern is global rather than territorial and that a search for regionally defined explanatory factors may be futile. Still, several other factors may account for variations and promote an understanding of why some countries have introduced instances of AR whereas others have not. In the following, two factors which are rather different in terms of approach and framework will be tried out for explanatory capacity. The one is about the democracy status of countries, whereas the other is about colonial heritages and thereby about diffusion.

Views on the merits of constitutional endurance differ much. While some observers support a stability in law, others like Thomas Jefferson, in his time, have argued that the dead has no right to govern the living and that a periodic reconsideration of fundamental constitutional principles will keep the principles fresh and will also keep the citizenry engaged in the process of self-governance (Ginsburg 2011, 112-3; Hutchinson and Colón-Rios 2010)). As they promote and guarantee the survival forever of some elements of law, AR-arrangements are certainly in the first rather than the second school of thought. Also, as they imply a curtailment on the rights of parliament and a definite interference with the sovereignty of parliament and other institutions of decision-making, AR-arrangements involve in a manner of speaking a de-politization of specific issues and principles. They thereby reduce the right of political institutions to initiate and make decisions. This is of course in poor agreement with a democracy doctrine – in a democratic view, electors and their representatives should always have the right to look over and revise the content of politics, including constitutional prescriptions. A relevant assumption, then, is that democracies hesitate to engage in establishing modes of absolute rigidity and therefore look with restraint on efforts to introduce and implement AR-devices; accordingly, the assumption is that differences between countries in terms of AR-adaption may be explained by reference to variations in the democracy status of the same countries (D. Anckar 2014, 7-8). In sum, it

is assumed here that democracies do not as a rule apply the AR-entrenchment. However, the assumption probably needs to be somewhat qualified. Given specific circumstances and premises it appears a reasonable expectation that democracies take a special interest in the preservation of democratic methods and ideals and therefore finds it only natural to introduce by means of absolute rigidity a constitutional ban on attempts to abandon the democratic system of government. This would be the case in countries which have before democratization suffered extended periods of non-democratic and non-competitive suppression. However, since this qualifying assumption touches upon the question what values and principles are AR-protected, it will be dealt with further in the next section of this essay, which is devoted precisely to the study of the contents of the many AR-prescriptions.

Findings in regards to democratic status are presented here in two Tables. The first, Table 2, gives an overall view of the relevant country distributions, whereas the second, Table 3, repeats this information but provides in addition data that introduce the regional dimension. The classifications in these Tables of countries in the categories of democracies and non-democracies are based on the well-known Freedom House ratings of the countries in the world, which are widely used by social and political scientists and are generally credited with validity as well as reliability. In essence, the units are rated by Freedom House on seven-category scales for political rights and civil liberties, and are on the basis of these ratings placed into one of three categories: "Free", "Partly Free", or "Not Free". On each scale, the value 1 represents the most free and value 7 the least free, and the placing of units in categories is dependent on the combined ratings. Countries rated in 2010 by Freedom House as "Free" are classified here to be democratic, whereas countries rated as "Partly Free" or "Not Free" are classified to represent non-democratic regimes (Freedom House. Online).

The general picture that comes forth from Table 2 offers at least indicative evidence for the hypothesis that democracy takes exception to AR-arrangements. Of the democracies of the world, slightly less than one fifth (19 per cent) make use of AR as against slightly less than two fifths of the non-democracies (39 per cent). True, the difference is not all that dramatic, and abstaining from AR-use is in both camps a dominating mode of behavior. The similarities are clearly there. But they do not nullify nor flatten the fact that democracy links more than non-democracy to a restricted use of the AR-device. Of course, it always remains in the probabilistic social sciences a disputed and unresolved matter when and why

a hypothesis stands confirmed or rejected (Nagel and Neef 1978, 225; Esaiasson et al. 2002, 81-3); in the case at hand it is a reasonable verdict that findings are in the expected direction. On a scale from +1.00 to -1.00, the connection between non-democratic status and AR-use may be described with a coefficient value of + 0.20.

Table 2. The Use of Absolute Rigidity in the Constitutional Amendment Formulas of the Democracies and Non-democracies of the World. Number of Countries.

		Democracies?	
		Yes	**No**
AR?	Yes	16	43
	No	67	67

Table 3 addresses the question whether or not the above pattern is stable in the sense that it remains much the same all over the globe. The evidence derived from the Table strongly suggests that the pattern is fairly robust and that the dislike of democracies for AR is a recurrent feature. The one real exception from this rule is Central and Southern Africa, where of the rather few democracies four apply AR-devices (Benin, Cape Verde, Mali, Namibia), whereas five do not (Botswana, Ghana, Mauritius, Sao Tomé and Príncipe, South Africa). In regards to other regions, because of a shortage of relevant cases, a couple of regions provide poor tests only. There is in Middle East and North Africa only one democracy, namely Israel, and North America consists of two stable and established democracies (Canada, United States) as against no no-democracies. Concerning remaining regions, the pattern is clear, convincing and unequivocal. All democracies in Asia and Oceania, almost all in Central America and Caribbean and in South America, and the great majorities of democracies in Central, Eastern and Southern Europe as well as Northern and Western Europe are opposed to AR-devices. One may note, however, that France, Germany, Greece and Italy are among the AR-users. The same is true of Norway, still operating an ancient constitution from 1814 in which it is said (article 112) in a somewhat indistinct formulation that amendments must never contradict the principles embodied in the Constitution.

Table 3. The Use of Absolute Rigidity in the Constitutional Amendment Formulas of the Democracies and Non-democracies of the World. Region-wise Distributions; Number of Countries.

Regions:	Democracies		Non-democracies	
	Absolute rigidity?		Absolute rigidity?	
	Yes	No	Yes	No
Asia	0	4	5	18
Central America & Caribbean	2	13	4	2
Central, Eastern & Southern Europe	3	11	5	7
Central & Southern Africa	4	5	21	19
Middle East & North Africa	0	1	6	11
North America	0	2	0	0
Northern & Western Europe	6	15	15	2
Oceania	0	10	1	4
South America	1	6	1	4

As noted earlier, the second empirical examination to be executed here is about diffusion in the context of colonial heritage. This test focuses on former British colonies only, and does so for a reason. Namely, these countries represent a group which may be expected to deviate even dramatically from any adherence to AR-ideals and principles. The metropolitan model, the Westminster Model, prescribes amendment by regular parliamentary majority – "exactly the same legislative procedure is followed whether the bill to be passed concerns, say, the placing of restrictions upon the methods of the trainers of performing animals or a radical alteration in the powers of the House of Lords" (Strong 1958, 65). This method is in full agreement with the doctrine of parliamentary sovereignty, which is usually conceived of as one defining feature of Westminster Rule and in fact one center -piece of the Westminster Model – former British colonies therefore, if and when diffusion is in the picture, may be expected to imitate the prototype, to endorse the principle of parliamentary sovereignty, and, accordingly, to place themselves at distance from the use of sovereignty-defying AR-arrangements.

As indicated in a relevant list (D. Anckar 2011, 51-2), in all 54 territories have emerged as independent countries from British rule since the end of World War II, and these territories form the population of the research at hand. To repeat, the

question to be answered is about the extent to which these former colonies have abstained from AR-use and have thereby in this sense at least applied methods that verify a commitment to parliamentary sovereignty and Westminster Rule. The answer is given in Table 4; to control for the impact also here of the democracy variable, colonies are classified in the Table not only in terms of AR-use but also in terms of democracy status. The answer is straightforward enough: almost all colonies repudiate the use of AR-devices, and the dividing line between democracies and non-democracies therefore now remains insignificant. All 24 democracies abstain from the use of AR-devices; almost all of the 30 non-democracies behave in like manner. Furthermore, the two sole exceptions among the non-democracies are Bahrain and Qatar, two cases that are former colonies in a very formal sense only. They received independence from Britain under existing rulers, this meaning that after independence they continued to exist as absolute monarchies that were only marginally if at all influenced in constitutional and other matters by their past as British territories (Chamberlain 1998, 133). All in all: while almost all colonies are in the anti-AR camp, the same is true of some 60 per cent of the other states. The difference is significant and testifies to an impact from a diffusion mechanism.

Table 4. The Use of Absolute Rigidity in the Constitutional Amendment Formulas of 54 Former British Colonies. Number of Countries.

		Democracies?	
		Yes	No
AR?	Yes	0	2
	No	24	28

However, importantly, the unequivocal figures notwithstanding, the findings do not imply that the former colonies have adopted without reservation the Westminster Model. Indeed, the main finding from an existing special investigation into the amendment methods of former British colonies is that the colonies have not imitated the even utterly flexible method of constitutional amendment that has been and is in use in the metropolitan power: while some former colonies have remained fairly close to the standard, others have not. According to the investigation, while close to one third of the colonies are still near the model, a total of fourteen colonies are placed at almost maximum distance from a Westminster ideal (D. Anckar 2012, 8-9). It may be noted in passing that the dividing

line between democracies and non-democracies comes to some extent alive in this comparison, as nine of the fourteen most deviating cases are non-democracies (D. Anckar 2012, 12); however, the grand picture is that the amendment methods in the colonies do not represent an unconditional adherence to the principle of parliamentary sovereignty. In regards to AR-entrenchments, however, the grand picture from this study now becomes one of a strict adherence to parliamentary sovereignty. While the belief that parliaments may perform constitutional legislation only when they lean on qualified majorities is much endorsed, the idea that present and future parliaments should never and under no circumstances have the right to reformulate legislation is definitely repudiated.

Entrenchments: A Content Analysis

Turning now from countries to contents, this section aims by means of a simple quantitative analysis to find out the objects and purposes of the AR-prescriptions. Quantitative analyses of the content of text materials usually operate from one of two very different research strategies (e.g. Pietilä 1973, 93-7; Esaiasson et al. 2002, 219-23). The one strategy builds on theoretical derivation – categories for analysis are derived from theoretical and conceptual frameworks, formulations and hypotheses and no empirical considerations enter the a priori categorization. The other strategy, by contrast, operates from an empirical examination of the document or documents in question and constructs on the basis of this examination a relevant list of categories. This second strategy has been applied here. From amendment clauses in constitutions and similar and relevant portions of constitutional texts have been listed all mentions of values, principles and institutional settings that are AR-protected; thereafter the items on this list have been grouped to form coherent as well as fairly broad classes. Admittedly, this has not been an easy task. The lists of items that occur in amendment clauses are sometimes repetitive, over-lapping or dressed in a language that is difficult to penetrate. For instance, the Constitution of Qatar states (art. 145) that provisions relevant to the governance and "inheritance of the State may not be the subject to a request for amendment". Obviously, what is or is not "relevant" to governance is a matter of sophisticated political and juridical interpretation, the outcome of which is by no means self-evident.

A first general observation is that there are between countries great variations in the extent of matters that are under AR-protection. In some cases only one pro-

tected area is mentioned, like, for instance, in the Constitution of Moldova which states (art. 142) that "no revision may be done if it results in the suppression of the fundamental rights and freedoms of citizens", or in the Constitution of Senegal which states (art. 103) that "The Republican form of government shall not be the object of any amendment". Other cases, in fact the great majority, enumerate a few areas; in some cases the lists of entrenched matters become quite exhaustive. One even extreme example can be found in the constitution of Angola, which states (article 236) that alterations to the Constitution must respect the dignity of the human person, national independence, territorial integrity and unity, the republican nature of government, the unitary nature of the state, essential core rights, freedoms and guarantees, the state based on the rule of law and pluralist democracy, the secular nature of the state and the principle of the separation of church and state, universal, direct, secret and periodic suffrage in the election of office-holders to sovereign and local authority bodies, the independence of the courts, the separation and interdependence of the bodies that exercise sovereign power, and local autonomy. Besides being only loosely defined and in fact even to some extent overlapping, the prescriptions are in this case so many that much is not left to be handled by means of less rigorous amendment methods. The corresponding clause of the Constitution of Portugal (art. 288) is in like manner an over-sized list of issues that enjoy AR-protection.

In Table 5, three protected categories and a residual category have been singled out. In the first category are items that describe the general political framework of the State; about one third of all entrenchments are within this category. Prominent sub-categories deal with the territorial integrity of the State and with guarantees for fundamental rights and freedoms. Of the 59 countries that have made use of AR close to half have done this partly out of a concern for the territorial integrity, whereas more than one fourth have protected rights and freedoms – given that claims to the existence of a specified territory and to territorial sovereignty are among the fundamental characteristics of any definition of the state concept (e.g. Lane and Ersson 1994, 28-43), the emphasis in the entrenchments on matters of territorial integrity is, of course, much to be expected. Of several distinct subcategories one is formed by a handful of countries which have installed prohibitions against amendments that relate to the Islamic character of the political system – the Constitution of Afghanistan, for example, states (article 149) that "the principles of adherence to the tenets of the Holy religion of Islam as well as Islamic Republicanism shall not be amended". These countries are all downright non-democracies, and the stipulations serve to illustrate the incompa-

tibility of Islam with democratic values, Islam denoting a fusion of the political sphere and the religious one which leaves little room for popular government (C. Anckar 2011, 54-5).

Table 5. Provisions Entrenched in the Constitutions of the World by the Requirement for Absolute Rigidity. Contents and Numbers.

Protected Area:	Totals:	Per Cent:
Political Framework	63	30
territorial integrity	26	
fundamental rights and freedoms	17	
Islam as State Religion; Islamic Sharia	6	
principle of hereditary rule	7	
separation of powers	6	
Others	1	
Form of Government	109	52
Republican	33	
Democratic	17	
pluralist democratic	17	
Unitary	17	
Secular	13	
Decentralized	8	
Representative	3	
Others	1	
Political Institutions	29	14
presidential term	10	
universal, free and regular suffrage	7	
independence of courts	7	
procedure for amending the constitution	3	
proportional representation	2	
Miscellaneous	8	4

Concerning especially the constitutional protection of fundamental rights and freedoms, a famous and much-quoted saying by Giovanni Sartori is "that a constitution without a declaration of rights is still a constitution, whereas a constitution whose core and centerpiece is not a frame of government is not a constitution" (Sartori 1994, 198). While this statement is apposite and pertinent in its own right, it is still true that a Bill of Rights now forms part of nearly all written constitutions; indeed, efforts are not rare to include, although with reservations, specifications of the rights of citizens in the very definition of a constitution (Hague, Harrop and Breslin 1998, 154; Lane and Ersson 2000, 290-1). The influx in support of Bill of Rights matters is evident also from the variegated composition of countries that apply AR-entrenchments – for instance, among countries that prohibit measures which pose threats to rights and freedoms are present democracies like Brazil, Namibia, Portugal and Romania, as well as present non-democracies like Angola, East Timor, Moldova and Ukraine. However, non-democracies in fact clearly outflank democracies in number: of the 17 countries which AR-encircle stipulations on rights and freedoms, no less than 12 are non-democracies in terms of the criteria that are used here. Given the highly reasonable assumption and view that rights and freedoms thrive and are best guaranteed in democratic contexts (e.g. Hadenius 1992, 28-32), the distribution is perhaps somewhat dismaying. It carries the somewhat bizarre consequence that AR-entrenchments of rights and freedoms are promoted in countries like Angola, still plagued in the years following the 1992 constitution by civil war, displacements of refugees and widespread starvation (Clemente-Kersten 1999 a, 65-7), or Republic of Congo, where the 1992 constitution was suspended by 1997, a transitional government was established, and military conflict emerged (Fleischhacker 1999 a, 261-2). Maybe one finds in these cases and others a reflection of an inclination of states, as it has been said, without necessarily having any sense of universally shared values on the subject of human rights "still perceive it as corresponding to their national interests to support the international normative activities in the field of human rights" (Törnudd 1986, 4).

Comprising about half of all entrenchments, the second main category is somewhat more tangible and apprehensible. This category, namely, is about items that describe the nature of the form of government that is protected; the descriptions are in terms of characteristics like republican, democratic, unitary, secular, etc. A total of 17 states have introduced prohibitions against amendments that pose threats to democracy or the democratic system; another 17 states have defined the targeted system somewhat more clearly as their AR-entrenchments are for the

benefit of "pluralist democracy". The language that is used in the relevant clauses is not seldom elevated and pompous and serves to illustrate the saying that "democracy is the form of government to which most contemporary countries, more or less sincerely and successfully, aspire" (Almond et al. 2008, 23). Indeed, of the 34 countries that explicitly ward off threats to democracy, only 11 are to be classified as democracies when applying the criteria used in this investigation. In other words, much like the safeguards of rights and freedoms, lip-service is paid abundantly. In some cases the democratic settings of political processes are protected by countries which are themselves in the light of Freedom House classifications as well as other assessments more or less at light-years distance from a democratic conduct and heritage. For instance, in the Constitution of Equatorial Guinea, a country in which political life "has been dominated by the authoritarian reign of a single family" and in which oppositional forces "still face political persecution" (Fleischhacker 1999 b, 351), it is said that the republican and democratic foundation of the State "shall not be subject to revision" (article 104), and the Constitution of unstable Haiti with a long history of political violence and paramilitary support of processes of destabilization and popular disempowerment (Sprague 2012) prohibits amendments that "may affect the democratic and republican nature of the State" (article 284-4).

In the introduction of this presentation a hypothesis was inserted to the effect that while democracies in general tend to avoid AR-arrangements, they may still, given experiences from periods of non-democratic and non-competitive suppression, resort to an AR-protection of the democratic government. Some democracies certainly verify this expectation. Benin is one example – the country experienced between 1960 and 1972 several regime changes and military coups that were followed by a military regime in 1972 which installed a military-dominated one-party system (Hartmann 1999, 79-83). Ruled upon independence in 1975 as a single-party system until 1991, democratic Cape Verde is clearly another example (Clemente-Kersten 1999 b, 189-91). Furthermore, democratic Mali is in the same group, experiencing upon independence in 1960 a centralization of executive power and suppression of political opposition, followed by a coup and military regime in 1968 which was in turn followed by single-party rule well into the 1990s (Mozaffar 1999, 567-70). As for remaining democracy cases, the overall picture turns blurred. While some cases, like Portugal and Romania, offer a limited support for the hypothesis, others, like Brazil, Dominican Republic, Germany, Greece and the Czech Republic are only barely, if at all, in line with expectations. Above all, however, the hypothesis is

undermined by the existence of several present democracies that have experienced before democratization difficult phases but still have renounced AR as a method for promoting democracy survival – Bulgaria, Ghana, Guyana, Lithuania, Poland, and Sao Tomé and Príncipe may be given as examples.

Further brief comments on the second main category touch upon two more subcategories. Interestingly, of altogether 13 states that have installed an AR-protection of the secularity of the political system, no less than 11 are African. This concentration mirrors, probably, the fact that the African continent is particularly heterogeneous in terms of religious adherence (C. Anckar 2011, 124-7), and that ethno-religions, in particular animism, i.e. the belief that all kind of objects, animate and inanimate alike, contain a soul or a spirit, are part and parcel of the heterogeneity (C. Anckar 2011, 85-6). Given the imminent danger of repercussions from such multifarious belief systems on political life in the overall fairly unstable and divisive African contexts, it is perhaps only natural that many African states have preferred to stake out by constitutional means a definite boundary line between the religious and political spheres of life. Conspicuously, matters of decentralization are only seldom mentioned in the many AR-clauses. In fact, of altogether some 25 federal countries in the world (Derbyshire and Derbyshire 1999, 19-22), the most part do not appear in the list here of countries with AR-commitments. In the materials at hand, the federalist principle is AR-protected in two countries, namely Brazil and Germany, and also in the Comoros, where the principle applies to island autonomy (D. Anckar 2003, 119-20). The remaining five cases that have installed an AR-protection of decentralization issues have done this to safe-guard existing local autonomy arrangements.

Still one step more palpable and operational, a third category is about the shape and functioning of political institutions. This term is sometimes defined in rather all-encompassing and perhaps even evasive terms (e.g. March and Olsen 1989, 16-8); here, it denotes a web of formal political structures. Constitutions usually have organizational sections that set out the powers of the various institutions of government; in this respect, it has been said, constitutions are "power maps" (Duchacek 1973 a). Such organizational matters, however, are only sparsely initiated in the AR-prescriptions; given that it is one main function of constitutions to define and delimit institutional competencies (e.g. Sartori 1994, 197-8), the smallness of this category is perhaps somewhat puzzling. Anyway, the category comprises only 14 per cent of the total classifications. Of the rather few sub-categories in this group, two give cause to specific comments.

First, the focus on the length of the presidential term that comes to fore in about one third of the classifications is probably evidence-based, as it is embraced primarily by countries that have suffered in the past dominant, close to unrestricted and uninterrupted presidential rule. For instance, the AR-emphasis in Guatemala (art. 281) on the principle of non-re-electivity of Presidency must be seen against the background that the country was ruled since independence in 1839 by a series of dictators through World War II and weighed down thereafter under repeated military control and a prolonged civil war (Marsh 1999, 432-3). In Guinea (art. 154), the restrictive prescriptions concerning the number and length of terms of President cannot be amended; again this restriction may be seen against the background of the ruthless and suppressive reign of Sékou Touré, the only running candidate in non-competitive presidential elections in 1961, 1968, 1974 and 1982 (Brüne 1999). Mauritania is certainly in the same category as the country was ruled since independence in 1960 by President Mokhtar Ould Daddah, elected in 1961 and re-elected in non-competitive elections in 1966, 1971 and 1976, was ruled again in 1984-2005 by President Ould Sid´Ahmed Taya, and experienced prolonged periods of military rule and ethnic conflict (Wegemund 1999, 585-7). The same pattern appears in the Democratic Republic of Congo, where restrictive stipulations on the number and length of the terms of office of the President nowadays are AR-protected. In the background is a dictatorship established in 1965 by then army commander Josef Désiré Mobutu, later Mobutu Sese Seko, who stayed in power to 1997 (Schmidt and Stroux 1999, 281-4). In Congo (Brazzaville) restrictions of the number of mandates of the President are in like manner AR-protected; again, experiences from the past are in the picture. Denis Sassou-Nguesso was installed as Interim President in 1979 and re-elected for three terms of office. He remained the dominant political figure in Congo until a transition to multi-party democracy in 1991; later, in 1997 and following a civil war he seized military control (Fleischhacker 1999 a, 258-62).

Second, the AR-method of explicitly protecting the very procedure for amending the constitution that is embraced in a few countries inspires the interesting question of the reach and validity of AR-stipulations in general. If in a given country the stipulation in regards to amendment is that a two-thirds parliamentary majority is required, and if the stipulation also is that amendments in any case must respect a certain value X, then this AR-entrenchment of X is in fact, this is certainly a reasonable interpretation, within reach for the two-thirds majority which has the power of amending the clause in question and may choose to modify or to

simply remove the entrenchment. Such an intervention does not necessarily carry a disrespect or violation of X, and the measure is therefore, formally at least, in line with the requirements of constitutional law. Of course, arguments could be developed to the effect that the abolition of an entrenchment automatically infringes the matters, ideals or principles that are within the realm of protection – to dispose of protection, the argument would go, equals a violation of the subjects of protection, and the disposal cannot therefore be implemented. While perhaps less than convincing, this line of reasoning appears to be implied in the great majority of AR-clauses which are presented in a language and tone which show little consciousness of the problem at hand. Accordingly, statements that explicitly forbid amendments of amendment methods are rare. One example may be found in the Constitution of Rwanda, which states in the article that deals with amendments (art. 193) that "No amendment to this article is permitted"; another example is from the Constitution of Ecuador (art. 441), explicitly stating that amendments must not change the procedure for amending the Constitution. In cases like these it would appear that the entrenchment remains valid in all present and future circumstances and remains out of reach for any majority. In theory at least, it stands for ever.

Finally, in a group of their own, named "Miscellaneous", are AR-prescriptions that are of a specific nature and do not fit easily in any of the other categories. There are no more than a handful of entries in this somewhat peripheral category. Examples may be found in the Constitution of East Timor (art. 156) which places the date of proclamation of national independence within an AR-realm, in the Constitution of Algeria (art. 178) which does the same in regards to the national emblem and the national anthem as symbols of the Revolution and the Republic, and in the old Constitution of Tonga (art. 79) which does not permit amendments that concern the titles and hereditary estates of the nobles.

Closing

Dealing with absolute rigidity, the most severe form of constitutional entrenchment, this study has involved a global comparison of all political systems and an effort to classify these systems on selected variables. Findings from this investigation are that the AR-formula is used in about one third of the countries of the world; it is thereby a frequent but not dominating feature of global constitutional policy. One important observation is that AR is used quite often out of bad political

and social experiences in the past, as a tool for warding off similar threats and misgivings and for guaranteeing as far as possible that the experiences belong to the past and not to the future. In regards to the question why some states resort to AR whereas others do not, this presentation has established that democracies are not as frequent AR-users as are non-democracies; furthermore, an inserted case study of former British colonies has indicated that the distaste of the metropolitan power for AR has indeed been transformed to the colonies, almost all of which have avoided the method in question. However, rather than repeating findings, this final section rounds off the presentation by briefly addressing the intriguing question: How important and effective are the various AR-regulations? Are the dead in fact deciding on behalf of the living; are certain items by means of AR-protection once and for all out of reach for decision-makers and political elites? About this is much not known, but this investigation, and others, suggests that there are at least three mechanisms for the living to challenge the will of the dead, mechanisms that may be named: rewrite, neglect and interpret.

Rewrite. The lifespan for constitutions varies much, and the variation may be explained by reference to a great variety of factors that may be grouped by several classification criteria (Ginsburg 2011). Some factors are external as they point to the role of particular environmental events and developments such as wars, coups, revolutions, and similar political and social crises; quite often, in fact, endurance crumbles away in the face of such shocks. Constitutions as well as appending AR-clauses are then declared invalid, erased, wiped out, obsolete, and forgotten, and they are to be replaced, perhaps after periods of constitutional bargaining, by new constitutions that may or may not repeat the relevant clauses. In such cases, and they are numerous, the dead have lost their grip of the living; life itself has removed the obstacles that stand in its way. Rewriting, however, may appear, in theory at least, also in less dramatic circumstances. This study has recognized and maintained an interpretation which makes it possible for the living to intervene by peaceful means in the will of the dead. According to this interpretation, governments may simply remove AR-clauses by adopting regular prescriptions for constitutional amendment, this meaning that the AR-method is not better protected than, say, stipulations that prescribe for amendment two-thirds or three-fourths majorities. Only when the AR-method is used to protect the method itself, absolute rigidity will prevail.

Neglect. An important distinction in the literature is between limited and auto-limited government, the first concept denoting that a government is limited in

what it can do and how it can do it, and the second concept meaning that governments recognize that there are actions they should not take and some methods they should not adopt, the scope of auto-limitation of course depending in part on what kinds of political and other checks may be exercised on the government (McAuslan and McEldowney 1985, 7-8). The distinction touches upon the eternal question if the formal constitution impacts upon the real constitution or if it is the case that the real constitution impacts upon the formal (Lane and Ersson 2000, 293-4); in the empirical world both conceptions are probably valid. In any case, the presentations that have been given here have provided several examples of states that have chosen to simply disregard their own AR-commitments. These examples have been about non-democracies that maintain in their constitutions AR-undertakings in regards to democratic ideals and practices, and also about states that provide a constitutional protection of human rights but still violate such rights. In such cases the real constitution overshadows the formal constitution, government being neither limited nor auto-limited but arbitrary and self-indulgent.

Interpret. Finally, there is still one avenue for challenging the will of the dead, and this avenue is about blurred and vague constitutional formulations that may, accordingly, be given the one or the other interpretation and execution. This investigation has not looked systematically into the matter, but has certainly conveyed by examples and illustrations an impression that ambiguities in terms of expression and intent prevail in the AR-stipulations. This is of course not an unusual feature of constitutional texts which are at times even intentionally drafted in an ambiguous manner – one example from the research literature may be imported to this text. According to this example, the 1991 Constitution of Bulgaria provides for political and religious freedom, but political parties that are founded on ethnic and religious distinctions are still proscribed. Also, whereas the same constitution establishes a parliamentary democracy, it still provides for a president with some authority and thus introduces an element that is formally inconsistent with the notion of parliamentary supremacy (Melone and Best 2000, 168-9). In the AR-texts at hand, similar strategies are frequent. As noted, examples have been given above; further examples are about statements that provisions relating to advances achieved in the field of fundamental freedoms and rights must not be violated (Morocco, article 142), that the mandatory provisions of international law must be respected (Switzerland, articles 193-194), that any provision that "seeks to diminish or detract" from certain principles is not permissible (Namibia, articles 131-132), and that changes to "the substantive matters of the democratic law-governed state" are inadmissible (Czech Republic, article 9). Since the precise

meaning of expressions like "seeks to diminish", "advances", or, indeed, "substantive matters" remain unclear and disputed, they open for interpretations of what is in reality prohibited and what is not.

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