



The Three Family Constitution Archetypes

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

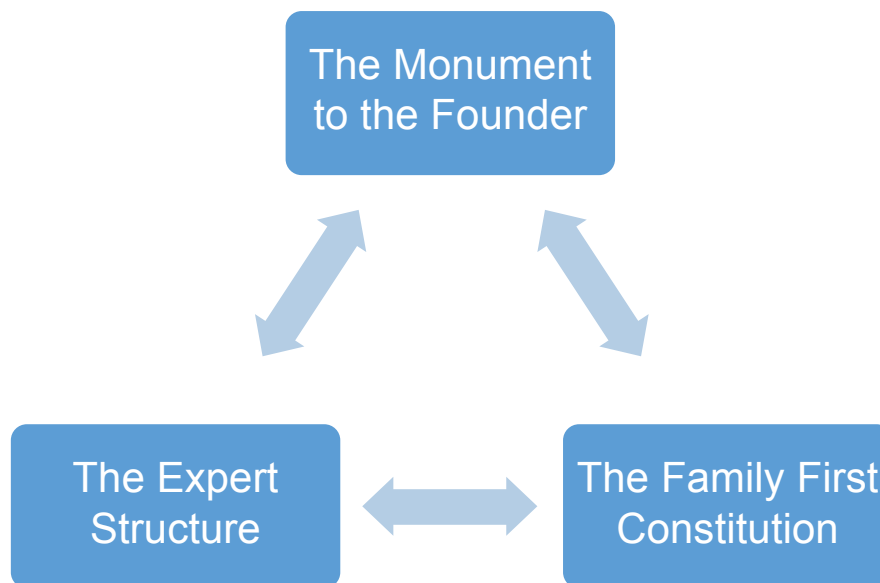
The concept of creating a formalized written family constitution has become generally accepted as representing a key best practice for family enterprises (especially those involved in a transition).ⁱ As such we should now be at the stage where we can move past the question of what are the benefits of developing a family constitution to a more detailed analysis of common family constitution “archetypes” – basic models or patterns that can often be recognized.

Following is a framework that can be considered that assumes there are three basic family constitution archetypes:

- The first is the constitution that is a “Monument to the Founder”ⁱⁱ;
- The second is the “Family First Constitution”;
- The third is the “Expert Structure”.

Each of these three main archetypes has their strengths and advantages, but each also has their shadow side or disadvantages. It should 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 the family 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.

Three kinds of family constitution



In addition to these three archetypes, there is a fourth kind of family constitution which is the “Wise Constitution”. This will be explained after the three archetypes have been examined.

What is a Family Constitution?

Before going into the specifics of the three kinds of constitution identified above, it is worth briefly reflecting on the term “family constitution” 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 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.ⁱⁱⁱ
- Usually 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.”^{iv} Therefore when talking about a 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 every-one in the family is on the same page together. Of course, having it in writing can help in this regard.
- Often families will draw a contrast between a constitution—which, according to Whitaker^v, expresses the spirit of the family—and its agreements, 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 “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.^{vi}
- The process of creating a family constitution is to be emphasized. “It is the process that counts rather than the product”. According to Hughes,^{vii} it is in fact a process of creating a generational, voluntary horizontal social compact together, as a family of mature adults.
- Finally it is usually assumed that a family constitution will not be legally binding, but this need not always be the case^{viii} 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 key point here is 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 honor the extraordinary achievements of the heroic wealth creator, so that his legacy will last “for generations”. The Monument to the Founder can be created by the Founder himself (or herself), but it can also be created by the sibling generation in honor of the Founder.

Characteristics

What is the defining characteristic of such Monuments and of wealth creating Founders in general? It is “will”, as in strength of will and will power, determination and resolve. This is what you expect from a successful patriarch, one who is used to being the sole decision maker; one who is used to “centralized 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. Where there is strong willed leadership the difficult decisions that are always present in family enterprises are likely to be directly addressed, not shirked. 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. With this type of constitution, the designer(s) of the Monument are often willing to spend time and effort to think very carefully about its terms and conditions and they will likely be thinking far ahead into the future – there will be a clear vision.

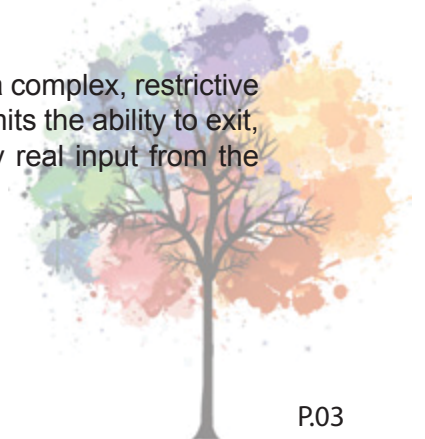
The shadow side

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^x 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.^x 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.

According to Whitaker, another problem with Monuments is that founders typically do not like transparency: they prefer secrecy in order to maximize their control.^{xi}

As an example of the shadow side of the Monument, it is easy to imagine a complex, restrictive and long term trust structure and family 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 summarized in a single word: love (and more specifically, love for family).

Characteristics

It is a constitution that will put an emphasis on the intangibles of family mission, vision, values and family principles, but which might not go into the specifics of roles, responsibilities and forums etc. 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”. Family system rules will apply in the management system. The kind of family that create this kind of constitution might themselves be inwardly focused and self-reliant.

The positive side

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 family constitution: the only answers that matter are those that the family devise for themselves.^{xii} 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 does however also have 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.^{xiii} 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.^{xiv} 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.

The Family First Constitution can often work for some sibling partnerships, but is then hard to maintain into the 3rd generation and beyond.



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.

Characteristics

As the first part of the name implies, there is likely to be an expert advisor involved helping to design the family constitution. An “expert” advisor 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” or “structures” which can refer to either (i) the use of trusts and vehicles like private trustee companies (“PTCs”) and other ownership vehicles to “bring structure” to the governance arrangements; or (ii) sophisticated governance structures or (iii) both of the foregoing.

The positive side

The Expert Structure Constitution is intelligent. 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. 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.

The shadow side

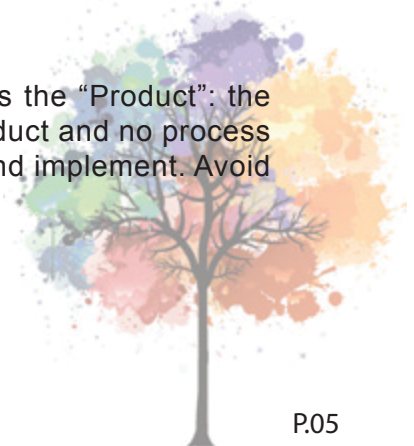
When faced with an Expert Structure, the questions to reflect on, and which point to its shadow side, will be “will they” and “can they” implement it? Will the family members be able to make this structure work? As Hughes asks: “will the family members be able to integrate this structure into their family system?” Or will it just end up being put in the bottom drawer and forgotten about? When helping a family with a family constitution, it is important to pay attention to the implementation stage.

The Expert Structure might be strong in terms of good theory for the management circle, but it might get put into the bottom drawer because it fails to take into account family dynamics.^{xv} A successful guiding principle is always that “evolution is better than revolution”.^{xvi}

The intelligently designed Expert Structure can sometime 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. As in the case of the Monument, the basic problem here is one of engagement.^{xvii}

The Product

There is also 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.



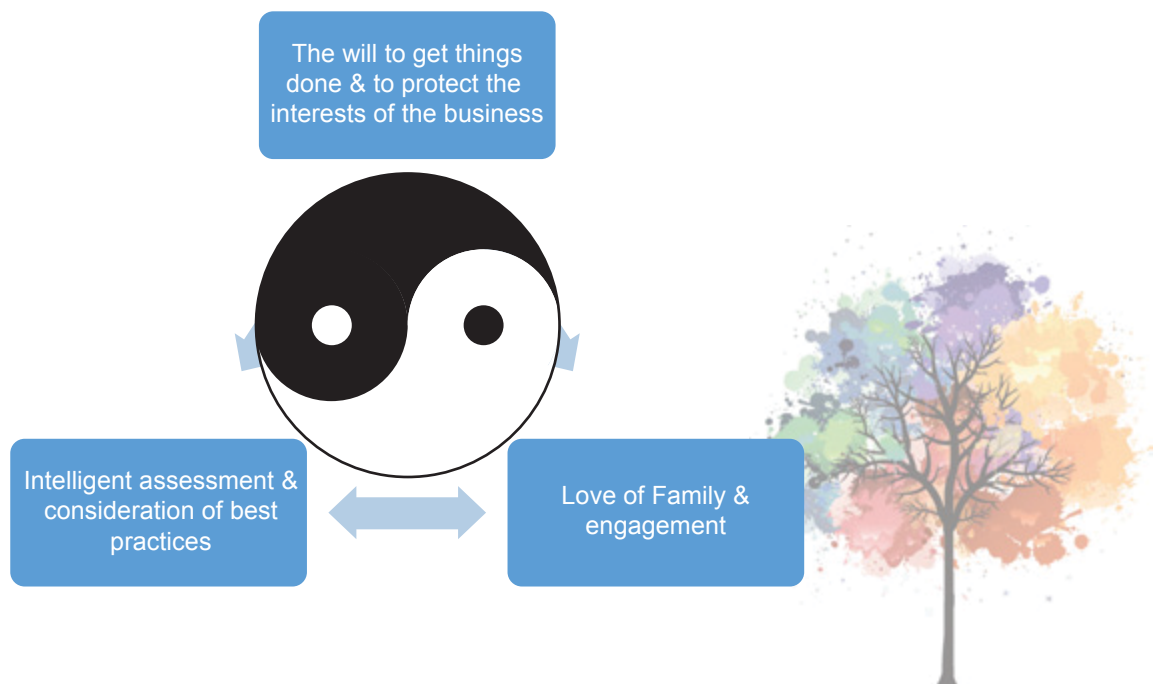
The Wise Constitution

The positive side and the negative side of the three common family constitution archetypes have been highlighted. So what is the best kind of constitution? The best kind is one that embodies wisdom, and hence it can be called the Wise Constitution. There are three separate aspects to wisdom to consider.

- 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^{xviii}, as well as the transitions the family are facing^{xix}.
- Second, the wise approach to developing a family constitution will as a minimum reflect on whether there is any one of the three archetypes at play with the client family; 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.
- Third, taking this a step further, a Wise Constitution will involve an effort to integrate the best features of the three archetypes that have been discussed, recognizing that there will need to be some trade-offs and compromises and perhaps paradoxical solutions to be developed to achieve a balance.

Therefore, 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. Those guiding the process of creating the constitution will always mindful of the question “can this be implemented”?

The Wise Constitution



Examining the Family's Unwritten Constitution

This white paper has focused on the process of developing or reviewing a written family constitution. However, as a concluding thought, if we go back to the observation that every family already has their own “unwritten family constitution”, then doesn't the same logic also apply?

Isn't the first important step for a family to reflect on whether their own unwritten family constitution represents a Monument to the Founder or a Family First Constitution^{xx}, and to consider the possible implications of that conclusion?

Isn't the second step in examining the family's own unwritten constitution then going to be to reflect on how the family does in terms of striking a balance between the Will to get things done, Love of family and the need for Intelligence in decision making and design?



ENDNOTES

- i See for example Dennis Jaffe's 2013 paper: Good Fortune: Building a 100 Year Family Enterprise, Wise Counsel Research, 2013.
- ii The term "Monument to the Founder" was coined by James E. Hughes Jr. in relation to a trust structure the sole purpose for which is to create a monument to the founder, i.e. creator of family financial wealth.
- iii Christian Stewart, The Wisdom of Elders, The STEP Journal Article July 2014.
- iv Ian Marsh of familydr.
- v Keith Whitaker of Wise Counsel Research Associates.
- vi Keith Whitaker.
- vii James E. Hughes Jr. Family, The Compact Among Generations, Bloomberg Press.
- viii Barabara Hauser, Family Ties, The STEP Journal, April 2012.
- ix The term rising generation is coined and explained in The Voice of the Rising Generation, by Hughes, Whitaker and Massenzio, Bloomberg Press.
- x For a discussion of the dangers of being focused only on financial capital see the Voice of the Rising Generation, above foot note.
- xi According to Whitaker, in this scenario, any constitution that emerges may be merely a Monument - for show - and may hide the true expectations and rules that will govern the family day-to-day.
- xii Barabara R. Hauser.
- xiii According to Whitaker: "The demand for conformity to a rule of equality can be as stifling and controlling as the most authoritarian patriarch's will."
- xiv Ian Marsh.
- xv See the article "Culture does indeed eat structure for breakfast" by Matthew Wesley, accessible from www.thewesleygroup.com/blog.
- xvi Hughes, Family, The Compact among Generations.
- xvii Whitaker.
- xviii Matthew Wesley.
- xix Hughes.
- xx The Expert Constitution is unlikely to be found as an unwritten, natural, family constitution.



ABOUT THE AUTHOR



Originally a tax and trust lawyer from South Australia, Christian Stewart moved to Hong Kong in 1994. In July 2008, he formed Family Legacy Asia to provide independent advice to Asian families on family governance. In this role he acts as a process consultant to help family businesses in Asia work together, through facilitating family meetings and helping the family to prepare their own family policies and family constitution.

He also advises several Asian Family Offices on trust and succession matters. He acts as an advisor on several Private Trust Company structures.

Prior to founding Family Legacy Asia Christian was a Managing Director and the Head of Wealth Advisory in Asia for JPMorgan Private Bank for 6 years. In that capacity he was responsible for representing JPMorgan's trust business in Asia.

Prior to joining JPMorgan, Christian was with PricewaterhouseCoopers in Hong Kong for 7 ½ years. At PwC he became a Partner in their Tax Practice specializing in Hong Kong estate duty planning and trust structuring, and he ran their Trust & Private Client team.

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ACKNOWLEDGEMENT & THANKS

Keith Whitaker of Wise Counsel Research Associates <http://wisecounselresearch.org/> & Ian Marsh of *familydr* www.familydr.co.uk reviewed and contributed to this article.



ABOUT FAMILY LEGACY ASIA

We work with successful Asian families to help them establish communication platforms and decision making structures for both the family and the family enterprise.

We facilitate family meetings to help the family talk about their vision and values and the relationship between the family and the family enterprise. We help them to create the “rules of the road” so that family members know what to expect in the future.

We believe that the key to passing on a successful family enterprise that will flourish for at least five generations comes down to the way in which the family members make joint decisions together, and this is called family governance.

While our approach is tailored for every family, we often use the process of creating a family council and family constitution to help build the “family team”, to strengthen family unity, and to help the family resolve the specific issues that they have been unable to resolve on their own.

The process of creating family governance is a problem solving process.

Our process can help simplify the challenges of planning for family succession.

One of the benefits of our process is that it helps to build a bridge between the older generation of the family and the next generation.

Another benefit is that we help create tools for the family to balance doing what is good for the family with doing what is good for the business.

In many family controlled enterprises, family conflicts arise because of confusion between family roles and values on the one hand, and business roles and values on the other hand. We help families avoid these kinds of conflicts.





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