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## Newsletter Issue 5 | December 2018

*This newsletter is published by the Constitution Transformation Network (ConTransNet) based at Melbourne Law School. We are a network of expert scholars sharing our latest research and experiences regarding the development of constitution-making processes, content and implementation.*

### On the Radar

#### "External assistance & constitution-making" by Prof Cheryl Saunders

The modalities and effectiveness of external assistance to national projects for constitution-making, often provided in the aftermath of conflict, has been a recurrent theme in 2018. It has echoed debates regarding related forms of assistance, namely, peacemaking and peacebuilding, and transitional justice.

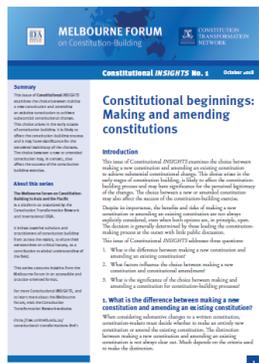
At its best, external assistance offers additional resources to support constitutional-building; actors with a degree of impartiality and distance from internal tensions; and comparative knowledge and experience about the process and substance of constitutional change. However, concerns about the success of constitutional projects, particularly in the difficult conditions associated with internal conflict, have been realised in recent years. Arguably, in at least some cases, failure is attributable, in whole or in part, to a shortfall in a sense of local ownership.

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### Melbourne Forum

The [2018 Melbourne Forum on the "Implications of Culture for Constitution-Building"](#), was held from 15-16 October in Colombo. The Melbourne Forum is an annual event co-hosted by International IDEA, ConTransNet and a local partner. In 2018, we were very pleased to partner with the Centre for Policy Alternatives, Sri Lanka. The Melbourne Forum also brought together practitioners and scholars from more than 10 countries in our region.

We are now very pleased to share with you the online [Report from the Third Melbourne Forum on Constitution-Building in Asia and the Pacific](#). The report summarises issues raised in each session. It also includes links to the papers presented during each session. We are also very pleased to share with you (links below) three publications in our new Melbourne Forum *Constitutional INSIGHTS* series, which were launched at our 2018 Melbourne Forum. This series captures insights from previous Forums in an



**1.1. The practical difference between making and amending a constitution**

**Making a new constitution**

Making a new constitution involves building and setting a new written constitution in a country, completely replacing the existing constitution. This is a complex process that involves a lot of work and usually takes a long time to complete. It is often done by a special body, such as a constituent assembly or a constitutional commission, which is set up for the purpose of drafting a new constitution. The process usually involves a lot of consultation and discussion with various stakeholders, including the public, civil society, and political parties. Once the draft constitution is ready, it is usually put to a referendum or a vote by the people to be adopted as the new constitution.

**Amending an existing constitution**

Amending an existing constitution involves making changes to the current constitution. This is a less complex process than making a new constitution, but it still requires a lot of work and usually takes a long time to complete. It is often done by a special body, such as a constituent assembly or a constitutional commission, which is set up for the purpose of amending the constitution. The process usually involves a lot of consultation and discussion with various stakeholders, including the public, civil society, and political parties. Once the draft amendments are ready, they are usually put to a referendum or a vote by the people to be adopted as part of the new constitution.

**Constitutional INSIGHTS #1: Constitutional Beginnings** examines the choice between making a new constitution and amending an existing constitution to achieve substantial constitutional change. This choice arises in the early stages of constitution building. It is likely to affect the constitution-building process and it may have significance for the perceived legitimacy of the changes.

Federalism or devolution involves the organization of public power so that government, on at least two levels, is more responsive and accountable. **Constitutional INSIGHTS #2: Implementing Federalism** explains why any change from a centralized to a federal or devolved system is a significant one. It also outlines some of the challenges that arise in the context of such change, and suggests options that might be available to meet them.

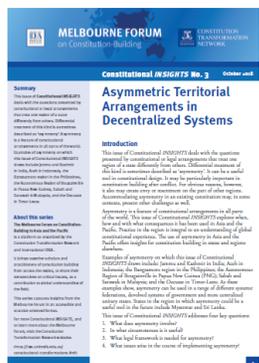


**1. What are the principal features of a federal form of government?**

There are two main types of federalism: dual federalism and cooperative federalism. Dual federalism is characterized by a clear division of powers between the central and state governments. Cooperative federalism is characterized by a more integrated approach to governance, with the central and state governments working together to provide services to the people.

**2. What is involved in implementing a new federal constitution arrangement?**

Implementing a new federal constitution arrangement involves a number of key steps, including: 1) defining the powers and responsibilities of the central and state governments; 2) establishing the mechanisms for the distribution of resources; 3) setting up the institutions of government; and 4) ensuring that the new arrangement is supported by the public and political leaders.



**1. What does asymmetry involve?**

Asymmetry typically involves greater autonomy for one or more parts of the country than for others. This means that a particular region has more legislative, executive, etc. powers than other regions. This can be done in a number of ways, including by giving a region its own constitution, or by giving it special powers that are not available to other regions.

**1.1. Asymmetrical federalism or decentralization**

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**Constitutional INSIGHTS #3: Asymmetric Territorial Arrangements in Decentralized Systems** deals with the questions presented by constitutional or legal arrangements that treat one region of a state differently from others. Differential treatment of this kind is sometimes described as ‘asymmetry’. Asymmetry is a feature of constitutional arrangements in all parts of the world

## Articles



**Issue 8 Summer 2018**

**In this Issue**

**Interview**  
Adama Dieng, UN Special Adviser for the Prevention of Genocide (pp.2)

**Featured**  
Constitutions and the environment (pp.6)

On the links between

In an article for the UN Newsletter, Prof Cheryl Saunders shared her insights "**On the nexus of peacemaking and constitution-making**". Her article reflected on discussions at Roundtable co-hosted by the Berghof Foundation and the UN's Department of Political Affairs to discuss this topic in New York from 21-22 May 2018.

In his article, "**Searching For Democracy 2.0 Without Losing Democracy 1.0**", Dr Tom Gerald

Daly, ConTransNet Co-Convenor and creator of the Dem-Dec Resource, reflected on how to reimagine and safeguard democracy, while charting a course between alarmism and complacency.



## News

### Seminar: "National Identity and Supranational Integration: European Union reflections"

On 14 September, Dr Michael Goldhammer, an Academic Visitor to Melbourne Law School, led a special seminar on "National Identity and Supranational Integration". Dr Goldhammer reflected on the effectiveness of constitutional law in settling supranational conflicts, using the European experience to offers insight into its strengths and limitations.

[Read more](#)



### Workshop: "Second Somalia Constitution-Making Meeting"

On 21 November, ConTransNet hosted members of the Somalia diaspora, as well as an official from the Somali Government and a Somali Federal MP, at a meeting to discuss the ongoing Somalia constitution-making process. Discussions focused on the most critical issues still under discussion, namely how to effectively design a federal system of government and distribute powers and resources.

[Read more](#)

### Dem-Dec Launch: "Is democracy decaying? And what can we do about it?"

On 22 October 2018, Melbourne Law School, Melbourne School of Government, in partnership with Dr Tom Daly, creator of the Democratic Decay Resource (DEM-DEC) held the official launch of the resource at the University of Melbourne. The launch took the form of a panel discussion, with reflections from scholars focusing on democracy in Poland, Venezuela, India and Australia.

[Read more](#)



### Event: "Celebrating Prof Cheryl Saunders & 30 yrs of the Centre for Comparative Constitutional Law"

On 30 November, Melbourne Law School celebrated the 30 year milestone of the establishment of CCCS, one of the first such centres in the world. A 1-day conference reflected on developments in comparative constitutional law since 1988, as well celebrating the achievements of CCCS's founder, Prof Cheryl Saunders, a leader in her field.

[Read more](#)



## Courses

### Post-Conflict Statebuilding (LAWS70313)

Bruce Oswald and Cheryl Saunders will teach an intensive subject in the Melbourne Law Masters from 27 February to 5 March 2019 on Post-Conflict State Building. This subject deals with the body of law and practice that applies to states as they emerge from conflict and try to build strong, prosperous and responsive communities.

[Read more](#)



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