You Cannot Vote Yourself a Mandate

Somewhere today, a group of committed exiles is drafting a constitution for a homeland whose people cannot freely vote. The research may be excellent. The participants may be brave, credentialed, and sincere. And if that group begins to speak as though it holds a mandate from the people it cannot consult, it will have crossed the only line that matters in constitution-making: the line between preparing a constitution and presuming to issue one. No amount of dedication crosses it. A mandate cannot be self-conferred.

Five powers, one firewall

The confusion dissolves once five different powers are kept apart. The power of initiative belongs to anyone: any voluntary group may propose constitutional research, and doing so creates no power over anyone else. Internal organizational authorization binds only those who joined voluntarily and accepted the charter; its effect stops at the organization's own boundary. Consultative power allows a body to collect and publish the views of participants — which represent those who actually took part, and no one else. Text-drafting power produces non-binding alternatives that anyone may comment on and no one must obey. The fifth power — formally making and ratifying a constitution with generally binding force — can be acquired only under the law in force at the time and through an appropriate democratic procedure. None of the first four powers gives rise to the fifth. Not stacked together, not over time, not by acclamation.

The errors that pretend otherwise are familiar enough to catalogue. Inferring the will of a whole province from the number of consultation participants is a substitution of the denominator: even a turnout of one hundred percent among exile participants is not the will of a province whose residents cannot vote, and the honest report publishes the real denominator, the eligibility conditions, and the regions left blank. Passing off an organization's internal election as a statutory election is a substitution of nature. Claiming present validity for a historical text is a substitution of time. Claiming statutory power from a research draft is a substitution of legal effect. Each is a way of writing "we have lawfully obtained this" when the truth is "we hope the future will be like this."

History already ran this experiment

Guangdong, 1921. The draft provincial constitution was, on its own terms, procedurally serious: Article 135 provided that the law would be decided by a general vote of the citizens of the whole province and take effect on promulgation. Critics of today's preparatory bodies sometimes treat that clause as evidence that the constitution was ratified. It is evidence of the opposite. On 19 December 1921 the Provincial Assembly completed only the second reading; the draft never passed a third reading, the citizens' vote was never held, and the constitution never took effect. The clause describes a procedure its authors intended. History records a procedure that never happened. Reading a normative text as an accomplished fact is the most common and most dangerous error in constitutional history — and no exile consultative vote, a century later, may pass itself off as the province-wide ratification that draft imagined.

Virginia, 1776, supplies the mirror image. The Fifth Virginia Convention adopted a constitution on its own authority on 29 June 1776, without a separate ratifying referendum — proof that constitution-making by a representative convention is a real historical form. But the franchise of the time was limited to adult white men who owned land, deficient in representativeness by any modern standard. The case shows that the form existed; it cannot show that constitution-making without democratic ratification is legitimate today.

Bodies that know what they are not

What, then, may preparatory bodies legitimately do? Research committees may catalogue materials, propose alternatives, and verify facts — claiming no representativeness, holding no "election" under any name. Consultative conferences may deliberate and record majority and minority views, provided any internal election is publicly declared to choose delegates of the registered participants only. A formal constituent assembly arises only when a valid legal basis and conditions for free and fair elections exist at the same time. These are a functional division, not a ladder of promotion: an excellent research committee does not grow into a constituent assembly, and a lively conference does not ripen into a mandate. A credible preparatory body also accepts a negative list — no legislation, no taxation, no police or armed forces, no courts, no compulsory determinations of citizenship — and submits to safeguards for the participants inside the country who bear real risks for taking part, whose safety outranks any improvement in the data.

Six thresholds stand between consultation and ratification: guaranteed freedoms and participant safety; public, contestable rules on eligibility and districts; a constitution-making body established by law; publication of the full draft and its fiscal impact; independent election administration and remedies; and ratification under the applicable higher law. Until they are passed — each separately, none waivable by enthusiasm — preparatory work remains what it honestly is: paving, not power. Being able to discuss a future constitutional order lawfully is not the same as having lawfully acquired the right to make one. The quality of a text cannot substitute for the completion of a procedure, and the first duty of anyone preparing a democratic constitution is to refuse to fake the procedure's result.

Read the full paper: From Exile Consultation to Democratic Constitution-Making