

The three family constitution archetypes¹ and a wise alternative

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If you are an adviser helping a family to consider the creation of a family constitution, or if you are involved in helping a family through the process of creating one, an important question to ask yourself and your client family is “what kind of family constitution are you going to create?”

The concept of creating a formalised written family constitution has become generally accepted as representing a key best practice for family enterprises. As such we should now be at the stage where we can move past the question of “what are the benefits of developing a constitution?”, to a more detailed analysis of common family constitution ‘archetypes’ – basic models or patterns that can often be recognised.

The following framework assumes there are three basic family constitution archetypes:

- the first is the constitution that is a ‘Monument to the Founder’²;
- the second is the ‘Family First Constitution’; and
- the third is the ‘Expert Structure’.

Each of these three main archetypes has its strengths and advantages, but each also has its shadow side. It will be a helpful process to name and explore these archetypes with a family that are developing or reviewing a constitution – or to identify if one of these archetypes seems to fit the path the family are taking – to help them to be more conscious of the choice they are making so that they will carefully reflect on both the positive aspects as well as the potentially negative aspects.

In addition to these three archetypes, there is a fourth kind of family constitution which is the ‘Wise Constitution’. To create a Wise Constitution, a balancing act is required. A Wise Constitution will represent the right combination of the virtues of Will, Love and Intelligence.

What is a family constitution?

Before going into the specifics of the three archetypes, it is worth briefly reflecting on the term ‘family constitution’ (or ‘family charter’) in general, with respect to which there is no standard definition.

- A family constitution establishes a framework for how a family will make joint decisions together, in other words it is concerned with how the family is governed. It will typically address the mission, vision and values of the

family and how conflicts are to be managed. It might have a section on the values and principles of the wealth creator. It will likely involve a clarification of roles and responsibilities, an examination of the boundaries between family, ownership and business, and it might create or define communication forums and decision-making bodies. It is advisable when creating a family constitution to consider making provision for the role of family elders.

- A family constitution is often thought of as being a single document that covers all of the matters described above, but a family does not have to adopt that approach. An alternative is for the governance documentation for a family to comprise a collection of separate documents such as a family mission statement and values statement, and separate charters for family institutions, eg the family council, family assembly, family elders. In addition, a charter for the board or boards of family companies will be important documents, as well as charters defining any committees created under the terms of any family trusts. This later approach could allow for a more organic and iterative approach towards developing the family and corporate governance documentation.
- Often families will draw a contrast between a constitution – which expresses the spirit of the family – and its agreements and policies, which are its ‘laws’. The constitution is the framework or the foundation of the laws. Laws will change from time to time, depending on circumstances. A constitution is much more enduring and less likely to change. If the ‘laws’ are not in accord with the constitution (written or unwritten) it is much more likely that the laws will be ignored or voided than that the constitution will be overturned. That’s why coming up with agreements or ‘laws’ in the absence of doing the work around the constitution is so often fruitless.
- It is assumed that a constitution will be a written document (or collection of documents including family policies), but then there is the observation that “every family has its own natural family constitution – it is just not in writing”. Therefore, when talking about a

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formal family constitution perhaps it is better to think in terms of a joint decision-making model that has been discussed and articulated so that everyone in the family is on the same page together. Of course, having it in writing would be a significant benefit.

- The process of creating a family constitution is to be emphasised. “It is the process that counts rather than the product.” According to family wealth expert Jay Hughes, it is a process of creating a generational, voluntary horizontal social compact together, as a family of mature adults who have individuated and differentiated. The process should be a ‘Fair Process’.³ The individual family members involved need to have the capacity to listen to each other ‘with empathy’ in order to be able to create an effective constitution.
- Finally, it is usually assumed that a family constitution is not a legally binding document, but this need not always be the case⁴ and in any event it would be normal to expect that there will be supporting legal agreements, such as a shareholders’ agreement, or the terms of a family trust deed, that are intended to provide support for the terms of the constitution. The constitution might include a section that summarises the legal agreements and explains their intended purpose in plain language. It is important to make sure that the legal agreements and the terms of the constitution are in alignment.

The first archetype: the Monument to the Founder

The Monument to the Founder is a monument created to honour the extraordinary achievements of the heroic wealth creator, so that his or her legacy will last ‘for generations’. The Monument to the Founder can be created by the Founder, but it can also be created by the sibling generation in honour of the Founder.

Characteristics

What is the defining characteristic of such Monuments and of wealth-creating Founders in general? It is strength of will power, determination and resolve; they embody the virtue of Will. This is what you expect from a successful patriarch, one who

is used to being the sole decision maker; one who is used to ‘centralised control’ of family, ownership and business; one who is able to get things done.

The positive side

The constitution that is a Monument to the Founder has its benefits. The defining, strong will power can bring family members to the table to work on the constitution together, and can ensure that the project gets done. The Founder might be careful to take steps to protect the business from the family. The Founder might be very ‘business first’ in his philosophy. Being familiar with patriarchal control, the constitution might seek to perpetuate this model by ensuring (with the help of the supporting legal structure and/or agreements) that there is a clear mechanism for the Founder’s designated successors to continue to exercise the voting control over the family business or wealth. Indeed, rather than a family-wide process, the task force that creates the constitution might be limited to these family business leaders. The constitution will go into detail as to the values the Founder wishes to perpetuate and the principles that he wants his business to follow. With the Monument, the designer(s) of the constitution are often willing to spend time and effort to think very carefully about its terms and conditions and they will likely be thinking far into the future – there will be a clear vision, and a clear structure.

The shadow side

However, the bigger the Monument to the Founder, the bigger the shadow it can cast. Typically, the creation of such a Monument does not call for and does not take into account the importance of family emotional commitment or engagement. It might be created in a top-down fashion without any real participation from the members of the rising generation of the family. The focus will often only be on family financial capital – the most important thing is to protect the business or to protect the money – ignoring family human and intellectual capital. The Founder is often able to operate without having to be accountable to either family or owners and so the Monument created may seek to entrench a similar autocratic style of governance system, one where those who take on decision-making authorities are not (or do not see themselves as being) accountable to the

rest of the family members. Often Monuments are restrictive and don't provide for easy or fair exit mechanisms. A key characteristic of the Monument to the Founder is an unwillingness to have to deal with the 'messiness' of divergent voices and opinions. Another problem with Monuments is that founders typically do not like transparency – they prefer secrecy in order to maximise their control.

As an example of the shadow side of the Monument, it is easy to imagine a complex, restrictive and long-term trust structure and constitution being designed that limits the ability to exit, that limits the ability to have a voice, and that was designed without any real input from the beneficiaries. However, nothing lasts forever.

The second archetype: the Family First Constitution

The second common archetype is the Family First Constitution, the positive characteristics of which can be summarised in a single word: love, and more specifically, love for family. The Family First Constitution is a reflection of the virtue of Love.

Characteristics

The Family First Constitution will put an emphasis on the intangibles of family mission, vision, values and family principles, but might not go into the specifics of forums, roles, responsibilities, exit and conflicts. It is a constitution that puts a premium on the family values of togetherness, equality and harmony. An example of a policy that would fit with this archetype would be that "every sibling receives the same salary". Another example might be "every family member is entitled to the benefit of the doubt when it comes to jobs in the business". Composition of the corporate board might be based on branch representation rather than required skill set.

The positive side

The kind of family that create this kind of constitution might themselves be inwardly focused and self-reliant. In extreme cases the family might be enmeshed. Even in that scenario there are benefits to the Family First Constitution. First it has been said that there are no right or wrong answers when it

comes to designing a constitution – the only answers that matter are those that the family devise for themselves. Therefore, the Family First Constitution can be beneficial to the family that created it where the 'rules of the road' have been articulated, are understood and are consistently applied. This second kind of constitution can also be expected to encourage a sense of belonging, a supportive emotional environment, a focus on finding roles for family members to play. It won't have the problems with emotional commitment or disengagement that lie at the foot of the Monument to the Founder.

The shadow side

The Family First Constitution also has its shadow side. An insistence on family harmony as a value can quickly translate into conflict avoidance and the avoidance of difficult conversations. An insistence on togetherness at all costs can stifle diversity within the family and send the message that individual values do not count. Enmeshment is not healthy. It can also send the message that if you are not a part of the business then you are not a part of the family. A focus on equality of family members can lead to 'too many cooks in the kitchen' and 'no structure chart' for the business. Remember that in family firms, fairness does not always mean equality. Conflicts can also arise with the Family First Constitution over issues such as birth order versus competency, and where different family members contribute to the business to different extents. Family system rules will apply in the management system. The Family First Constitution can often work for some sibling partnerships, especially where all of the siblings are in management, but is hard to maintain into the third generation and beyond.

Investing in trust and communication

If a family are really serious about putting family first they will invest in trust and communication. Just because a family see themselves as being committed to working together and having a shared vision and values, and a commitment to their legacy, this does not mean that they have the relationship skills to make it work. A necessary precondition for a family to form a family council and work on their constitution

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and policies together is the ability to listen with empathy. How does a family invest in trust and communication? The family could do a programme together on learning how to have difficult conversations or non-violent communication. The family council could engage coaches or counsellors to work with individual family members on relationship issues. The family meeting agenda would include time for listening skills, active constructive responding, and to teach family members other relationship skills and tools.

Investing in the dreams of the rising generation

There is another way of thinking about putting family first. Jay Hughes says that if a family want to beat the shirt sleeves to shirt sleeves proverb and flourish, the most important place to focus on is the family circle, and see that as being more important than the ownership circle, with the least important being the management circle. (Those who design Monuments to the Founder will tend to reverse this order of priority and put all of their focus on the management circle, and practically none on the family circle.) This means using financial capital to invest in the growth of the individual family members. A practical way to start to put this philosophy into practice is to help each individual family member to 'know themselves' using an assessment process⁵ and working with experienced coaches and counsellors. Hughes is essentially saying that the strongest foundation that a family can provide for their family governance system is a group of mature adults who have differentiated and individuated and who know themselves including knowing their own vocation or calling. Hughes summarises by saying that the mission of a family that want to postpone the proverb is simply to invest in the dreams of the rising generation.

The third archetype: the Expert Structure

The third common kind of constitution is the Expert Structure. The Expert Structure reflects a good model based on all of the latest best practices in terms of both family and business governance. The Expert Structure is the embodiment of the virtue of Intelligence.

Characteristics of the Expert Structure

As the first part of the name implies, with the Expert Structure, there is likely to be one or more expert advisers involved helping to design the family constitution. An 'expert' adviser is a subject matter expert, though this does not preclude such an adviser from having deep experience and wisdom. Traditional professional advice is typically provided as expert advice. Expert advice and advisers can be contrasted with a 'helping relationship' or with advice on process. At the extreme an expert adviser is one who

relies more on his or her own expert answers to provide to the family, than on a process of helping the family develop their own answers.

As the second part of the name implies, with this third archetype there can also be an emphasis put on 'the structure' which can refer to either the use of trusts and vehicles like private trustee companies and other ownership vehicles to 'bring structure' to the governance arrangements; or sophisticated governance structures, or both of these.

The positive side

The Expert Structure is intelligent. It can reflect an effort by the family to seek out the best possible advice to guide them through the constitution process and to achieve their mission and vision. It can also reflect an inclination to making sure that the smartest, most competent people are appointed to decision-making roles within the Expert Structure. Intelligence includes thinking about appropriate checks and balances, and addressing the relevant tax, legal, matrimonial and succession issues. It could mean bringing a 'prevention focus' mindset to the planning process,⁶ which is a valid and critical mindset. It can also mean having a well-thought through philosophy, guiding principles, processes and practices that are intended to help the family to achieve its mission and to flourish as a family. The best aspect of this archetype is if in making the constitution the family members get to thoughtfully consider all of the appropriate options and relevant best practices and to debate and make an informed decision. Intelligence is also manifested through a commitment to learning. Jay Hughes stresses that with the advent of the new Fourth Industrial economy, for a family to build resilience and adapt to an ever-increasing rate of change, it is critical that it view itself as a learning organisation.

The shadow side

When faced with an Expert Structure, the questions to reflect on, and which point to its shadow side, will be 'will they' and 'can they' implement it? Will the family members be able to make this structure work? Will the family members be able to integrate this structure into their family system? Or will it just end up being put in the bottom drawer and forgotten about? Will they understand it and will they put in the effort required to learn how the governance system and the structure works? When helping a family with a family constitution, it is critically important to pay attention to the implementation stage.

The Expert Structure might be strong in terms of good theory, but it might get put into the bottom drawer because it fails to take into account family dynamics⁷ and the capacity of the family members to

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learn and evolve. A successful guiding principle is always that 'evolution is better than revolution'.

It is also important to reflect on the composition of the advisers and non-family professionals working with the family. Are all of the advisers traditional expert advisers? How many members of the professional team are professionally qualified to work with the qualitative issues involved with growing family human, intellectual, social and spiritual capital? If the technical advisers and non-family professionals are not balanced out with those with skills and experience in addressing the qualitative capitals of the family, then don't expect family qualitative capitals, and the capacity of the family members, to grow.

The intelligently designed Expert Structure can sometimes also fail (like the Monument to the Founder) in the area where the Family First Constitution is strong, which is by overlooking the importance of cultivating family emotional commitment. Where there is a lack of emotional commitment the basic problem is one of engagement.

The Family Constitution Product

There is a variation on the Expert Structure archetype which is the 'Product' – the 'off-the-shelf constitution'. As its name implies, the Product is all product and no process and predictably will not be something that the family can integrate and implement. Avoid constitutions that are merely products.

When studying constitutions, it is common for families to ask to see examples and templates. It is a major mistake, however, for a family to simply take a template or someone else's constitution, and adopt it as its own. Sometimes family leaders have the mentality that they need a family constitution and it becomes one more task on their task list that they want to complete as quickly and efficiently as possible, so they can get back to business as usual. As mentioned, it's the process not the product that matters. It is helpful to remember that with a family constitution there is an inverse relationship between the time spent developing a constitution and agreeing its terms, and the success of the family implementing the constitution. One of the families in Hong Kong

that have successfully crafted their own family constitution tell their peers that it is always an ongoing process, it never ends. Rather than the family business leader being responsible for the family constitution, identify a family champion who has the time and temperament to engage the whole family in a fair process.

Pathways to balance

The three family constitution archetypes each embody Will, Love and Intelligence respectively. As highlighted, each of these archetypes has both a positive side and a shadow side to it. How can a family avoid the potential shadow side of their family constitution? Following are a total of 12 suggested pathways to finding balance for each of the three archetypes.

The *Monument to the Founder* is characterised by clear decisive strong leadership; the importance of protecting the business and respecting the experience and wisdom of the family wealth creator. To avoid the shadow side of the Monument:

- Ensure there is a family champion or family leader from behind who is committed to family engagement and involvement in the governance process.
- Give growing the qualitative capitals of the family at least equal priority to the focus on the business or financial capital.
- Differentiate between vote and voice in the decision-making processes. This is an aspect of Fair Process. Giving family members who are not involved in decision-making roles a communication forum and a voice, is not the same thing as allowing them to insist on their ideas being implemented.
- Ensure there are family elders who are respected by both the older generation as well as the rising generation. Family elders can help to build a bridge between generations.
- Make sure the constitution includes a mechanism to make amendments and addresses the question of the rights of family members as citizens under the constitution.⁸ An effective family governance structure is one that is based on a voluntary decision to be a participant.

The *Family First Constitution* might be characterised by engagement and a commitment to invest in family human capital. To avoid the shadow side of the Family First Constitution:

- Build strong boundaries between the family and its enterprises; have a commitment towards professionalism, and again following the principles of Fair Process in decision making. Family voice supports family engagement, but it does not mean the boundary between ownership and management is ignored. A family can adopt an Enterprising Family Philosophy and invest heavily in the development of its human intellectual and social capital and still insist on professional qualifications for all roles, whether family, corporate governance or business roles. As a rule of thumb, Jay Hughes advises that you should only put family members into roles for which they have a demonstrated commitment and calling.
- When the family invests in developing the qualitative skills and capacities of its individual family members they become mature contributors to both the family and corporate governance roles.
- Invest in increasing the skill set of the family members to have difficult conversations, in working together collaboratively, in effective decision making and to resolve conflicts.
- Adopt the philosophy of ‘both together and apart’. Encourage family members to go on their own path, to stand on their own feet independently of the family.

The Expert Structure might be characterised by best practices, complexity and reliance on professional advisers. To avoid the shadow side of the Expert Structure:

- Create a multi-disciplinary team of advisers that includes a mix of both expert technical and quantitative advisers, as well as experienced qualitative advisers, including individuals from the helping professions, and process consultants.
- Commit to family learning and development, create a family learning committee and develop a curriculum for family learning experiences. The family members have to learn about the governance and ownership structures.
- Remember and apply the maxims:
 - “Evolution is better than revolution”;
 - “Family culture eats structure for breakfast”;
 - and
 - “With family governance, there are no right or wrong answers, the best answers are the ones that the family members come up with

on their own after thoughtful consideration of the pros and cons”.

In all, 12 Pathways are important for each of the archetypes, though families and their advisers should focus first on the ones suggested for each particular archetype, before they review and work on the rest of the Pathways.

The Wise Constitution

So what is the best kind of family constitution?

The best kind is one that embodies wisdom, and hence it can be called the Wise Constitution. The Wise Constitution is one that seeks to balance Will, Love and Intelligence.

First, wisdom implies taking the time to be aware of the bigger picture and to be aware of the culture and capacity and skills of the client family, as well as the transitions the family are facing.

Second, the wise approach to developing a family constitution will include considering whether there is any one of the three archetypes at play; to consider which direction it looks like the family are going in, to help the family to be conscious of that direction, to get the family to reflect on the negative or shadow side of that approach, and to consider how to avoid or to compensate for those possible downsides.

A Wise Constitution will involve an effort to integrate the best features of the three archetypes that have been discussed, the positive sides, recognising that there will need to be some trade-offs and compromises and perhaps paradoxical solutions to be developed to achieve a balance. To achieve balance first work with the Pathways to Balance recommended for the specific archetype then consider adopting as many of the remaining 12 Pathways to Balance identified above as possible.

Remember the process of creating the constitution is more important than the product. More than that, the focus should be on what are the ongoing processes that the family will need to implement to bring the constitution to life.

The Wise Constitution will have elements of will power and decisiveness and the ability to make hard judgment calls that the Monument to the Founder embodies. It will also take into account the critical importance of family values and of family emotional commitment and support and of finding roles for family members that the Family First Constitution offers. Finally, it will be made intelligently after thoughtful study of good models and best practices, it will consider how to put the smartest, most competent people into the right places, but it will be tempered with realism of the dynamics and skills and culture of the family.

| Archetype | Virtue | Positive aspect | Shadow | Pathways to balance |
|-------------------------------|--------------|---|--|--|
| The Monument to the Founder | Will | <ul style="list-style-type: none"> • Clear structure • Clear leadership • A clear legacy • Business principles that have worked | <ul style="list-style-type: none"> • Patriarchal control • Lack of engagement • Lack of voice • Lack of flexibility • Lack of exit rights | <ul style="list-style-type: none"> • A family champion • Invest in qualitative capitals • Differentiate between voice and vote • Family elders • Make sure there is an amendment power • Consider a sunset clause. • Outline the rights of citizens |
| The Family First Constitution | Love | <ul style="list-style-type: none"> • Engagement • Stewardship • Investment in human capital • A foundation of trust and communication | <ul style="list-style-type: none"> • Enmeshed family • Poor boundaries • Exploitation of business resources • Lack of professionalisation • Lack of credibility, lack of competence | <ul style="list-style-type: none"> • Clear boundaries • Fair process in decision making • Enterprising family philosophy • A commitment to professionalism • Invest in skills including relationship skills • Together and apart |
| The Expert Structure | Intelligence | <ul style="list-style-type: none"> • Best thinking • Best practices • A clear philosophy • Good set of checks and balances • A learning organisation • After action review of decisions | <ul style="list-style-type: none"> • A formation • A structure the family is unable to integrate • Lack of engagement • Advisers working on the family not working with the family • Family reliant on advisers | <ul style="list-style-type: none"> • Create a multidisciplinary team of advisers also including qualitative advisers • A commitment to family learning and development • Evolution better than revolution • Help the family create their own unique answers |
| The Wise Constitution | Wisdom | All of the above | The family must be willing to support and invest time and effort in maintaining the structure | All of the above |

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- 1 The author would like to thank the following individuals for their contribution to this article and for freely sharing their ideas on family constitutions: Jeremy Cheng, Barbara Hauser, Jay Hughes, Hartley Goldstone, Dennis Jaffe, Ian Marsh, Matthew Wesley and Keith Whitaker.
- 2 The term 'Monument to the Founder' was coined by Jay Hughes in relation to a trust structure the sole purpose of which is to create a monument to the founder, ie creator of the family financial wealth.
- 3 The five principles of Fair Process are explained in *When Family Businesses Are Best*, by Randel S Carlock and John L Ward, Palgrave Macmillan, 2010.
- 4 Barbara Hauser, "Family Ties", *The STEP Journal*, April 2012.
- 5 The assessment process recommended by Hughes can be found in chapter 19, *Educational Assessment Tools of Family, The Compact Among Generations*, Bloomberg Press, 2007.
- 6 Hartley Goldstone observes that the prevention focused mindset is a common one for fiduciaries but it needs to be balanced with a 'promotion focused mindset'.
- 7 See the article "Culture does indeed eat structure for breakfast" by Matthew Wesley, available at www.thewesleygroup.com/blog.
- 8 "Is My Family Constitution Unconstitutional?" by Allison Anna Tait, May 2019, *Law & Inequality: A Journal of Theory and Practice*.

'The three family constitution archetypes and a wise alternative', by Christian Stewart, is taken from the twelfth issue of *The International Family Offices Journal*, published by Globe Law and Business, <http://ifo16.globelawandbusiness.com>.