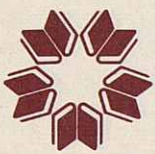
THE ACLS COMPARATIVE CONSTITUTIONALISM PROJECT

FINAL REPORT



American Council of Learned Societies

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The ACLS Comparative Constitutionalism Project Final Report

The American Council of Learned Societies (ACLS) initiated its project on comparative constitutionalism in 1987. The project, which was supported principally by the Ford Foundation, involved convening a series of six international institutes over a three-year period. The primary goal was to stimulate and broaden the study of this timely and important subject as an expression of the Council's commitment to promoting the interdisciplinary exploration of significant scholarly questions.

While the study of constitutional law and comparative government are venerable academic subjects, scholarly work on comparative constitutionalism has been relatively thin. The ACLS institutes were comparative across disciplines, cultures, and regimes, as well as through time. This focus reflected the premise that an effective discussion of constitutions and constitutionalism should not be the disciplinary preserve of lawyers and political scientists, but rather should involve multidisciplinary research informed by a wide range of perspectives and experiences.

The participants in the institutes (who are identified in the appendices to this document) reflected a diversity of expertise that provided the intellectual depth required to initiate an inquiry that prompted exchanges on constitutionalism among academics, journalists, and public figures from around the world. The project was directed by Melanie Beth Oliviero, with the assistance of Rebecca K. Nichols. In addition, ACLS President Stanley N. Katz, Vice President Douglas Greenberg, and American Studies Program Director Steven C. Wheatley were involved in all phases of the project. This report outlines the design of the program, highlights the themes discussed, and reviews the consequences of a truly global effort. It concludes that not only has the goal of enhancing the academic field of comparative constitutionalism been achieved, but that the project produced theoretical insights that may be of use to both writers and users of constitutions.

THE DESIGN

The first formal activity of the project was to appoint an Advisory Panel to help design the program and its overall architecture. Members of the panel and others participated in a planning conference held in

June 1987. (For an identification of Advisory Panel members and planning conference participants, see Appendix A.) One objective of this conference was to develop a working definition of constitutionalism. This proved easier said than done, although a general consensus emerged that: 1) a constitution includes a set of self-conscious rules for making rules, 2) constitutionalism reflects a value preference about rules for making rules that change with ideology and culture, and 3) that any meaningful definition of constitutionalism must take account of problems of legitimacy and consent. The planning conference recommended that the project's regional institutes focus on the dynamic as well as the structural aspects of the relationship between state and society. Project advisors further agreed that the selection of topics for regional institutes should be determined by local consultation. Each institute would thus represent an opportunity for global consideration of regional issues of constitutionalism.

The project commenced its work with an international examination of American constitutionalism. The Ford and Johnson Foundations sponsored an institute entitled "Foreign Perspectives on the United States Constitution," at the Johnson Foundation's Wingspread Conference Center in Racine, Wisconsin on September 26-30, 1987. A central theme of the discussions was the durability of the American Constitution. Conference participants, consisting of constitutional scholars, jurists, public officials, journalists, and humanists from around the world, considered both the unique aspects of constitutionalism in the United States and the relationship between American constitutional history and other national experiences. The keynote themes (offered in presentations by four American scholars) were: historical perspectives; the provision of justice and human rights; governmental structure; and state and society. The experience provided valuable intellectual and organizational insights for the preparation of the project's second phase. (For a full description of the Wingspread meeting, see the *ACLS Newsletter,* Volume 1, No. 2, Winter 1988.)

In 1988 and 1989 the ACLS concentrated on exploring the international dimensions of the phenomenon of constitutionalism by sponsoring regional institutes in Latin America, Asia, Africa, and Western Europe; all but the European institute were funded exclusively by the Ford Foundation. For the European initiative, a consortium of regional funders joined Ford: the Volkswagen and Fritz Thyssen Foundations of the

Federal Republic of Germany, and the Bank of Sweden Tercentenary Foundation (Riksbanken Jubileumsfond).

These institutes departed significantly from the Wingspread meeting's initial focus on the U.S. Constitution. They were explicitly comparative, but focused in each case on constitutional issues of particular regional concern. This shift was partly motivated by the belief that the distance between scholarship and policymaking is not nearly so pronounced elsewhere in the world as is the case in the United States. Even more important, the organizers of the project were sensitive to the need to depart from the typical scholarly practice of concentrating on the American experience in constitutional study. They hoped, if it seemed appropriate in other parts of the world, to regard constitutional change as a subject that might be studied in its own terms and not judged by the yardstick of American experience.

In planning the regional institutes the ACLS consulted scholars in law and social science, area specialists, local contacts, and the Ford Foundation. Steering Committees (see Appendix B) composed of regional experts from each of the four targeted areas were formed to advise the project staff in identifying the issues with the greatest significance in the different regions. Each Committee met twice before the full conference to refine its agenda and suggest participants. The result was four distinct programs that focused discussion on topics of specific regional interest and relevance.

For each event the ACLS cooperated with local organizations for substantive as well as logistical advice. In the case of Latin America, the partner organization was the Center for Information and Study about Uruguay (CIESU). The two cooperating institutions in Asia were the Law and Society Trust of Sri Lanka, and the Institute for Public Policy Studies of Thailand. In Africa, the local coordinator was the offices of the Southern Africa Political and Economic Series/African Association of Political Science, Southern Africa Chapter (SAPES/AAPS). The John F. Kennedy Institute for North American Studies of the Free University of Berlin was the co-hosting organization for the European Regional Institute.

The institutes were between three and five days in length. The number of participants was deliberately kept low — roughly 35-40 participants with a broad range of professional and regional expertise

were invited to attend each institute. Approximately half were drawn from the region; the rest came from other parts of the world. The objective was to facilitate the fullest participation. Toward that end, two institutes included simultaneous translation into at least two languages. The Latin American Regional Institute was held in Punta del Este, Uruguay, October 31- November 4, 1988. The Asian Regional Institute took place February 23-27, 1989 in Chiangmai, Thailand. The African meeting followed shortly thereafter during May 22-25, 1989 in Harare, Zimbabwe, and the European Regional Institute was held in West Berlin, September 13-15, 1989.

Although the substantive themes of the meetings varied, the basic design was uniform. Working papers were commissioned in advance to explore each of several topics designated by the regional steering committee (a complete identification of paper titles can be found in Appendix D). These papers were then distributed to all participants weeks prior to the meeting itself, so that when the group convened, its members would have a common core of information and analysis from which to begin the deliberations. In all cases, the emphasis during the institutes was on discussion. Different configurations of plenary and small group sessions were employed, but very little time was spent on formal presentations. In Latin America and in Africa, both the written materials and the discussions were translated into two languages: Spanish/English and French/English, respectively. In the other two areas, English was the single language used.

To provide a measure of continuity across the four regional institutes, certain other features were incorporated into the design. Two overview essays were commissioned to provide distinct perspectives of the subject. These became part of the sets of papers for each institute. Their role was to transcend the region-specific interpretations of constitutional issues and to synthesize the essential aspects of constitutionalism, its alternate forms, the values that underlie it, and the social forces that govern its success or failure. Walter Murphy (Department of Politics, Princeton University) prepared an essay on *Constitutions, Constitutionalism and Democracy,* and H.W.O. Okoth-Ogendo (Faculty of Law and Director, Population Studies and Research Institute, University of Nairobi) produced one entitled *Constitutions Without Constitutionalism: Reflections on an African Paradox.* Professors Murphy and Okoth-Ogendo attended each of the institutes as an additional measure of

institutional memory, although Okoth-Ogendo was unfortunately unable to come to Berlin. In addition, several other participants were also invited to attend more than one meeting. As a result, in each setting, there was a small core of participants who had earlier contact with the project and who brought their knowledge of another institute's proceedings to the discussions.

Some themes were common to each institute. These themes included: the nature of constitutional legitimacy; federalism and the consequences of the political distribution of power; religious and ethnic diversity; constitutionalism and positive rights; civil rule and bureaucracy; the role of the military in constitutional government; and the potential tension between constitutionalism and democracy.

With these topics, among others, serving as the focus of discussion, the institutes' most significant accomplishment was the discourse itself. All the formal discussions were recorded, in the original language of the speaker and in translation. The institutes were designed to promote informal discussion, with meal times and evenings reserved for continued interaction. In addition, the ACLS designated a rapporteur prior to the start of each meeting. Thus, for each of the regional institutes, the set of working papers includes a rapporteur's summary.

A final institute, held at the Woodrow Wilson School of International and Public Affairs of Princeton University, November 15-17, 1989, sought to synthesize the results of the regional meetings. It was smaller than the other institutes, and each of the participants had attended at least one or more of the earlier meetings. The meeting was primarily evaluative, but it also considered how the inquiry initiated by the project might continue.

What follows is a summary of the content of the discussions that began in Punta del Este in October 1988 and ended in Princeton in November 1989.

THE ISSUES

The search for definitions of constitutionalism generally led in two directions: 1) toward a formalistic view that relied principally on structural characteristics of constitutional documents, and 2) toward an analysis that treated the particular constitutionalism of a given society as a dynamic process, rooted in underlying social realities. Despite the

obvious differences in these two approaches, they repeatedly intersected.

A distinction between constitutions and constitutionalism was central to the definitional problem. Participants understood that the questions at issue involved more than analyzing constitutional structures or texts, although several participants argued that in contemporary society the legitimacy of the state rests upon the government's adherence to the rule of law. In this somewhat formalistic definition constitutionalism necessarily included such means as judicial review, due process of law, and separation of powers.

While legality and legitimacy emerged as central concepts in attempts to construct a theory of constitutionalism, the ambiguous relationship of constitutionalism to democracy was a constant underlying theme. To what degree are certain democratic principles preconditions for constitutionalism or necessary consequences of it? Is constitutionalism thus bound by the cultural and political values that have become associated with Western liberalism and capitalism?

The question of fundamental rights also received discussion at all the institutes. The debates mirrored the methodological contrast between legal formalism and socio-political analysis. On the subject of human rights, in particular, this took the form of a universalist argument contending with more relativistic claims. Several participants argued that there could be a single, universal standard of rights and that their protection is best assured by means of the formal rule of law. Relativism about rights, according to this argument, is analytically indefensible and politically dangerous.

The alternative position argued that the reality of cultural and economic diversity makes it effectively impossible either to identify a sufficiently comprehensive core of universal human rights, or to adopt uniform sanctions that are appropriate and enforceable across cultures. Rights, like all legal concepts, are embedded in particular historical and cultural circumstances. They cannot be easily transferred from one society to another. Moreover, even the most ardent advocate of a universal standard of human rights will agree that not *all* rights are universal. Analytically, therefore, it is difficult to distinguish universal rights from culturally contingent ones.

The adequacy of "the rule of law" to define constitutionalism also came in for criticism. More than one participant pointed out that the rule of law is meaningless unless one knows who makes the rules and enforces them. Underlying a commitment to the rule of law is a powerful impulse toward stability at all costs. As a result, several of the institutes focused on the other sources of political stability that might derive from class structure and hegemonic social processes or the threat of direct and violent intervention by the military.

Most institute participants agreed that constitutional rule-following, generally, and democratic order, in particular, presuppose the existence of a state and its organization of power. Thus, any understanding of constitutionalism must inevitably involve not only the "rules for making rules," but also local processes of institution building and value formation.

The question of institution building inspired discussions of democratic structures and the alternatives to them. This gave rise to a more general examination of the variety of institutional forms that constitutions establish: democratic frameworks such as parliamentarianism and presidentialism, more authoritarian models such as military regimes and one-party states, as well as others derived from oligarchical and monarchical traditions.

The limitation of theoretical models for a comparative understanding of constitutionalism became clearest in attempts to account for the inherently political nature of constitutionalism. Precisely because much of the attention of this project was placed on nations in political transition, whether in the developing or more developed regions of the world, the conclusion was widely shared that constitutionalism is a dynamic, political process, rather than a fixed mode of distributing power, rights, and duties. As a result, mere structural comparisons of constitutional documents invariably simplify a phenomenon whose nuances are beyond the analytical tools of comparative constitutional law and comparative government, the methodological settings for most previous studies of constitutionalism.

Constitutional legitimacy thus is more often validated by political and social realities than by formal legal criteria. The general acceptance of this view prompted careful consideration of the historical and anthropological realities that underlie the creation, maintenance, and decay

of a constitutional order. In the developing world, ethnicity and nationhood pose especially powerful challenges to modern U.S. and European constitutionalism, which owes its existence to an historical experience quite alien, even antagonistic, to the cultures and societies of Asia and Africa, as well as some of those in Latin America. Throughout the regional institutes, individual nations and their political structures were presented as case studies. There are very few examples of nations sufficiently homogeneous that a popular consensus on constitutional values and institutions has easily formed. The global reality is that most societies are characterized by a pluralism that takes geographic, linguistic, religious, ethnic, and economic forms.

The discussions returned repeatedly to the question of whether non-liberal forms of constitutionalism, arising from local historical experience, might be sketched or imagined. Abstractly, this was not an unreasonable notion; in practice, however, it proved difficult to describe the precise form that such a constitutionalism would take. Nonetheless, the evidence from Asia and Africa, particularly, demanded consideration of amalgamated models that organize power and create rules that are not always "democratic." The Western assumption that constitutionalism and democracy are *necessarily* linked was thus repeatedly and effectively challenged. Yet the colonial legacy of Western institutions and bureaucracies have made wholesale restructuring virtually impossible in most Third World nations. Simultaneously, however, monarchical traditions and indigenous systems of social organization continue to influence popular perceptions of governance and civic responsibility.

Potential responses to these conditions were also considered. Many participants suggested that broad based political socialization is a prerequisite to stable constitutionalism. A theory of constitutional literacy emerged which contends that the polity must be educated about the idea of limited government before such a government can succeed. This view is based, in part, on the principle that constitutionalism imposed from above, rather than being allowed to develop from below, is actually authoritarianism, and has insufficient basis in civil society to be considered a "genuine" constitutionalism.

The form of political arrangements that would emerge from such a popular process might then co-exist with traditional values. In this analysis, constitutionalism need not be bound by or defined by Western

culture. Yet even those who pursued this line of reasoning most thoroughly sometimes argued for appropriating local cultural beliefs and practices to introduce or validate concepts borrowed from the West, such as revising the doctrines of Islamic shari'ah as a way of "constitutionalizing" rights in the Islamic world. Ample evidence was cited of the same mechanism being employed in the reverse: usurping cultural values to avoid constitutional accountability. From Senegal, India, and Botswana came reports of how traditional institutions have been used to legitimize one-party states.

This inevitably led back to the question of what values one considers "constitutional." Are there preconditions for constitutionalism? Must there be a tradition of legalism? Why reform a culture at all if it is so distant from those values? In some analyses, constitutionalism may be, by definition, an imposition of Western political culture on other, non-Western societies and polities. These are exactly the questions at the center of many ongoing political struggles throughout the world. There was widespread recognition among the discussants that constitutionalism, if it is to emerge, must arise out of such struggles and that its final form was not necessarily predictable. As Western liberal constitutionalism developed organically over centuries from the conditions that existed in Europe and the Americas, so may another organic form emerge from contemporary conditions.

Attempts to manipulate this process to balance aspirations for greater popular participation against an uncritical impulse toward governmental stability also were analyzed. The accommodation of military elements as separate political parties, with civilian institutions regulating their budgets, as in the case of Venezuela, was cited as one such example. It was widely agreed that the power of the executive, whatever form it takes, must be limited. This, too, requires political socialization. The system of autonomous regions within a federated framework, such as the one in place in the Catalonian and Basque regions of Spain, was considered as an alternative to the situation in certain African countries where internal conflicts are frustrating the process of state formation and nation building.

The effect of external events and geopolitical conditions on internal conditions also drew extensive attention during the discussions. State building and the development of new national identities are critical and self-conscious activities in many Third World countries. The pace

of national development has, moreover, varied markedly. In some cases, the transition from feudalism, monarchy, and colonialism to industrialization, social diversity, and self-government has been telescoped into mere decades in comparison to the centuries over which such change occurred elsewhere.

One of the effects of this accelerated process and international involvement in it has been for emerging states to concentrate on economic development, frequently at the expense of political liberalization. The recognition that civil and human rights can be made secondary to ensuring economic stability and growth was shared widely across all regions. Guarantees of civil and political rights may be the function of modern states in theory, but social and economic rights are more common aspirations for states in the Third World. Ruling regimes in the developing world, many of them nominally constitutional, have presented the problem as an either/or proposition: either one can have food, or one can have the right to complain about the food, but one cannot have both. Sadly, in too many cases, one can have neither.

The omnipresence of externally driven change reinforces the notion of constitutionalism as a dynamic process. It also echoes repeated assertions that the essential features of the process itself are not constants. As political culture is transformed, the flow and direction of institution building and value formation may fluctuate. Competition within and among social groups can thus erode constitutionalism, even when the constitutional arrangements of a particular society are designed to account for such competition. The pluralist principles of Madison's *Tenth Federalist,* in other words, have tended not to succeed in the new nations of the modern world, however one evaluates their success (or lack of it) in the United States.

The distillation of these varied and energetic discussions approximates a definition of constitutionalism: it revolves around a political process, one that overlaps with democracy in seeking to balance state power and individual and collective rights; it must be viewed in the cultural and historical contexts from which it emanates; and it must contain elements of institution building and public consciousness.

The work of the project isolated questions that demand further study. Throughout the meetings clear directions for further interdisciplinary investigation emerged. There is a profound need for more

rigorous assessment of the historical traditions that underlie modern states, for example, since contemporary political alliances and antipathies are very often rooted in the social history of preceding generations.

Closely allied with this line of inquiry is one that focuses on cultural analysis. There is an intrinsic relationship between culture and constitutionalism, one to which anthropological and sociological approaches can and should be applied. The solutions to ethnic conflicts and the distribution of power among minority groups may lie in an understanding of the internal relationships among the groups that comprise a given polity. Such analyses can also contribute measurably to developing a typology of constitutional cultures, a suggestion explicitly made during the institutes.

The relationship of constitutionalism to social and economic structure was a fundamental theme. What are the economic foundations of political democracy? The repeated pattern of mass poverty and underdevelopment giving rise to authoritarian rule was frequently noted, but only partially analyzed. There are also transnational questions that need to be better understood in terms of the effects the international economy and international institutions can have in both stabilizing and destabilizing constitutional governments.

The need to bring broader theoretical expertise to bear on the problem was cited as well. In philosophy, anthropology, sociology, and history, in particular, there are avenues of research that can contribute significantly to developing a constitutional theory that responds to the socio-political realities of modern states. The confounding question of alternative constitutional visions can perhaps best be addressed through such a more nuanced comparative theoretical approach.

The moral values that underlie both the construction of a constitutional framework and the development of a public consciousness of constitutionalism represent another area for interdisciplinary research. Given the obvious dichotomy revealed in the course of the project between the universalist and relativist positions, pivotal questions, such as whether there are preconditions for constitutionalism and whether international human rights law has a future, may only be adequately addressed through this sort of analysis.

A parallel line of inquiry revolves around the issue of state formation and nation building. Indigenous patterns of culture, along with socioeconomic stratification, distinguish the boundaries of a political map of constitutionalism. How critical is the variable of a strong and independent middle class to the development of constitutionalism?

There were also questions raised from a more practical perspective. The development of legitimacy within the cultural context of a pluralistic society should be understood through informed research and public education programs. The theme of constitutional literacy that arose from the discussions can similarly be addressed through analysis and implementation of training in constitutional practice. The evidence is already overwhelming that grass-roots social movements play critical roles in the creation and stability of constitutional governments. A more careful evaluation of popular struggles can suggest ways of understanding and directing the momentum of these movements. The element of civic action and the role of human rights groups, social organizations, and NGOs, as well as the economic initiatives they produce, is another very important dimension of the study of comparative constitutionalism.

Several approaches were proposed to facilitate further research and its application. A variety of educational methods might be incorporated to help promote the indigenization of constitutionalism, such as workshops to stimulate public consciousness and the development of more specialized training and published materials. The role of the scholar as political actor, although not directly considered in the institutes, was nonetheless a factor present throughout the project. More than one participant observed that the knowledge gained from this sort of comparative approach had implications for the development of constructive activism. On the level of policymaking, the project contributed insights into the processes of institution building. Some argued that comparative constitutionalism has great significance for assisting the process of adapting Western 'constitutional' values, as opposed to cloning them. The dynamics of the comparative methodology itself were considered, with recommendations made that there remains a pressing need for both country-specific and multi-disciplinary analyses.

The primary objectives of the ACLS Comparative Constitutionalism Project were to strengthen alliances among scholars and practitioners

worldwide by providing them with an opportunity to become acquainted with one another, and to encourage them to pursue the study of comparative constitutionalism. There has been very encouraging evidence that these scholarly, networking functions have taken root.

GENERAL INITIATIVES

The ACLS has received an additional grant from the Ford Foundation for the period January-June, 1990, for a Publications Project to complement the work of the Comparative Constitutionalism Project . In three phases, the project will produce: 1) separate volumes by H.W. O. Okoth-Ogendo and Walter Murphy building upon their participation in the project and the overview essays they prepared for it; 2) a volume of selected papers from the entire project to be compiled and edited by the ACLS; and 3) dissemination of duplicated sets of all the working papers in all institute languages from each regional institute, available both from the ACLS and in the regions.

The audio tapes which were made of the discussions from each institute will be kept on deposit in the ACLS offices as an additional resource for continuing study.

One of the functions of the Summary Institute was to elicit suggestions for ways to keep the study of comparative constitutionalism active. Among the ideas generated was the recommendation to engage colleagues in other disciplines not well represented in the institutes, such as economics and anthropology. There was a strong sense that more attention be concentrated on the connections between and among disciplines. The need to promote linkage with existing programs such as the United Nations Research Institute for Social Development was mentioned. Another recommendation was to create a clearinghouse to coordinate research efforts and exchange materials on comparative constitutionalism. Although such a function is beyond the current capacity of the ACLS, other organizations, or one created expressly for this purpose, could undertake such a task, perhaps producing a newsletter once a year and keeping the core network informed and growing.

One example of these sorts of follow-up activities has already been undertaken by Julio Faundez, who participated in the Latin American, African, and Summary Institutes. He has proposed a project on "Law

and Political Transitions." It is an international, interdisciplinary, comparative research project "inspired" by the ACLS Comparative Constitutionalism Project and involving some of the same networks of people. It seeks both academic and practical answers to questions concerning the nature of new regimes in Asia, Africa, Latin America, and Eastern Europe. The design is in two stages: 1) the preparation of national reports from three countries within each of the four regions (12 total) by individual lawyers or political scientists (9-12 months) after which an international seminar will be convened at Faundez' home institution, the University of Warwick, where these researchers will be joined by a dozen other specialists for a five day meeting, and 2) revision of the papers and publication of selected ones.

There have also been numerous other examples of participants who have channeled their experiences with the project into their other scholarly pursuits. In addition to individual scholarly publications in several languages, articles on the project itself have appeared in publications as diverse as the *Bulletin of the International Association for the Philosophy of Law and Social Philosophy* and a mass circulation Japanese news and business journal.

Asian Regional Institute participant Alice Tay introduced a new course on comparative constitutionalism in 1989, "Constitutionalism in the Modern World," at the University of Sydney Law School which drew significantly on the ACLS project working papers. ACLS President Stanley N. Katz has prepared a course on "Constitutionalism and Social Change in the Contemporary World" for his senior seminar at the Woodrow Wilson School for International and Public Affairs of Princeton University in the fall term of 1990. He will be drawing from the entire range of discussions and working papers generated by the project to concentrate on the role of constitutionalism in the transformation of societies outside the United States. Students will be asked to select a particular country or region where rapid change has been occurring on which to focus their examination of these issues. Dov Ronen, who participated in both the Latin American and Asian Regional Institutes, inaugurated a seminar series on "Ethnicity and National Claims and the States" in the spring semester of 1989 at the Harvard University Center for International Affairs.

Latin American Initiatives

A working group comprised of participants in the Punta del Este meeting has formed an association known as PECLA (Programa de Estudios sobre Constitucionalismo Latinoamericano). Since agreeing on the initiative at the close of the October 1988 institute, representatives of PECLA have since met to plan a project on "The Constitution, Constitutionalism and Democracy" with the financial support of the Brazil Field Office of the Ford Foundation. The two-year plan is a direct outgrowth of the Latin American Regional Institute of the ACLS Comparative Constitutionalism Project. The first phase will involve publishing a volume of collected works, including some of the papers from Punta del Este, and will undertake independent, parallel national studies in 1990 culminating in a meeting to compare findings. The ACLS will contribute to the publication effort with a subvention of funds from its Publications Project. A future phase is proposed to design an extra-regional international comparative study and to produce a final conference and publication that would further enhance the study of comparative constitutionalism.

A Center for the Study of Institutions (Centro de Estudios Institucionales) was established in Buenos Aires in mid-1989 by Carlos Nino, who participated in the Latin American, European, and Summary Institutes. The Center has already organized a Buenos Aires symposium on democracy and economics to further the development of interdisciplinary, comparative study and has held a more extensive meeting in collaboration with the Yale Law School in New Haven in March of 1990. There are also discussions underway to formalize a collaboration with the law school at the University of Buenos Aires on political reform and related studies.

Asian Initiatives

The Institute for Public Policy Studies of Thailand, under the leadership of Chai-Anan Samudavanija, one of the project's regional partners for the institute held in Chiangmai, has initiated activities that expand upon the law and development issues that emerged from the discussions there. The subject of constitutionalism is central to a program currently under development by the Institute and its sponsoring agency, the Social Science Association of Thailand. In the first phase of a proposed three-year effort, a conference is planned for 1991 which will

bring together representatives from the countries of Indochina with their colleagues from the rest of Southeast Asia to facilitate exchange and understanding on the model of the ACLS project. This attempt to unify Southeast Asian scholars and policymakers around common social, political, and economic concerns will develop into ongoing working group seminars. In subsequent phases of the project, specific issues will be targeted for joint and parallel program development.

The other ACLS partner organization in Asia, The Law and Society Trust of Sri Lanka, and its Director, Neelan Tiruchelvam, are closely affiliated with another organization doing parallel work. The International Centre of Ethnic Studies has several related activities underway with which topics and participants from the Chiangmai meeting are associated. One aspect is publications; a text on *The Judiciary and Plural Societies* is in production. A series of books is being prepared on federalism, with texts completed for Malaysia and India, and monographs in preparation for Switzerland, Nigeria, Pakistan, and Canada. Research is also underway on a comparative study of electoral systems; and a series of monographs is planned with University Press on *Constitutionalism in Context* taking an interdisciplinary, case study approach.

African Initiatives

The Steering Committee created for the African Regional Institute decided at the close of the Harare meeting to remain intact and to launch an African follow-up project with the partner organization SAPES (Southern African Political Economy Series) as its secretariat. The ACLS has agreed to support the publication of a bilingual volume of the Harare Institute working papers under the Ford grant for publications of materials from the Comparative Constitutionalism Project . An editorial sub-committee of Ibbo Mandaza, Abdullahi An-Na'im, and Boubacar Barry has been created to work with Issa Shivji on editing the papers. The full committee, which also includes Akinola Aguda, Reginald Austin, Francis Deng, and H.W.O. Okoth-Ogendo, proposes to develop further international projects on the subjects of Southern Africa: contested regions, social movements, political regimes and democracy, the nation-state and democracy, regrouping and federalism, the national question and democracy, and social movements and democracy.

Abdullahi An-Na'im is also involved in other activities that intersect with his participation with the project. He was the host of an International Conference on Human Rights in Cross-Cultural Perspectives at the University of Saskatchewan in November 1989 which included topics and individuals from the regional institutes. He is also editing papers from a series of workshops held by the Third World Legal Studies Association in Khartoum and in Belgium on themes parallel to many of the issues of the comparative constitutionalism project.

H.W.O. Okoth-Ogendo, in addition to his book project, hopes to link the network from the project to ongoing inquiries into why constitutions have tended not to succeed in Africa. One of these is an effort in Lesotho which is restricting itself, in Okoth-Ogendo's words, to "the beleaguered states of Southern Africa." Another is his joint project with Gören Hyden at the University of Florida where they have established a program on "Constitutionalism, Governance, and Civil Society". The first phase of the program already underway concerns documentation; the next step will be training.

European Initiatives

The ACLS plans an adjunct event to the Comparative Constitutionalism Project focusing on Eastern Europe. With an additional grant from Ford, and in collaboration with the joint constitutionalism study of the Cardozo Law School and the New School for Social Research, the Institute of State and Law of the Hungarian Academy of Sciences, and the Department of Sociology of Law of Eötvös Loránd University, a multilateral working group will meet in June at a conference designed to establish a core network for future studies on constitutionalism in the region.

THE OUTCOMES

For the ACLS the project has been a signal success, not only because of particular intellectual accomplishments, but also because it helped to launch the organization in a new institutional direction. Until the constitutionalism project, the ACLS was known primarily in this country as a grantmaking organization and as a publisher of scholarly reference books. Those critical activities continue, but the comparative constitutionalism project has also helped the ACLS to demonstrate its competence to manage a large specialized project with worldwide implications.

Further, although the ACLS has always had a significant international presence as the American representative to the Union Académique Internationale and as the administrative oversight body for the Council for International Exchange of Scholars and the International Research & Exchanges Board, the Comparative Constitutionalism Project has permitted the ACLS to expand its role in international scholarship to a very significant degree. First, the project permitted the ACLS to establish direct contact with colleagues and institutions in parts of the world where the organization was relatively unknown. In Europe, moreover, where the ACLS has a more extensive reputation than in Africa, Latin America, and Asia, the ACLS has already begun to reap the benefits of pushing forward a broader and more eclectic set of scholarly concerns. In sum, the network of contacts, the organizational experience, and the intellectual vigor that the project lent to the ACLS could have been acquired in no other way. We believe that the ACLS will continue to benefit from the Comparative Constitutionalism Project for a long time to come.

To the degree that the project as a whole was conceived to serve as a catalyst for international/interdisciplinary exchange of high quality, it has succeeded. The promise of ongoing inquiry on the subject of comparative constitutionalism as reflected in the number of concrete developments that have flowed from the initial activities is but one measure of the project's success. Evaluation of the project was both solicited and offered spontaneously. The ACLS was encouraged repeatedly during the course of several of the discussions to consider holding other meetings on selected sub-topics, such as economic development and constitutionalism or the question of pluralism and migration issues. Although the Council is not the appropriate locus for such continuing activities, the frequency of such suggestions implies that substantial value has been derived from the current series of institutes.

In part to capitalize on the intellectual momentum of the institute experience (and as a measure of formal evaluation), the ACLS directly invited feedback from all participants at the conclusion of each meeting. The most constant theme in participant responses concerned the significance of the focus on constitutionalism as an issue of both immediate and enduring international importance.

Repeated references were also made to the seriousness of the commitment of the ACLS both to the subject matter and to the enterprise itself. In fact, this praise was more a reflection of the dedication and contribution of the participants than a credit to the project's organizers. While the diversity of ideologies and experiences among the participants occasionally made comparisons difficult, the participants repeatedly emphasized the unique value and significance of the comparative perspective upon which the project had insisted from the beginning.

It was never the intention of the project to produce a global definition of constitutionalism or to produce a generalized theory of constitutional change. The primary goals were to stimulate the study of comparative constitutionalism and expand networks of knowledgeable scholars and practitioners committed to collaborating on further inquiry. Significant progress has been made in achieving both these objectives. In addition, the array of topics and approaches that have been identified have contributed to improving the understanding of constitutionalism's varied forms of expression.

Perhaps the most powerful evidence of the value of this undertaking was the sense of responsibility demonstrated by scholars as they sought solutions to issues of immediate global concern. Participants credited this project with enhancing, and in some cases restoring, the legitimacy of constitutionalism to the academic and political agenda. The comparative approach was applauded for expanding a too narrowly defined interpretation of the concept and for highlighting aspects of constitutional study that are routinely neglected.

The most compelling comments were those which expressed gratitude for the opportunity to speak freely among peers on a subject that has, in many parts of the world, virtually disappeared from public discourse for ideological reasons. Wherever the practice of government negates the spirit of law, wherever an environment for sustaining constitutionalism is lacking, this project has demonstrated the value of serious scholarly consideration of constitutionalism in an international, interdisciplinary, and comparative perspective.

APPENDICES

A Project Advisory Panel and Planning Conference Participants
B Regional Steering Committees
C Regional Institute Topics
D Project Overview Essays and Regional Institute Working Papers
E Regional Institute Participants
F Summary Institute Questions for Consideration and Participants
G Regional Institute Participant Biographical Information

Appendix A:
Project Advisory Panel and Project Planning Conference Participants

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Appendix B:
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Appendix C:
Institute Session Topics in Scheduled Order, Paper Writers, and Commentators

Latin American Regional Institute on Comparative Constitutionalism

Constitutionalism in Latin American History and Today
focus on sources of constitutional thought and reform in Latin America as well as upon an analysis of the reasons for and content of the current wave of constitution-making in the region.
Paper Writer: Heraclio Bonilla. Commentators: Boubacar Barry and Peter Smith.

Human Rights in Constitutional Order and in Political Practice in Latin America
focus on analysis of why certain kinds of rights become constitutional matters and others are legislative questions in different societies.
Paper Writer: Hugo Frühling. Commentators: Julio Cotler and Patricia Hyndman.

The Military in the Constitutions of South America
focus on the relationship of the Latin American military to governments and other social groups, and on its place in Latin American society.
Paper Writer: Juan Rial. Commentators: Maria Carrilho and Alain Rouquié.

The Constitutional System of Liberalism and the New Functions of the Modern State
focus on relationship of bureaucracy and federalism to policymaking and planning in contemporary constitutional thought — the practicalities of constitution-making counterposed to larger, more transcendent goals.
Paper Writer: Fábio Konder Comparato. Commentators: H.W.O. Okoth-Ogendo and Csaba Varga.

Transition to Democracy, Corporatism and Constitutional Reform in Latin America
focus on how Latin American constitutions have been reformed in the past and how they may be most effectively reformed in the future.
Paper Writer: Carlos Nino. Commentators: Miriam Campanella and Julio Faundez.

The Democratic Regime and Constitution of Venezuela
focus on the relationship of social structure and non-governmental institutions to constitutionalism. Among the forces discussed: ethnic groups, political parties, the church.
Paper Writer: Miriam Kornblith. Commentators: Atilio Borón and Dov Ronen.

Democracy: Presidential or Parliamentary, Does It Make a Difference?
focus on comparative analysis of presidential and parliamentary regimes, and their many variants, as well as upon structures for representation and direct democracy in Latin American constitutions.
Paper Writer: Juan Linz. Commentators: Bolivar Lamounier and Laurence Whitehead.

Asian Regional Institute on Comparative Constitutionalism

Nationalist Discourse and Constitutionalism
focus on the intellectual and ideological constitution-making in specific Asian contexts; pre- and post-colonial nationalism and its relationship to constitutional arrangements today.
Paper Writer: Tapan Raychaudhuri. Commentators: H.W.O. Okoth-Ogendo and Alice Tay.

The Uses and Usurpations of Constitutional Ideologies
focus on the distinct philosophical elements underlying constitutions in specific national contexts, those which give constitutions legitimacy, and those which sow the seeds of political dissent; the issue of constitutional mystification.
Paper Writer: Radhika Coomeraswamy. Commentators: Walter F. Murphy and L.M. Singhvi.

The Development of Impoverishment: Constitutional Accountability and International Responsibility
focus on the international dimensions of constitutional change, both the internal problems of development that bear on constitutionalism, and the international factors that affect development and have an impact on constitutionalism; the mechanisms that are needed to ensure constitutional accountability.
Paper Writer: Sjahrir. Commentators: Veniamin Chirkin and Chandra Muzaffar.

Cultures and Constitutionalism
focus on the question of national identity formation as drawn from ethnic, religious, and feminist movements in Asian countries; the adaptation of constitutional forms to local circumstances, and the

critiques of constitutionalism that emerge in both traditional and modern Asian societies.
Paper Writer: Upendra Baxi. Commentators: Bolivar Lamounier and Gill-Chin Lim.

Civil and Military Tensions in Constitutionalism in Asia
focus on the interaction between civilian and military approaches to constitutional government in Asian countries, how the tensions between the military and civilians are manifested, and what means can be adopted to ease that relationship.
Paper Writer: Kamal Hossain. Commentators: Atilio Borón and Chai-Anan Samudvanija.

Social Movements, Constitutional Arrangements, and the Realization of Human Rights
focus on the issue of empowerment of social groups, how human rights can be constitutionally enforced in different national contexts, and the role of governmental and non-governmental actors in human rights advocacy.
Paper Writer: Daniel Lev. Commentators: Yude Henteleff and T. Mulya Lubis.

Panel: The Future of Constitutionalism and the Nature of the Polity
focus on the future role of constitutions in Asia, especially as they increasingly operate in a context of technological advances: the future preparedness of constitutionalism in Asian countries to deal with secularism, pluralism, and nationhood.
Paper Writers: Carmencita Aguilar, Yash Ghai, Abdurrahman Wahid.

African Regional Institute on Comparative Constitutionalism
"Constitutionalism and the State in Africa"

The Experience of Constitutionalism and the State in African Society
focus on the socio-economic and political contexts which shape the phenomenon of constitutionalism as it exists in Africa; an examination of the modern state.
Paper Writer: Issa Shivji.

Nation-Building and Constitutionalism in Africa
focus on the process of nation-building; the means for asserting national identity adopted by countries with no pre-colonial history of nationhood as well as states with a long tradition of nationhood.
Paper Writer: Abdelali Doumou. National Example Paper Writers: Tahseen Basheer (Egypt), Henriette Diabate (Côte d'Ivoire).

The National Question, Secession, and Constitutionalism
focus on the degree to which a population characterized by cultural, linguistic, and religious differences can be unified under a single constitutional framework; strategies which have proven successful in forging a shared national identity and examples of internal conflicts and secessionist movements.
Paper Writer: Abdullahi An-Na'im. National Example Paper Writers: Asmalash Beyene (Ethiopia), Francis Deng (Sudan), Ernest Wamba-dia-Wamba (Zaire).

The Military and Constitutionalism in Africa
focus on the role of the military in political life; an evaluation of regimes which have embraced constitutionalism, as well as those which have ignored or rejected the idea.
Paper Writer: Eboe Hutchful. National Example Paper Writers: Akinola Aguda (Nigeria), Lansiné Kaba (Guinea), K.A. Maope (Lesotho).

One Party and Multi-Party Systems in African Constitutionalism
focus on the experiences of states with one-party and with multi-party systems of government; a comparison of the similarities and differences of their respective constitutional arrangements.
Paper Writer: Boubacar Barry. National Example Paper Writers: Athaliah Molokomme (Botswana), Charles Mwalimu (Zambia), Yérim Thiam (Senegal).

Social Movements and Constitutionalism in Africa
focus on the significance of cultural legitimacy in the acceptance or rejection of a constitution; the manifestation of power and powerlessness in contemporary social structures and social movements.
Paper Writer: Mahmood Mamdani. National Example Paper Writers: Mahmoud Ben Romdhane (Tunisia), Gita Honwana Welch (Mozambique).

Movements for National Liberation and Constitutionalism
focus on contempory responses to post-colonialism; the conceptual frameworks within which efforts toward national liberation are conceived, and the relationship of constitutionalism to those efforts.
Paper Writer: Ibbo Mandaza. National Example Paper Writers: Reginald Austin (Zimbabwe), Peter Katjavivi (Namibia), Samuel Nolutshungu (South Africa).

Constitutionalism in Europe since 1945: Reconstruction and Reappraisal
focus on a review of the post-war experiences of constitution-building and -rebuilding in Europe; the political arrangements having evolved in the search for stability in government and for safeguards against abuse of power.
Paper Writer: Nevil Johnson. Commentator: Gerhard Casper.

The Parliamentary Crisis and How to Strengthen Democracy
focus on the development and status of parliamentarianism within the context of post-war development, and on how individual rights have fared in light of the development of a strong state; the effect of increased democratization on the relationships among political parties.
Paper Writer: Klaus von Beyme. Commentator: Carlos Nino.

The Role of Constitutional Courts in the Protection of Individual Rights
focus on the role of the constitutional courts with regard to civil rights protection, examining the court's function in the context of constitutionalism in modern-day Europe, and considering the mechanisms it employs to ensure individual rights.
Paper Writer: Louis Favoreu. Commentator: Walter Murphy.

Federalism and Decentralization in Europe since World War II
focus on the phenomenon of a decentralized, federal model of government in the reconstructed constitutionalism of Europe, in particular its relevance to the current reforms being undertaken in Eastern Europe.
Paper Writer: Peter Hardi. Commentator: Knud Krakau.

Iberian Case Study: The Constitutionalism of Redemocratization
focus on the problem of transition from dictatorship to democracy as exemplified by the experiences of Spain and Portugal; the origins of the problem, the development of the processes, and the constitutional implications of the solutions.
Paper Writer: Jordi Solé Tura. Commentator: Juan Rial.

Constitutionalism: The European Community and State Sovereignty
focus on the integration of Europe and its constitutional significance; the emerging extra-constitutional political system of an integrated Europe, and the phenomenon of legislation by administration and those elements which legitimize it.
Paper Writer: Joseph H.H. Weiler. Commentator: Hans-Peter Schneider.

European Courts and Human Rights
focus on the human rights function of the European constitutional court system, and the degree to which it serves to unify, or to create conflict with regard to state implementation; the instruments that exist on a supra-national level, and their relevance to the search for a European constitutionalism.
Paper Writer: Ludger Kühnhardt. Commentator: Yash Ghai.

Constitutionalism of the European Community and Public Opinion
focus on the social and economic consequences of legislation by the Community bureaucracy, particularly as measured in the perception of responsiveness of Community states to their citizens; the influence of public opinion on politics, and the public affairs aspect of the development of integration in Europe.
Paper Writer: Alexander von Brünneck. Commentator: Marie-France Toinet.

Panel: Constitutionalism and Survival

Constitutionalism and Survival
focus on the relevance of constitutionalism to Europe given the changes wrought by integration and growing supra-national bureaucracy; the limits of constitutionalism and its responsiveness to issues crossing national boundaries, and problems which challenge state constitutionalism, particularly issues of peace and mutual security.
Paper Writer: Rita Tullberg. Commentator: Miriam Campanella.

Environmental Issues and Constitutionalism
focus on the problem of the environment and constitutionalism's future in an increasingly integrated European Community, concentrating on issues which affect the health and safety of countries throughout Europe, and the constitutional preparedness of these countries to assume social responsibility for them.
Paper Writer: Luciano Gallino.

Intra-Community Migration and Constitutionalism
focus on migration, another issue critical to the survival of an integrated Europe and constitutionalism; attention to these population shifts motivated by political unrest and economic stability, and to the restrictive access to naturalization and asylum frequently encountered.
Paper Writer: Aristide Zolberg.

Appendix D:
Project Overview Essays and Institute Working Papers

Overview Essays

Constitutions, Constitutionalism, and Democracy
Walter F. Murphy

Constitutions without Constitutionalism: Reflections on an African Political Paradox
H.W.O. Okoth Ogendo

Latin American Regional Institute on Comparative Constitutionalism

Constitutionalism in Latin American History and Today
Heraclio Bonilla

The Constitutional System of Liberalism and the New Functions of the Modern State
Fábio Konder Comparato

Human Rights in Constitutional Order and in Political Practice in Latin America
Hugo Frühling

The Democratic Regime and Constitution of Venezuela
Miriam Kornblith

Democracy: Presidential or Parliamentary, Does It Make a Difference?
Juan Linz

Transition to Democracy, Corporatism and Constitutional Reform in Latin America
Carlos Santiago Nino

The Military in the Constitutions of South America
Juan Rial

Rapporteur's Summary
Luis E. González

Asian Regional Institute on Comparative Constitutionalism

THE FUTURE OF CONSTITUTIONALISM AND THE NATURE OF THE POLITY
Carmencita T. Aguilar

CULTURES AND CONSTITUTIONALISM
Upendra Baxi

USES AND USURPATION OF CONSTITUTIONAL IDEOLOGIES
Radhika Coomeraswamy

CONSTITUTIONALISM: CHALLENGES OF RELIGION, PLURALISM AND NATIONHOOD
Yash Ghai

CIVIL AND MILITARY TENSIONS IN CONSTITUTIONALISM IN ASIA
Kamal Hossain

SOCIAL MOVEMENTS, CONSTITUTIONALISM, AND HUMAN RIGHTS
Daniel S. Lev

CONSTITUTIONALISM AND THE NATIONALIST DISCOURSE: THE INDIAN EXPERIENCE
Tapan Raychaudhuri

THE DEVELOPMENT OF IMPOVERISHMENT: LESSONS FROM INDONESIA
Sjahrir

THE FUTURE OF CONSTITUTIONALISM AND THE NATURE OF THE POLITY: THE CASE OF INDONESIA'S 1945 CONSTITUTION
Abdurrahman Wahid

RAPPORTEUR'S SUMMARY
Douglas Greenberg

African Regional Institute on Comparative Constitutionalism "The State and Constitutionalism in Africa"

STATE AND CONSTITUTIONALISM IN AFRICA: A NEW DEMOCRATIC PERSPECTIVE (KEYNOTE PAPER)
Issa G. Shivji

THE NATIONAL QUESTION, SECESSION AND CONSTITUTIONALISM: THE MEDIATION OF COMPETING CLAIMS TO SELF-DETERMINATION
Abdullahi Ahmed An-Na'im

THE NATIONALITY QUESTION, SECESSION AND CONSTITUTIONALISM: THE CASE OF ETHIOPIA
Asmalash Beyene

MEDIATING COMPETING CLAIMS TO SELF-DETERMINATION: THE CASE OF THE SUDAN
Francis Deng

Zaire: The National Question, Secessions and Constitutionalism
Ernest Wamba-dia-Wamba

One Party and Multi-Party Systems in African Constitutionalism
Boubacar Barry

The Multi-Party System in Botswana
Athaliah Molokomme

One Party Systems in African Constitutionalism: A Case Analysis of Zambian Experience
Charles Mwalimu

Multi-Party Systems in Africa: The Example of Senegal
Yêrim Thiam

The Dilemma of the State in Africa: Economic Liberalism and Political Liberalization
Abdelali Doumou

Nation-Building and Constitutionalism in Africa: The Egyptian Experience
Tahseen M. Basheer

The Process of Nation and Constitution Building in Côte d'Ivoire
Henriette Diabate

Reconstructing Political Space: Militarism and Constitutionalism in Africa
Eboe Hutchful

The Military and Constitutionalism in Africa: The Nigerian Experience
Akinola Aguda

Constitutionalism in Guinea under the Military
Lansiné Kaba

The Military and Constitutionalism in Lesotho
K.A. Maope

Social Movements and Constitutionalism in the African Context
Mahmood Mamdani

Constitutionalism and Social Movements in Tunisia
Mahmoud Ben Romdhane

Social Movements and Constitutionalism: The Case of Mozambique
Gita B. Honwana Welch

Movements for National Liberation and Constitutionalism in Southern Africa
Ibbo Mandaza

The National Liberation Movement and The State in Zimbabwe: Constitutions, Constitutionalism and Class
Reginald Austin

Movements for National Liberation and Constitutionalism: The Nambian Case
Peter Katjavivi

The Constitutional Question in South Africa
Samuel Nolutshungu

Rapporteurs' Summary
Mapopa Chipeta, Gilbert Mudenda, Lloyd Shachikonye

European Regional Institute on Comparative Constitutionalism

Constitutional Courts and Individual Rights
Louis Favoreu

Improving Environment-Related Decisions through Models of the Interactions between Sciences
Luciano Gallino

The Significance of Constitutionalism in Hungarian Political Changes
Peter Hardi

Constitutionalism in Europe since 1945: Reconstruction and Reappraisal
Nevil Johnson

European Courts and Human Rights
Ludger Kühnhardt

Iberian Case Study: The Constitutionalism of Redemocratization
Jordi Solé Tura

Constitutionalism and Survival
Rita Tullberg

Parliamentary Crisis and How to Strengthen Democracy
Klaus von Beyme

Constitutionalism of the European Community and Public Opinion
Alexander von Brünneck

Constitutionalism: The European Community and State Sovereignty
Joseph H.H. Weiler

Labor Migrations, Refugees, and Constitutionalism: Challenges and Opportunities for a New Europe
Aristide R. Zolberg

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Appendix E:
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Appendix F:
Summary Institute Questions for Consideration, and Participants

Questions for Consideration

How would you define constitutionalism as it operates in your region of the world?

How does this experience with constitutionalism of your region compare with that of other regions as presented at the institute(s) you attended?

In developing your thoughts further on constitutionalism within your region, or comparatively across regions, what other aspects of the phenomenon of constitutionalism would you want to explore; for example, have its social, cultural, and economic aspects been sufficiently explored?

Has your view of constitutionalism changed in any significant way as a result of your experience with the ACLS/Ford project on comparative constitutionalism?

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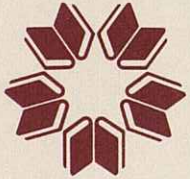
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