Constitutions matter. That simple statement—that constitutions really matter—hardly seems surprising until one honestly reflects on the state of constitutionalism around the world. To put it mildly, constitutional regimes are at different stages of development and are having differing degrees of success with their fundamental law. Some, like Canada and Iraq, are governed by basic texts that were drafted or influenced by imperialist forces. Others, like the countries of Eastern Europe, have engineered constitutional charters that not only reflect a heritage largely unfamiliar to those in the West but also attempt to combine what may be incompatible political and economic impulses. Still others, such as Israel, have chosen to forego the modern practice of relying on a written constitution and have instead opted for the interpretive flexibility that accompanies an unwritten text. Finally, countries, such as South Africa, which have insisted that their modern constitutional documents would be the panacea for a longstanding history of ethnic or regional conflict, are now realizing that it takes more than a constitutional charter to bind a citizenry.

Even in the United States, the polity that arguably redefined the entire concept of constitutionalism more than two centuries ago, the position of the constitutional text in public life is at best curious. Recent surveys indicate that the public’s perception of the Constitution is that it remains an important document; but those same surveys also reveal a disturbing ignorance as to the specifics of the text itself. Americans think the Constitution is important, but they can’t tell us what it says. To add to its puzzling place in the public eye, consider also its comparative position alongside the Declaration of Independence as one of America’s two cornerstone public documents. The lofty principles espoused in the Declaration seem to reverberate more easily with the American temperament, while the complex and sometimes dry language of the Constitution seem somehow less memorable. It is revealing that citizens of the United States are eager to celebrate the moment in which the colonies declared their independence from England—July 4—but few are eager to celebrate September 17—the day the newly drafted
constitution was presented to the public for ratification—as the anniversary of the birth of a new nation. Almost everywhere we look, it seems, constitutions have become surprisingly marginalized.

Added to this implicit marginalization of the constitutional text is the argument, shared by practitioners and laymen alike, that constitutions cannot be all that important if they are so often circumscribed by political leaders at times of crisis. The suggestion seems to be that, when push comes to shove, a constitution—mere words on a page—is no real barrier to the authority of self-interested and desperate officials or that the survival instincts of individuals in power will always prevail over even the most authoritative constitutional provisions. Examples abound, from the isolated instances when political leaders ignore specific clauses of the text to the tyrants in Third World countries who see the constitutional document as an unnecessary obstacle in their quest for power.

Finally, a good many scholars have added to the debate surrounding the importance of the constitutional text by examining constitutional politics from a variety of perspectives. Yet aside from the emergence of exciting new studies in comparative constitutionalism—studies, it is important to note, that often recognize the primacy of the constitutional document—and a fresh spate of volumes that describe how constitutions help to design good democratic polities, surprisingly few in recent years have explicitly acknowledged the importance of the text itself. Even some of the most respected constitutional scholars have fallen prey to the notion that constitutional texts enjoy only secondary importance. Many contemporary public law scholars either ignore the proposition that the documents themselves matter or, what is even more likely, inadvertently disavow it. Take the current political science and legal literature for example. Despite a slight resurgence of interest in the subject, for almost five decades now the academy has insisted that constitutional engineering, as well as the study of constitutions more generally, can be a fruitless endeavor. The idea that constitutions can regulate human behavior is, in the words of one constitutional theorist, “preposterous.” One of the foremost legal scholars of the last half-century—Joseph Raz—is even less sanguine about the enterprise: “A powerful case can be made to the effect that a substantive theory of constitutions and of constitutionalism has limited application. Its application is to some countries and to some constitutions only.”

Even when scholars hover close to the topic of constitutional theory, they often miss the forest for the trees; indeed, there is an imbalance in the constitutional literature in favor of discussions about all things judicial—judicial power, judicial interpretation, judicial independence, and so on. When not interested
in the behavior of judicial bodies or the attitudes of judicial actors, political scientists in particular have focused their energies primarily on the critical issues of constitutional interpretation and judicial review. They inevitably focus on courts as the center of constitutional inquiry. Occasionally—and, I might add, with increasing frequency—distinguished scholars will broaden the scope of inquiry by considering the impact of other institutions, particularly the executive and legislative branches, on the interpretive project. Scholars of American political development and “New Historical Institutionalism,” for example, explicitly or implicitly call for a reduced role for the judiciary in the interpretation of the Constitution—an interesting proposition to be sure. And yet they too are still interested in exploring questions of constitutional interpretation and not specifically questions related directly to the theory underlying the need for constitutions. Like so many others, they apparently view the constitutional document through the prism of institutional politics.

The reality for most legal and political scholars is that institutions are influenced by, and contribute to, the meaning of the constitutional text. The text derives its meaning from the branches responsible for interpreting its many clauses and principles. I certainly think that is a fair assessment of modern constitutional politics and one that should not (and cannot) be discredited. And yet such a pronouncement immediately implies the marginalization of the constitution itself. If we focus on what institutions say about the constitution as the primary (exclusive?) means to provide textual definition, we invariably neglect the principle that a constitution exists independently of the institutions it creates. The constitution is out there. We can see it and touch it in most cases. It exists prior to the formation of the government and is the mechanism responsible for creating those governmental bodies that will eventually give it definition. How, then, does a constitution somehow become less relevant once institutions are charged with the duty of providing meaning to its terms?

This book aims to redirect our attention back to constitutions themselves, back to the documents themselves. The claim that “constitutions matter” includes the recognition that what makes them matter are the institutions, culture, traditions, and so on that give life to a polity; but the texts matter too, both for symbolic and practical reasons. My hope is that this project will be situated within a broader debate about constitutional politics much like the “New Criticism” movement in literary theory was situated within a broader conversation about the indeterminacy of a literary text. In that discussion, prominent scholars and artists wrestled with such weighty issues as what counts as part of a narrative, and is the literary text itself definitive or are other factors—the context in which a novel is written,
the background of the author, the personal values of the reader, and so on—part of the text. Among the most important consequences of that debate was a reinvigoration of the importance of the text as text. Many (perhaps even most) ultimately rejected the idea that the text in isolation was definitive, that a work of literature could be read and understood absent the contextual realities that influence author and reader. But the emergence of the debate managed to accomplish something very important: it redirected attention back to the text itself. People were forced to confront the text as an independent entity, and even though many rejected its utter isolation, the confrontation was certainly worthwhile. In this work I too reject the idea of the constitutional text as definitive, but I also refuse to endorse the idea that such texts are irrelevant.

Put another way, my primary aim is quite simple: to acknowledge the importance of texts as instruments to order political societies, as documents that use words to create worlds. In the same way that impressive scholarship has advanced our understanding of the “legal” constitution (from Ronald Dworkin and others) and the “political” constitution (from Keith Whittington and others), I hope to advance the discussion by focusing on the “textual” constitution. To do that successfully—to remind people of the importance of constitutions—requires that we take texts seriously as political documents and that we explore their many subtle features. That is not to say that this project represents a return to the “legal formalism” of the late nineteenth century, an approach to understanding law that was based on the principle that buried beneath poorly crafted statutes, judicial opinions, and constitutions were discoverable truths. It will bear repeating throughout the book that constitutions around the world are distinct, and rightly so; the environment in which a constitution emerges will profoundly influence its character and composition. But there are some similarities both in the aims and in the functions of many of the world’s constitutions. There are, to put it differently, important features that characterize most contemporary constitutions. This book tries to illuminate those features.

The Importance of Constitutional Texts

Why are constitutional texts worth studying? In large part, constitutions are profoundly important because they help to form collective public identities; they help to shape a country’s public character. They are models for a political world that go well beyond describing the architectonic features of a polity’s government institutions. The very best ones have a spirit, a transcendent quality that encourages public veneration. The worst ones become symbols of a faltering and
disordered community. Their primary value probably cannot easily be quantified; indeed, they imagine and then help to realize a shared collective existence. In short, when they are successful they bring to life a political world primarily through the mechanism of a single text drafted with a unique and fundamental status.

South Africa’s recent experience with constitutional change provides a vivid illustration of the value of a constitution to a nation’s collective identity. There should be little doubt that the process of adoption, which included widespread deliberation, consensus building, and conciliation, was essential to the future success of the polity’s post-apartheid order; but it was the instrument itself—the constitution itself—that literally brought to life a distinct political community. Nelson Mandela’s words on the eve of South Africa’s constitutional ratification are illuminating: “And so it has come to pass,” he said, “that South Africa today undergoes her rebirth, cleansed of a horrible past, matured from a tentative beginning, and reaching out to the future with confidence.” Later in the speech he describes the adoption of a new constitutional charter as placing all South Africans on a “new road” with an altogether different “soul.” For Mandela, the document represents a “rebirth,” a “cleansing,” in that a new and different political community based on the principles of equality, liberty, democracy, and dignity was born. It marks a tangible historic transition from an old regime to a new one, and accompanying that transition is the plan, laid out in the specific clauses and provisions of the constitutional text, for realizing the imagined political community. As Mandela implies, a constitution’s greatest impact lies in its ability to envision a distinct political community.

Part of what makes constitutional texts so important is that much of the world has embraced them as unique compositions. Often the constitutional document itself is an important tangible symbol of collective identity, but even when a constitution is absent, the idea of constitutions as devices to control arbitrary and capricious authority is powerful and comforting. As is evidenced by Mandela’s comments, constitutional documents enjoy a certain reputation, a credibility rarely matched by any other political or nonpolitical treatise. If we are to believe Mandela, they enjoy the power to give birth to a nation. As such, they are fundamentally different than religious texts, statutory laws, policy proposals, narratives, and other written (and even unwritten) documents. Their purpose is distinct from these writings, partially because they come with certain expectations that other documents do not enjoy. A narrative or story will not ordinarily organize an entire political community around certain defined principles and goals. A religious tract might do that in some sense, but even so, most religious
documents enjoy a different reputation and a narrower purpose in the post-Enlightenment age. Indeed, in some sense constitutions have replaced religious doctrines as the principal organizing instrument of a particular society. Leaders now look to constitutions to announce their country’s legitimacy on the international stage. A typical regime will have only one constitution, with most political communities considering their historical development as beginning from a single constitutional founding. Citizens often revere their constitutional text. James Madison, in fact, insisted that one of the ingredients for a successful constitution was a healthy veneration of the text by succeeding generations of citizens.\textsuperscript{14}

It might be useful to recall the words of Alexander Hamilton, who, writing as Publius, underscored the importance of general constitutional deliberation by claiming, “The subject speaks its own importance, comprehending in its consequences nothing less than the existence of the Union.”\textsuperscript{15} Of course, Americans are not currently in a state of fundamental constitutional change, but a number of regimes around the world are in the precise position the United States was in more than two centuries ago. Their constitutional texts are new and untested. The institutions of their polities have not yet had an opportunity to comment on the many complex clauses of their governing charters. Constitutional foundings in South Africa, Greece, Switzerland, Turkey, Croatia, New Zealand, and many more are not even a generation old.

For those regimes in particular, and for all constitutional regimes in general, the constitutional text rightfully remains at the forefront of political debate. Unclouded by institutional interpretations, these states are still grappling with the most basic issues of constitutional government: What can our constitution do? What should it do? Some of the answers to these questions were uncovered during the writing and ratification stages, but rarely do constitutional engineers consider all of the broad theoretical purposes of a constitutional document. The heart of this project, therefore, is a discussion of the various functions performed by constitutions. If constitutions matter, we ought to stop and consider what it is they do, or rather, what it is they are supposed to do. This book represents one attempt to understand the various functions of the modern constitutionalist text.

Organized in chronological sequence, beginning with a description of the inevitable destruction of an old regime that accompanies a new constitutional founding and ending with a constitution’s most visible function—its mandate to limit the potentially abusive power of government—this book explores the most critical design features of constitutions. Envisioning the development of a constitution and its polity over time, roughly the first half of the book explores those functions that are most visible, or at least most contested, around
the founding: the constitution’s transformative role, its aspirational quality, and its design features. In large part the aim of the modern constitutional founder is to wrestle with the questions that animate the first half of the book: Why does a polity need a new constitutional vision? What vision for a political future should a polity embrace? What political design gives a polity the best opportunity to realize that vision?16

The second half of the book then turns to the components of a constitution that come into focus a bit more after the founding moment has passed: its role as manager of political conflict, its ability to ensure recognition of different constituencies, and its capacity to both empower and limit the polity’s political institutions. The entire project rests on a simple assumption: that constitutionalist texts, while differing dramatically in the degree to which they successfully manage politics, do not differ widely in their functional purpose. I will argue that those fully operative (or at least reasonably operative) constitutional charters that subscribe to the basic principles of constitutionalism all have similar features, even if those features translate into very different political practices. The documents aim to achieve similar goals, and for that reason it is important that we keep the texts—and not just the institutional interpretation of those texts—in our sights. This is particularly true as we witness the birth of new constitutional regimes around the world.

In the modern era, constitutions perform at least seven different functions. This book is an attempt to explain each.17 After a general overview of constitutions and constitutionalism in chapter 1, chapter 2 explores the process of constitutional transformation, defined here as the power of the constitution to help destroy an old polity and create a new one. Chapter 3, on constitutional aspiration, examines the role of constitutions in imagining a more perfect political community. Often articulated in preambles and rights guarantees, a country’s aspirations for its collective future find a home within the constitutional draft. Chapter 4 then examines one of the more generally understood features of the modern constitutional experiment: the role of the text to structure or design a polity’s institutions in a specific, self-conscious way. After that, chapter 5 turns to the issue of constitutional conflict. Frequently, the aim of most constitutions is to manage (although not eliminate) certain institutional conflict. In so doing, a constitution will inevitably create conflict as well. Chapter 6 then explores the recent trend to see constitutions as providing important avenues for minority groups to find meaningful recognition in the political dialogue. Chapter 7, on constitutional empowerment, considers the role of the text in empowering institutions of government to make decisions in the name of their constituents. (This
power, incidentally, is critical to the legitimacy of public policies and initiatives that emerge from institutions such as legislatures, executives, etc.). Chapter 8 returns to a theme introduced in chapter 1, the theme of constitutional limits, in which I examine the essential function of a constitution to limit the power of the sovereign, or, more accurately, the power of practical reflections of the sovereign within the institutions of government.¹⁸

My goal is not to comment on how successfully modern constitutionalist documents achieve or realize their various constitutional functions; again, I am interested in what they aim to do, not how well they do it. An analysis of the comparative success of various constitutional polities is the responsibility of scholars far more gifted than I.¹⁹ My focus instead is on broader theoretical questions, ones that can stand apart from studies (both empirical and theoretical) of the nature of constitutional law and yet encompass those inquiries: What are constitutions? What are their purposes? What do they aim to accomplish? Why do framers construct them in the first place? To answer these and other questions, I will examine the most obvious design features of the modern constitutionalist text as well as some of the less recognized functions of those documents. In the end, my hope is that the chapters of this book, taken together, will present a portrait of the modern constitutional instrument. My wish, in other words, is that this book may give the reader a small glimpse into why polities around the world so often look to constitutions to perform critically important tasks ranging from collective identity formation to preventing the rise of potentially abusive political power. Assuming that I am successful at that primary objective, I will then conclude by returning briefly to a discussion of why constitutions matter, focusing this time on the increasing importance of constitutions in an unstable and violent world.

What Is Meant by a Constitutional Text?

Before turning to the task at hand, it is important to define a bit more clearly the scope of this project. A more complete definition of constitution will follow in the subsequent chapters, but for now it is necessary to confront some of the broader theoretical definitions. By constitutional text, I mean to limit the inquiry to those formal (though sometimes unwritten) instruments whose primary purpose is to order a political society. I am principally interested in the collections of words and phrases found in a country’s fundamental law that, when taken as a whole, attempt to usher in a distinct public life. I certainly recognize that the constitutional document only tells part of the story and that a comprehensive
understanding of any contemporary polity requires going far beyond the constitution’s words and phrases, but the collections of words themselves are important and worthy of sustained attention. This book is a theoretical exploration of the functions of certain modern constitutional texts, not of the events that gave rise to these texts or the institutions charged with maintaining these texts. Those are important inquiries, to be sure; they are not part of this inquiry, however.

I would like to think that this book stands alongside (not in opposition to) some of the most interesting scholarship on constitutional theory that has surfaced in the past few years. For example, it has become fashionable of late to view constitutions as something more than just words on a particular document. That is, a group of important political and constitutional theorists have suggested that a simple reading of the words in the text represents a tragically narrow view of constitutions. They argue that constitutions are more than just simple documents that we can see and read. Rather, they are dynamic institutions that ebb and flow with changes in the political and social climate. The actual constitutional documents, in other words, represent just the tip of the iceberg; the real meaning of constitutional texts can be found only by looking at how they have been influenced and shaped by the many political forces of a polity.

John Finn, for example, recently explored the question “What is the Constitution?” His conclusions are indicative of the trend to see constitutional texts as something far greater than simply a collection of clauses and phrases on parchment paper. About the American constitution, he writes that there are “two principal constructions,” a “Juridic,” or legal construction, and a “Civic,” or political construction. The Juridic, he writes, regards the Constitution primarily as a legal document, “as the supreme law of the land.” It emphasizes legality and how law trumps (or transforms) politics. Insofar as the Constitution is law it is not—or it is more than—politics or policy. It “defines the rules of the game, not winners and losers; . . . it shapes the contours of politics, not the content.” The Civic Constitution emphasizes not the legal character, but rather the political character of the basic charter, its status not as supreme law but as political creed. It envisions a political order in which constitutional questions, although partly questions of law, are fundamentally and first questions about politics, about the broad principles and normative commitments that comprise our commitment to shared community.

Finn’s objective is to articulate a conception—a definition—of American constitutionalism that acknowledges these two, sometimes competing, understandings of the constitutional experiment.
In both theory and practice, I think Finn and the others are onto something here. There are competing conceptions of constitutional polities (especially in the United States) that must be recognized. The constitution of a country does include more than just the text. Still, if we are to admit that reality, we also must be prepared to admit to the marginalization of the text itself. Once we see constitutional documents as more than text, as made up of institutional interpretations or societal movements—or, in the case of John Finn, as legal and political conceptions—we tend to relegate the documents themselves to the side. The text is seemingly replaced by the broader and admittedly more subtle understanding of a constitutional “project” or “enterprise.” Make no mistake, I am not suggesting that any analysis of constitutionalism that comprehends the text as more than just the tangible parchment is misguided. I too will suggest exactly the same thing, especially in the chapters on constitutional transformation and constitutional aspiration. Similarly, I am not arguing that the institutions responsible for interpreting the text are themselves somehow unimportant. On the contrary, these attempts to understand the constitution through the lens of institutional interpretations, or as reflecting some type of interplay between the various organizations and constituencies of the polity, seem not only sophisticated but also quite compelling. And yet, despite their sophistication and accuracy, there may be something lost when the actual text is no longer the primary instrument that occupies our attention. For me it is somewhat unsettling to insist that the text itself is secondary to the constellation of political bodies that it helped to create in the first place. It is, after all, the words of the text that help to create the complex worlds in which we live.

At the outset, it is probably important to admit to a few other particulars of this book. As I mentioned above, my objective is not to comment on the success of individual constitutions in achieving the goals set out in the document. This project is a work of constitutional theory; it examines the abstract notion of constitutional functionality: what constitutions aim to do, regardless of the degree to which they successfully do it. Very good books have been published on “workable” or “unworkable” constitutions around the world (Gary Jacobsohn’s work on Israel and India comes to mind, as does Akhil Amar’s on the U.S. Constitution and its amendments), but no book that relies heavily on the texts themselves explores the more general functions of the constitutional form. I try to do that by looking at the words of the text. My data is the texts themselves. Drawing a distinction between constitutional texts and constitutional practice may not satisfy all, but it is the essence of constitutional theory. Put simply, I recognize that
the question of how constitutions function on the ground is different than what they say. Nonetheless, this book draws general conclusions about constitutions, not by seeing if they actually accomplish what they set out to do (which is important, but would result in a far different book), but by exploring the promises they make in the words of the document. Again, if we believe that constitutions matter, then we must believe that the words matter too.

As such, this book aspires to provide a broad and general outline of the component features of a large percentage of constitutions around the world. What it does not aim to do is draw conclusions about all constitutions. It is perhaps most important to note that I examine only a portion of the constitutions of the world. I am specifically interested in a defined subset of constitutional charters—described in the first chapter—that adhere to the principle of constitutionalism and that are more or less respected by those in positions of power. As will become clear, not all constitutions can claim to be both constitutionalist and authoritative. Luckily, however, many can. This project is centered exclusively on several texts within this broad category.

Within that category, I draw heavily from four charters that are representative of the type of constitutional texts so often replicated around the world. The U.S. Constitution obviously belongs in this group, for countries have borrowed from its design and language practically since it was introduced two centuries ago. In addition, I look to the constitutions of Canada, South Africa, and, less frequently, the constitutions of Eastern Europe, for helpful illustrations. I chose these texts carefully; they reflect the type of questions, struggles, processes, and language that are commonly seen in modern constitutional foundings. Eastern European constitutions are instructive because, as early models of post-Communist charters, they have tried to incorporate complicated economic and political realities into a single written form. Canada’s constitution, amended so dramatically in 1982, is a prime example of a constitutional document that tries to account for significant cultural and linguistic differences in its population. South Africa’s constitution neatly illustrates the type of fundamental law—heavily detailed, lengthy, and primarily concerned with rights—that emerges from a political society rife with economic, ethnic, and racial tension. Of course, not all of the illustrations will come from these four texts, but they provide anchors to the broader theoretical discussions that follow.

The study is not, therefore, a work of comparative constitutionalism, at least not in any traditional sense. My intention is not to suggest that certain constitutions are better or worse at realizing the functions set out below or that one constitution represents the paradigm example of a text devoted to a particular
A discussion of that magnitude would require intellectual gifts that I do not possess—at a minimum an understanding of particular languages, cultures, economics, and histories. At first glance, I may be accused of ignoring Akhil Amar’s important caution: that understanding constitutional texts “without context” is mostly an empty enterprise. The context I have chosen to use is one that considers the universe of constitutional texts in an attempt to announce some conclusions about these important documents. To say something general about constitutionalist constitutions requires that we look beyond America’s immediate borders to the charters of other nation-states. It requires that we examine primarily the words of the constitutional texts, knowing that those words are important for the purpose of describing constitutional functionality but that they do not tell us the whole story.

There is surely a comparative quality to this work. One thread in this study is the notion that the currently popular style of constitutional texts is the product of an evolutionary trend in political order. Constitutional instruments, in other words, have developed over the last several centuries. For example, they are typically far longer and more detailed than they used to be. Their preambles often reflect idiosyncratic tales of oppression and tyranny, whereas in the past they rarely did so. They are also designed in ways that reveal a keen distrust of framers and politicians alike. Perhaps this last quality is not unique to contemporary constitutions, but I will attempt to show that the level of distrust among subjects and leaders is more acute now than at any other time in modern constitutional history. The comparisons that animate this study are therefore vertical rather than horizontal, historical rather than national. In other words, I will draw comparisons of constitutions through time, being careful not to make an explicitly normative claim about whether they are somehow better at the present than they used to be. They are different now, to be sure, and my instincts tell me they might in fact be less effective in organizing and regulating political communities. But these are just my instincts, nothing more.

I also cannot claim that every modern constitutionalist text performs all seven constitutional functions all of the time. Most are committed to the constitutional functions outlined in the chapters that follow. Even so, to imply that all carry out each of the seven functions is misleading. Some texts are at different stages of development, while others will likely never embrace specific functions. The constitutional function defined in chapter 6 (the one discussing constitutional recognition) is a case in point. Not all constitutions in the modern era have become declarations of the principle that marginalized groups should find meaningful political recognition in the fundamental law. Not all constitutions, in other
words, can claim to protect, much less identify, specific subcommunities within the polity. More and more have done so in recent years, including Canada (in terms of the French-speaking population) and South Africa (in terms of specific ethnic and regional groups), but it would be wrong to assert that all have.

Similarly, it is necessary to point out that a definition of what qualifies as a constitution does not depend on the presence of all of these functions. Much of the first chapter is devoted to constructing a comprehensive definition of the term “constitution,” so it is unnecessary at this point to go into great detail about the topic. Suffice it to say that constitutions take a multitude of forms—some are written, some are unwritten, some are constitutionalist, some are non-constitutionalist, some are liberal, some are communitarian—and that the presence or absence of the functions described in this book does not turn a constitution into something unconstitutional or turn an ordinary law into a constitutional provision. Again, it is useful to draw on the recent trend of modern constitutions to function as powerful voices for historically marginalized groups as an illustration. The original 1867 Constitution did not recognize French culture as an integral part of Canadian constitutional law, and thus Canadians, prompted by threats of secession, sought a radical transformation of their constitutional document in the late 1970s and early 1980s. The result was the 1982 Canadian Charter of Rights and Freedoms, a comprehensive set of amendments to the original nineteenth-century text. With the 1982 Charter, the Canadian constitution became a much more liberal, tolerant, and inclusive text, but it did not turn the original uninspired document into a full-fledged constitution. The 1867 Constitution already qualified for that title.

In the end, what I can claim is that these limitations in no way derail the overall scope of the project. Those who study constitutions—or even institutional interpretations of constitutional texts—will, I hope, recognize that the majority of the world’s charters subscribe to most, if not all, of the various functions examined in the chapters below. Certain constitutions do, in fact, aim to limit the power of the sovereign; they do design political institutions in particular ways; and they do set out aspirational goals for the polity. These important texts are written in part to regulate political conflict; they do construct a new vision of political life; and they do seek to empower the institutions of the polity to act on behalf of the sovereign. The fact that not all of them perform all of these functions at every point in a polity’s history does not alter the reality that constitutional texts serve important purposes, that they endeavor to realize certain critical objectives, and that they are worthy of our focused attention. My simple task in this book is to elucidate that essential truth.