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Notes on Continental Constitutional Identities

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Notes on Continental Constitutional Identities

Benjamin Franklen Gussen*

ABSTRACT

Geo-constitutional analysis examines the reciprocal effect of geography on constitutions. Within this analysis, a continental constitutional identity focuses on the intersection between institutional geographies and institutional identities, where constitutions are understood as meta-institutions. In some constitutions, belonging to a continent is part of the national identity, while other constitutions only signal a non-geographic, usually an ethnic, identity. The US Constitution is an example of the former. The quintessential example of a non-geographic constitution is the Constitution of the Russian Federation. A similar disregard of continental identities can be found in Israel and the Arab League countries east of the Sinai Peninsula, in contrast to North African constitutions west of this peninsula. The potential for armed conflict due to the presence or absence of these identities can be mitigated by continental nesting (i.e., by aligning the geographic and socio-political characterization of a continent). The Article illustrates this approach in the context of Africa, arguably the least geopolitically misaligned among Old World continents, by explaining why a post-colonial Africa includes Israel and all Arab League countries. Similar analysis of other continents can explain how to mitigate intra- and intercontinental conflict by explicitly nesting constitutional identities within continents based on evolving geopolitical exigencies.

TABLE OF CONTENTS

| | | |
|-----|--|----|
| I. | INTRODUCTION | 68 |
| II. | WHAT IS A CONTINENTAL CONSTITUTIONAL IDENTITY AND WHY IT MATTERS..... | 76 |
| | A. Institutional Geography and Constitutions | 78 |
| | 1. Geography-of-Constitutions | 80 |
| | 2. Geography-in-Constitutions | 82 |
| | B. Why Is a Constitutional Occultation of Continental Identities a Problem? | 88 |
| | C. The Solution: Nestedness | 90 |

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| | | |
|------|--|-----|
| III. | THE AFRICAN MISALIGNMENT | 94 |
| | A. Africa as a Constitutional Identity in Arab League Countries | 96 |
| | B. Continental Occultation East of the Sinai .. | 101 |
| | C. The Trans-Sinaic Geography..... | 103 |
| | D. Towards Trans-Sinaic Integration..... | 107 |
| IV. | CODA..... | 112 |

I. INTRODUCTION

Can geographic conventions influence constitutional identities—that is, do they influence the emergence of identities in national constitutions? Can these identities nurture a strategic intent that would clash with the interests of transcontinental polities? Are intercontinental clashes also nurtured through occultation, where the constitutions of some polities neglect the national ethos inherent in continental geographies?¹ In astronomy, a lunar occultation occurs when the Moon appears to move in front of another celestial object, thus making the object hidden from the observer. Some constitutions perform a similar function to the Moon by preventing the people from observing their national ethos. In search of answers to these questions, our intellectual journey starts in Eurasia, a continent that encompasses over one-third of the total land area on this planet. This is a well-defined continent based on the (European) mapmakers' convention for defining continents:

By the 16th century at the latest, *continent* had come to denote a landmass of very great size, possessing a well-defined maritime perimeter, and linked to other continents either by a single isthmus—as Africa is joined to Asia and the two Americas to one another—or not at all, as in the cases of Australia and Antarctica, the two island continents in the Southern Hemisphere.²

However, Eurasia is not culturally homogenous. It forms six cultural zones (Europe, West Asia, Central Asia, South Asia, Southeast Asia, and East Asia), where “Western civilization is reduced to the status of one case in a group of four comparable civilizations” (the other

1. See ENCYCLOPEDIA OF ASTRONOMY AND ASTROPHYSICS 1916–19 (Paul Murdin ed., 2001). As to national ethos, see Amitai Etzioni, *Minorities and the National Ethos*, 29 POL. 100, 100 (2009) (explaining that national ethos “refers to the particularistic values, traditions, identity and vision of the future (or ‘destiny’) of the given nation”).

2. John G. A. Pocock, *What Do We Mean by Europe?*, WILSON Q., Winter 1997, at 12, 14.

three being West Asia, South Asia, and East Asia).³ On the other hand, there is an

anomaly in our typology of continents . . . [because of the international community's] habit of listing Europe as one of the seven continents, when it does not comply with the . . . definition [of a continent] at all precisely. The "continent" of Europe is a product partly of the Mediterranean need for a term to inscribe and describe the lands west of the Bosphorus, and partly of the exceptionally self-centered and world-dominating outlook developed by a civilization that evolved in those lands. The notion of a "continent" was formed in that civilization, but it applies only inexactly to "the continent of Europe."⁴

The essence of this world-dominating outlook can be distilled into one painting where continents, barring one, are all depicted as White women. In *The Four Continents*, while the Flemish prominent artist Peter Paul Rubens depicts Europe and Asia as two White women, the brunette woman as Europe and the blonde woman as Asia, potentially suggesting a shared Eurasian identity, he places these women at opposite ends of the painting, with Europe on the left, and Asia on the right.⁵ Rubens places Africa, the only non-White woman in the painting, in the middle, which I will return to discuss in detail below. As to America, it can be seen behind Asia, as if on the other side of the Bering Strait that separates Russia from the United States. This seventeenth-century painting captures a collective consciousness of a European continental identity distinctly separate from that of Asia. One can trace this separateness to the sixth century BC in the work of Anaximander, who conceived of the Phasis River of western Georgia (known today as the Rioni River) as separating Europe from Asia.⁶ In other maps, Europe is conceived of as the continent north of the equator, while Asia is the continent south of the equator.⁷ The key point is that, historically, humanity's imagination of continental geography continued to reflect the evolution of our world consciousness. Grouping

3. Edward L. Farmer, *Civilization as a Unit of World History: Eurasia and Europe's Place in It*, 18 HIST. TCHR. 345, 349 (1985) (tracing a European separate identity since the failed Mongolian attempt to unify Eurasia in the 13th century).

4. Pocock, *supra* note 2, at 14.

5. Peter Paul Rubens, *The Four Continents* (illustration). Dated around 1615, the painting (also known as *The Four Rivers of Paradise*) is oil on canvas and is currently held at the Kunsthistorisches Museum in Vienna, Austria. Interestingly, Rubens also depicts America, viewed as a single continent, as a blonde woman. See *The Four Rivers of Paradise*, KUNSTHISTORISCHES MUSEUM, <https://www.khm.at/en/objectdb/detail/1614/> (last visited Oct. 3, 2022) [<https://perma.cc/6EX4-R7DX>] (archived Oct. 3, 2022).

6. See DIRK L. COUPRIE, HEAVEN AND EARTH IN ANCIENT GREEK COSMOLOGY: FROM THALES TO HERACLIDES PONTICUS 82–84 (2011) (providing a rendering of Anaximander's world map, where Africa, referred to as Libya, is separated from Asia by the Nile River).

7. See *id.* at 82 ("The continent north of the 'equator' is called 'Europa,' and that south of the 'equator' is called 'Asia.' In this conception, Libya (which is to say Africa) is a part of the continent Asia. This results in the reconstruction of Anaximander's map . . .").

countries into continents allowed for new conventions to emerge. Notwithstanding this, Eurasia, within this consciousness, does not exist, or, if it did, it would only exist as an irrational fear where Europe continues to labor under the thirteenth-century failed attempt by the Mongols to give birth to a Eurasian socio-political identity that is aligned with its geographic identity.⁸

Surprisingly, however, Eurasia as a continental identity continues to influence international relations in the twenty-first century, given the Russian Federation's

development of Eurasian integration in post-Soviet Eurasia (PSE). This includes fostering the Eurasian Economic Union (EEU) and the Collective Security Treaty Organization (CSTO) as part of what can be called Putin's 'heartland' strategy, to avoid PSE becoming a zone of contestation between stronger outside powers. This is in keeping with the pragmatic Eurasianism advanced above all by Nursultan Nazarbayev (1994), the president of Kazakhstan between 1991 and 2019, who can claim to be the progenitor of Eurasian integration through his famous speech at Moscow State University in 1994.⁹

Nonetheless, the Russian Constitution has always been silent on any continental identity.¹⁰ This occultation can be traced back to the Russian Constitution of 1906,¹¹ as well as the 1936 Constitution of the

8. See generally Alexander V. Maiorov, *The First Mongol Invasion of Europe: Goals and Results*, 32 J. ROYAL ASIATIC SOC'Y 411 (2021) (recounting the Mongol crossing of the Dnieper River in their drive to occupy Kyiv).

9. Richard Sakwa, *Sad Delusions: From Greater Europe to Greater Eurasia*, 12 J. EURASIAN STUD. 5, 12 (2021) (arguing that Russia's efforts to create a Greater Europe where it becomes a great power in a pluralist order have been defeated by the Historic West, forcing Russia to look for a Greater Eurasia alignment with China).

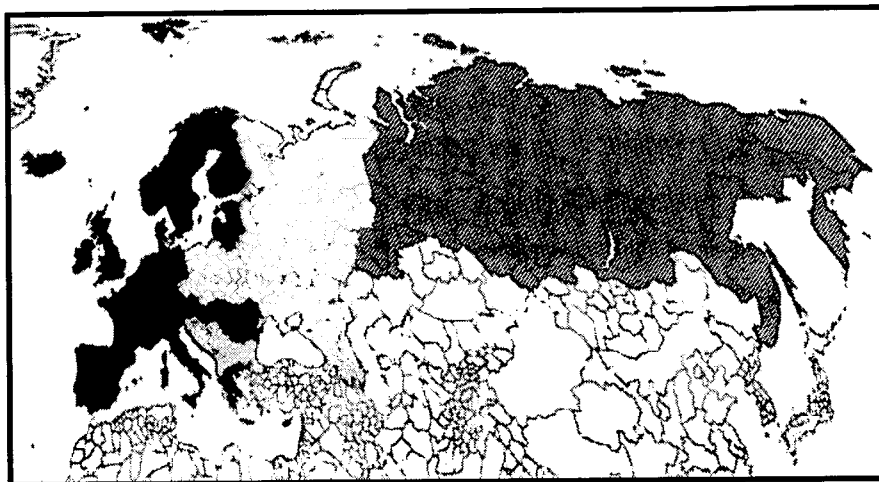
10. See generally KONSTITUTSIIA ROSSIĬSKOĬ FEDERATSII [KONST. RF] [CONSTITUTION] (Russ.). For an unofficial translation, see *Russian Federation 1993 (rev. 2014)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Russia_2014?lang=en (last visited Oct. 3, 2022) [<https://perma.cc/KT9G-PWZ3>] (archived Oct. 3, 2022). For other European countries that do not have a continental constitutional identity, see KONGERIKET NORGES GRUNNLOV [CONSTITUTION] (Nor.) (for an unofficial translation, see *The Constitution of the Kingdom of Norway*, LOVDATA (Sept. 21, 2022), <https://lovdata.no/dokument/NL/lov/1814-05-17> [<https://perma.cc/J8J6-DNYQ>] (archived Oct. 3, 2022)); EESTI VABARIIGI PÕHISEADUS [CONSTITUTION] (Est.) (for an unofficial translation, see *Estonia 1992 (rev. 2015)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Estonia_2015?lang=en (last visited Oct. 3, 2022) [<https://perma.cc/4YHY-E9E9>] (archived Oct. 3, 2022)); STJÓRNARSKRÁ LÝÐVELDISINS ÍSLANDS [CONSTITUTION] (Ice.) (for an unofficial translation, see *Iceland 1944 (rev. 2013)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Iceland_2013?lang=en (last visited Oct. 3, 2022) [<https://perma.cc/ST4D-XYXR>] (archived Oct. 3, 2022)).

11. See generally Основные Государственные Законы Российской империи (1906) [FUNDAMENTAL LAWS OF THE RUSSIAN EMPIRE]. For an unofficial translation, see ROYAL RUSSIA & GILBERT'S ROYAL BOOKS, RUSSIAN FUNDAMENTAL LAWS 1906, <https://docs.google.com/viewer?a=v&pid=sites&srcid=bnNkNDIubmV0fG1yLWdyZWVu d29vZHxneDoxOTI5NWNhZGFINDUwODVj> (last visited Oct. 9, 2022) [<https://perma.cc/C8BF-JH5N>] (archived Oct. 9, 2022) [hereinafter RUSSIAN FUNDAMENTAL LAWS 1906].

Union of Soviet Socialist Republics.¹² Even today, the Russian Constitution does not reflect any aggregation of a collective consciousness, neither in reference to Eurasia nor to Europe.¹³ Why?

It is useful here to provide a map of the “Slavic World,” which includes the Russian Federation and its European and Asian parts.¹⁴ See Figure 1 below. Note especially the size of Russia’s Asian part relative to Europe, including the Russian part. Russia’s Asia is as large as Europe. We can think of Russia as looking simultaneously to both the East and the West.

Figure 1: A Map of the Slavic World¹⁵



12. KONSTITUTSIJA SSSR (1936) [KONST. SSSR] [USSR CONSTITUTION]. For an unofficial translation, see *1936 Constitution of the USSR*, BUCKNELL UNIV. (1996), <http://www.departments.bucknell.edu/russian/const/1936toc.html> (last visited Oct. 9, 2022) [<https://perma.cc/8UTP-KV9P>] (archived Oct. 9, 2022).

13. See generally KONSTITUTSIJA ROSSIĬSKOĬ FEDERATSII [KONST. RF] [CONSTITUTION] (Russ.).

14. For a discussion of Slavic World, see generally A.I. Shcherbinin & N.G. Shcherbinina, *The Slavic World as a Political Construct*, 42 *Русин* no. 4, 2015, at 37 (analyzing the connection between Russia and the rest of the Slavic World); Alexander Maxwell, *Taxonomies of the Slavic World Since the Enlightenment: Schematizing Perceptions of Slavic Ethnonyms in a Chart*, 58 *LANGUAGE & HIST.* 24 (2015) (discussing various taxonomies of the Slavic World).

15. Russia’s European part is shown in light color. The rest of Europe is shown in dark color (to the left). The hashed area (to the right) shows the Asian part of the Russian Federation. The map details every province or state in all countries.

Europe is suffering from a direct clash between two continental projects: the European Union and the Eurasian Union.¹⁶ A Eurasian continental identity is in direct opposition to the geographic identity of the European Union (EU), and more importantly, to the role played by the United States in Europe through the North Atlantic Treaty Organization (NATO). The long evolution of a European civilization, and its offshoots in the New World, militates against a replacement of this continental identity with that of Eurasia. Put differently, a Eurasian continental identity would make the members of the European Union the “Ukraine” of Eurasia (i.e., at the border of a continent dominated by other superpowers (including China)).¹⁷ This would also make the United States a continent like that imagined by Rubens—a continent that lies beyond the horizon, relatively irrelevant to the evolution of this Eurasian identity.

No wonder, therefore; that the United States would see Eurasia as a threat to its hegemony.¹⁸ Consequently, the United States has been curtailing the possibility of a Eurasian integration by nurturing Slavic identities that are distinct from Russia, and by helping these countries integrate instead into Europe.¹⁹ A case in point is Ukraine, which together with “Georgia, Azerbaijan, and Kazakhstan—became focal points of American policy, in part because of the role they could play in curtailing Russian power.”²⁰ However, Eurasia is also a direct threat to what came to be known as “Chimerica,” the symbiotic

16. See NICU POPESCU, EURASIAN UNION: THE REAL, THE IMAGINARY AND THE LIKELY 35 (Sept. 2014), https://www.iss.europa.eu/sites/default/files/EUISSFiles/CP_132.pdf (last visited Oct. 4, 2022) [<https://perma.cc/Q3U7-43MN>] (archived Oct. 4, 2022) (analyzing the 2014 Ukrainian crisis as a direct consequence of the competing European Union and Eurasian Union projects).

17. See *Ukraine*, ONLINE ETYMOLOGY DICTIONARY (June 20, 2022), <https://www.etymonline.com/word/ukraine> [<https://perma.cc/M69X-5MG6>] (archived Oct. 4, 2022) (“[F]rom Russian or Polish *Ukraina*, a specific use of *ukraina* ‘border, frontier,’ . . . from Old Russian *oukraina*, from *ou* ‘by, at’ + *kraj* region. . . . ‘The territory was so called because it was the borderland or ‘frontier zone’ of medieval Russia at the time of the Tatar invasion in the 13th century.’”).

18. For a critical analysis of the origins of this hegemony, see G. John Ikenberry, *Rethinking the Origins of American Hegemony*, 104 POL. SCI. Q. 375, 376 (1989) (arguing that “the United States was clearly hegemonic and used its economic and military position to construct a postwar order. But that order was not really of its own making. There was less exercise of coercion than is commonly assumed in the literature on hegemonic power, and where it was used, it was less successful than often thought.”).

19. See, e.g., Andrew C. Kuchins, *What Is Eurasia to US (the U.S.)?*, 9 J. EURASIAN STUD. 125, 125 (2018) (explaining that the “baseline for U.S. policy was established in 1992, the prevention of a peer competitor emerging in Eurasia”).

20. Thomas Graham, *The United States and Eurasia in Historical Perspective*, in THE RETURN OF EURASIA 285, 307 (Glenn Diesen & Alexander Lukin eds., 2021) (arguing that the need for the U.S. to balance geostrategy with ideology will be one of the biggest challenges facing the current world order in the coming decades).

“partnership between the big saver and the big spender.”²¹ While some have argued that Chimerica is in decline due to intensifying geopolitical competition between the United States and China, the positive expectations of further Chimerican economic integration seems to continue to play a major role in their geopolitical cooperation.²² Put differently, China continues to evolve into the kingmaker in the third millennium. The success or failure of the European and Eurasian Unions hinges on whether China will continue “courting” the United States or will eventually decide to “elope” with Russia and Europe.

There are, therefore, two options for nesting a Global North:²³ one led by the European Union, and one led by a Eurasian Union. The winning option will depend on China’s geopolitical choices. Is the world ready to imagine a geography that diverges from a Eurocentric paradigm? Answering this question goes beyond what I set out to elucidate in this Article, namely, the use of continental constitutional identities as an analytical tool. The complexities of the analysis necessitate a much wider enquiry than that feasible in a journal article. In comparison, however, a nesting analysis concerning Africa is achievable, due to the relatively small-scale realignment necessitated by a fusion of continental identities east and west of the Sinai Peninsula.²⁴ The Article will therefore focus on this nesting. The wider enquiry, notwithstanding, will be outlined in the last Part, Part IV, for possible research extensions.

For Africa, the shadow of Eurasia over Europe is replicated by a lingering aftereffect of a colonial geography. Rubens’s masterpiece *The Four Continents* shows Africa as a Black woman, seated below the other three continents, with her back to the viewer; she is the only one

21. Niall Ferguson, *Niall Ferguson Says U.S.-China Cooperation Is Critical to Global Economic Health*, WASH. POST (Nov. 17, 2008), <https://www.washingtonpost.com/wp-dyn/content/article/2008/11/16/AR2008111601736.html> [<https://perma.cc/KSE9-SCWX>] (archived Oct. 4, 2022); see also Niall Ferguson & Moritz Schularick, *‘Chimerica’ and the Global Asset Market Boom*, 10 INT’L FIN. 215 (2007).

22. See generally Niall Ferguson & Moritz Schularick, *The End of Chimerica*, 14 INT’L FIN. 1 (2011) (arguing that the Global Financial Crisis would end the Chimerican relationship); HO-FUNG HUNG, *CLASH OF EMPIRES: FROM ‘CHIMERICA’ TO THE ‘NEW COLD WAR’* (2022) (suggesting that the global expansion of Chinese companies is vitiating the Chimerican symbiosis). As to the future of Chimerica, see generally DALE C. COPELAND, *ECONOMIC INTERDEPENDENCE AND WAR* (2015) (arguing that positive expectations of trade and commerce are likely to outweigh incentives for armed conflict).

23. See GRAHAM MARSHALL, *ECONOMICS FOR COLLABORATIVE ENVIRONMENTAL MANAGEMENT: RENEGOTIATING THE COMMONS* 47 (2005) (describing the nesting principle as “the eventual result of larger, more inclusive organizational units emerging from, and then ‘nesting’ . . . smaller, more exclusive units that manage to self-organize sooner. Smaller organizations thus become part of a more inclusive system without giving up their essential autonomy.”); see also ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* 51–52 (Canto Classics ed. 2015).

24. See *infra* Part III.

staring back at him, her gaze piquing his curiosity.²⁵ This understanding of Africans as Black, in stark contrast to White Europeans, was not limited only to the cultural sphere. Blackness became the basis for defining the boundaries of Africa and influenced European mapmakers beginning in the thirteenth century. While the map of Africa as it stands today suggests that the African Continent begins at the Mediterranean Sea to the north, this physical boundary has not always been accepted as a true representation of Africanness. Hence, “Africanist researchers—whether working as historians, archaeologists, ethnographers or linguists—have historically ceded the northern part of the African continent, from the Mediterranean coastline to some ill-defined latitude in the Sahara, to researchers in other disciplines.”²⁶ Today, “[t]hese original, racist conceptions of a trans-Saharan historical divide have, of course, been very much vitiated by research on the continent, as well as by more general critiques of the concept of race.”²⁷

Notwithstanding, the map of Africa continues to be visited by the same confusion when we look at the eastern border of this continent. To this day, almost every atlas suggests that the continent is bordered by the Red Sea, thus separating the Sinai Peninsula, the Levant, Iraq, and the Arabian Peninsula from Africa. I argue that this map nurses a colonial hangover. The current definition of the African Continent is based on an era that was exemplified by the 1885 Berlin Congo Conference.²⁸ At the time, most of Arabia, the Levant, and North Africa were part of the Ottoman Empire,²⁹ while the Africa that the European powers were interested in was one that could be exploited under international law—using a “test of civilization.”³⁰

25. See Rubens, *supra* note 5.

26. Scott MacEachern, *Where in Africa Does Africa Start?*, 7 J. SOC. ARCHAEOLOGY 393, 395 (2007).

27. *Id.* at 396.

28. See Hilke Fischer, *130 Years Ago: Carving Up Africa in Berlin*, DEUTSCHE WELLE (Feb. 25, 2015), <https://www.dw.com/en/130-years-ago-carving-up-africa-in-berlin/a-18278894> [<https://perma.cc/A6DC-UXZG>] (archived Oct. 4, 2022). According to Michael Pesek, “a researcher in African colonial history at the University of Erfurt, . . . ‘[t]here is much talk of reparations for the slave trade and the Holocaust. But little mention is made of the crimes committed by the European colonial powers during the hundred years or more they spent in Africa, . . .’” *Id.*

29. See, e.g., Ahmet Doğan, *The Berlin West African Conference 1884–1885 and the Ottoman Empire* 12 (Mar. 2021) (M.A. thesis, Middle East Technical University), <https://open.metu.edu.tr/bitstream/handle/11511/89837/12626185.pdf> [<https://perma.cc/B4LJ-TZHC>] (archived Oct. 4, 2022) (“The Ottoman Empire’s first contact with the [African Continent] started at the beginning of the 16th century. It was the time that the Empire conquered Egypt which was under the Mamluk rule for three centuries. After that time, Ottoman dominance which was established firstly on coasts of Northern Africa, Egypt, and the Red Sea started to expand through the continent.”).

30. See, e.g., JOHN WESTLAKE, *CHAPTERS ON THE PRINCIPLES OF INTERNATIONAL LAW* 141–43 (1894) (stating that under international law, the lack of an ability to furnish

This Article envisages a post-colonial African continental identity.³¹ It invites the reader to contemplate how Africans can “map[] their own autonomous development trajectories.”³² It does so by exposing a colonial geography that continues to alienate part of the continent.³³ The colonial partition of Africa is evinced east of the Red Sea as much as west of it. Realignment requires a new definition of the African Continent, where North Africa extends to include Israel and the Arab League countries east of the Sinai Peninsula. The Arab World becomes nested within Africa, thus accentuating the continental separation of this part of Africa from other regional powers, namely Tükiye (Turkey³⁴) and Iran. Based on this redefinition of the African Continent, the Middle East is reduced to a single geographic point, at the intersection of the borders of Tükiye, Iran, and Iraq, which would resemble a “Three Corners Monument,” where the continents of Europe (Global North), Asia (Global East), and Africa (Global South) meet.³⁵ This African Continent could usher an autochthonous identity, where diversity holds the promise of security and prosperity, away from neo-imperial ethnic hegemony or an *aggiornamento* of sectarian religious crusades.

Our journey proceeds as follows. Part II explains the concept of continental constitutional identities at the intersection of institutional geography and constitutional identity. The Part also enlists social psychology to explain the origins of the Russo-Ukrainian armed conflict based on the presence of a European identity in the Constitution of

a government analogous in its ability to regulate complex life as do those in Europe is justification for ceding sovereignty to European powers); see also Antony Anghie, *The Evolution of International Law: Colonial and Postcolonial Realities*, 27 *THIRD WORLD Q.* 739, 745 (2006) (quoting WESTLAKE, *supra*, at 141, to explain the role of international law in legitimizing colonialism).

31. Note that Africa, as much as any continent, is not only a geographical designation. See, e.g., Willem Fourie, *Four Concepts of Africa*, 71 *HTS THEOLOGICAL STUD.* (May 12, 2015), <https://hts.org.za/index.php/hts/article/view/2847/5538> [<https://perma.cc/XKL6-AJSF>] (archived Oct. 4, 2022) (arguing that “Africa can be conceived of as a place, a commodity, a condition and an ideal”).

32. SABELO J. NDLOVU-GATSHENI, *EPISTEMIC FREEDOM IN AFRICA: DEPROVINCIALIZATION AND DECOLONIZATION* 245 (2018).

33. This geography is a theoretical geography based on colonial assumptions and constraints. In contrast, the trans-Sinaic thesis is based on a physical, empirical geography. This thesis can also be understood as an existential geography giving effect to a shared collective consciousness. For a primer on these types of geographies, see generally David R. Lee, *Existentialism in Geographic Education*, *J. GEOGRAPHY*, Sept. 1974, at 13.

34. See *Turkey Officially Changes Name at UN to Tükiye*, *GUARDIAN* (June 2, 2022, 8:53 PM), <https://www.theguardian.com/world/2022/jun/03/turkey-changes-name-to-turkiye-as-other-name-is-for-the-birds> [<https://perma.cc/L7VU-LH89>] (archived Oct. 4, 2022).

35. Compare to the Four Corners Monument that marks the intersection of the boundaries of the States of Arizona, Colorado, New Mexico, and Utah. See Dallen J. Timothy, *Borderlands: An Unlikely Tourist Destination?* 8 *BOUNDARY & SEC. BULL.* 57, 57–58 (2000).

Ukraine, and the absence of any continental identity in the Constitution of the Russian Federation. Finally, the Part explains how the principle of nesting can mitigate such conflict. In Part III, the Article zeros in on nesting the African Continent. The Part explains how the African Continent is acknowledged as a constitutional identity in Arab countries west of the Sinai Peninsula. The Part contrasts this acknowledgement with the continental alienation found east of the Sinai Peninsula, in the constitutions of Israel and the eastern part of the Arab World. The Part encourages using a trans-Sinaic definition to rectify this alienation based on scientific and existential evidence. The Part then discusses the importance of this rectification for African integration using the concept of nestedness. The Part puts emphasis on the critical role of the African Union (AU) in adopting the proposed definition of the African Continent. Finally, Part IV offers some concluding remarks with an outline of possible research extensions to other continents.

II. WHAT IS A CONTINENTAL CONSTITUTIONAL IDENTITY AND WHY IT MATTERS

A *geo-constitutional analysis* attempts to explain the effect of geography on the design and interpretation of a given constitution, and the modulation of the geography of a given polity by its constitution. When focusing on political geography, one finds parallels between geopolitical and geo-constitutional analysis. Geopolitics studies the role of geography in regulating international relations.³⁶ According to Rudolf Kjellén, geopolitics is “the theory of the state as a geographical organism or phenomenon in space.”³⁷ On the other hand, Gerard Toal (Gearóid Ó Tuathail) explains that geopolitics “addresses the ‘big picture’ and offers a way of relating local and regional dynamics to the global system as a whole.”³⁸ One can therefore think of geopolitics as a dynamic discourse about geographical loci of power.

For example, Alfred Mahan suggests that (military and commercial) sea power is the key to security and prosperity, and eventually to

36. See, e.g., Nick Megoran, *The Task and Responsibility of Geopolitical Analysis*, 13 *GEOPOLITICS* 403, 406 (2008) (“Critical geographers have admirably risen to the challenge of confronting active geopolitics; yet the task of infiltration is one that we have been less forthcoming in reflecting upon. This is a more demanding task because of the work and risk involved in articulating concrete alternatives in an unpredictable and ambiguous world.”).

37. SAUL BERNARD COHEN, *GEOPOLITICS OF THE WORLD SYSTEM* 11 (2003) (quoting RUDOLF KJELLÉN, *DER STAAT ALS LEBENSFORM* [THE STATE IS A FORM OF LIFE] 34–35 (Margarete Langfeldt trans., S. Hirzel at Leipsig 1917) (Ger.)).

38. Gearóid Ó Tuathail, *Introduction: Thinking Critically About Geopolitics*, in *THE GEOGRAPHICS READER* 1, 1 (Simon Dalby et al. eds., 1998).

world hegemony.³⁹ On the other hand, Halford Mackinder suggested that a nation can achieve the status of a superpower only through control of central Asia, what he called the world “Heartland”—generally, the area currently part of the Russian Federation east of the Ural Mountains.⁴⁰ For Nicholas Spykman, however, world power results from controlling the fringes of the Homeland, what he called the “Rimland,” which includes the crescent stretching from Anatolia to East Siberia.⁴¹ Constitutions are also about loci of power because they specify the horizontal and vertical divisions of power within the polity. The strategic intent, no matter if in relation to the Homeland, Rimland, or control of the seas, could be inferred not only from the geography captured in constitutions, but also from its occultation. Geo-constitutional analysis emphasizes geopolitics when analyzing the constitutional identity of a polity. In other words, analyzing constitutional identities requires an analysis of geopolitics to ascertain alignment with the national ethos. For example, Ukraine’s adoption of a European constitutional identity aligns with and motivates its efforts to join NATO. The geography in the constitution reflects a national ethos nested within Europe, and this then becomes the compass for political decisions, including moving away from a Russian identity.

When focusing geo-constitutional analysis on continental conventions, we can ascertain the existence of *continental constitutional identities*. This concept, which is situated within the literature on constitutional identities,⁴² and has its roots in applied social psychology,⁴³

39. See ALFRED THAYER MAHAN, *THE INFLUENCE OF SEA POWER UPON HISTORY: 1660–1783* 225–26 (15th ed. 1898) (arguing that world hegemony is linked to dominance of the seas through military and commercial fleets).

40. Halford John Mackinder, *The Geographical Pivot of History*, 23 *GEOGRAPHICAL J.* 421, 423 (1904) (noting that “[t]he most remarkable contrast in the political map of modern Europe is that presented by the vast area of Russia occupying half the Continent and the group of smaller territories tenanted by the Western Powers”).

41. Nicholas Spykman, *Heartland and Rimland*, in *THE STRUCTURE OF POLITICAL GEOGRAPHY* 170, 171–74, 177 (Roger E. Kasperson & Julian V. Minghi eds., 1969) (suggesting that “[t]he heartland becomes less important than the rimland and it is the cooperation of British, Russian, and United States land and sea power that will control the European littoral and, thereby, the essential power relations of the world”).

42. See generally Gary Jeffrey Jacobsohn, *Constitutional Identity*, 68 *REV. POL.* 361 (2006); GARY JEFFREY JACOBSON, *CONSTITUTIONAL IDENTITY* (2010); Michel Rosenfeld, *Constitutional Identity*, in *THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW* 756 (Michel Rosenfeld & András Sajó eds., 2012); MICHEL ROSENFELD, *THE IDENTITY OF THE CONSTITUTIONAL SUBJECT: SELFHOOD, CITIZENSHIP, CULTURE, AND COMMUNITY* (2010); Michel Troper, *Behind the Constitution? The Principle of Constitutional Identity in France*, in *CONSTITUTIONAL TOPOGRAPHY: VALUES AND CONSTITUTIONS* 187 (András Sajó & Renata Uitz eds., 2010).

43. See Federico Fabbrini & András Sajó, *The Dangers of Constitutional Identity*, 25 *EUR. L.J.* 457, 462, 466 (2019) (suggesting that the concept of constitutional identity is flawed because it is so indeterminate that “it cannot satisfy the requirements of the

is used in three senses.⁴⁴ First, the concept is understood as an embodiment of the ideas and principles found in constitutions. Second, it refers to the architecture of a given constitution. Third, it is “*identitarian* in the sense that the constitutional ideas and principles present beliefs on long-term goals, aspirations, and commitments constituting the essence of a constitutional polity.”⁴⁵ A continental constitutional identity should be understood in this third sense, where national identity is based on a collective identification with a continent, to the exclusion of all other geographies.⁴⁶ Like constitutional identities, this concept “emerges *dialogically* and represents a mix of political aspirations and commitments that are expressive of a nation’s past, as well as the determination of those within the society who seek in some ways to transcend that past.”⁴⁷ However, unlike constitutional identities, the concept also straddles the wider literature on constitutional geography, which itself is part of institutional geography. Continental constitutional identities are therefore, like geopolitics, influenced by space as well as time.

The first subpart elaborates on this overlap with constitutional geography. Later, the Part explains the nesting principle and how it can mitigate conflict in international relations that arises from continental constitutional identities.

A. *Institutional Geography and Constitutions*

An institution is a set of “man-made rules that govern human [behavior].”⁴⁸ Examples of social institutions include the family and the city.⁴⁹ Institutional economics is an example of the use of institutional analysis, where the focus is on economic institutions, such

rule of law”); Laurence H. Tribe, *A Constitution We Are Amending: In Defense of a Restrained Judicial Role*, 97 HARV. L. REV. 433, 440 (1983) (arguing that a constitutional identity “cannot be objectively deduced or passively discerned in a viewpoint-free way”).

44. See Bui Ngoc Son, *Globalization of Constitutional Identity*, 26 WASH. INT’L L.J. 463, 469 (2017).

45. *Id.* at 469.

46. This understanding of continental constitutional identities does not allow for transcontinental polities, given the contradiction of having one national identity, but multiple continental identities. Such polities adopt non-geographic national identity.

47. JACOBSON, *supra* note 42, at 7.

48. PIET KEIZER, TJALLING C. KOOPMANS RSCH. INST., *THE CONCEPT OF INSTITUTION: CONTEXT AND MEANING 2* (Aug. 2008), https://www.uu.nl/sites/default/files/rebo_use_dp_2008_08-22.pdf (last visited Oct. 4, 2022) [<https://perma.cc/3VMC-6CL9>] (archived Oct. 4, 2022). For a review of definitions of institutions, see Howard B. Kaplan, *The Concept of Institution: A Review, Evaluation, and Suggested Research Procedure*, 39 SOC. FORCES 176, 176 (1960) (defining an institution as “a complex of stable status-role relationships that is concerned with a particular area of activity”).

49. See JOYCE O. HERTZLER, *SOCIAL INSTITUTIONS 9–14* (1929) (providing a systematic analysis of the essential components of social institutions).

as markets.⁵⁰ On the other hand, institutional geography applies geography to institutional analysis, hence distinguishing between the geography of institutions and the geography *in* institutions.⁵¹ The former takes institutions as signifiers of geographical difference.⁵² The latter takes institutions as a treatment that controls changes in affected human subjects.⁵³

Constitutions are institutions.⁵⁴ A constitution can be described as a meta institution given its influence on the whole domestic legal system, and hence, its ubiquitous influence on human behavior within a given polity.⁵⁵ Karl Nickerson Llewellyn, an American jurist, describes the institutional nature of constitutions as follows:

A national constitution is a somewhat peculiar institution in that it involves in one phase or another the ways of a huge number of people—well-nigh the whole population. If, like ours, it is a firmly established constitution, it involves ways of behavior deeply set and settled in the make-up of these people—and it involves not patterns of doing (or of inhibition) merely, but also accompanying patterns of thinking and of emotion-attitudes, e.g., potent and largely predictable, toward the verbal symbol “Constitution” and toward any person supposed to be attacking “It.”⁵⁶

The above quote illustrates both the geography-of-constitutions, and the geography-in-constitutions. The former explains, *inter alia*, the

50. For the original work on institutional economics, see generally GUSTAV VON SCHMOLLER, *GRUNDRISS DER ALLGEMEINEN VOLKSWIRTSCHAFTSLEHRE* [PRINCIPLES OF POLITICAL ECONOMY] (1900) (Ger.). For an introduction to institutional economics, see generally BERNARD CHAVANCE, *INSTITUTIONAL ECONOMICS* (2009); NEW INSTITUTIONAL ECONOMICS: A GUIDEBOOK (Éric Brousseau & Jean-Michel Glachant eds., 2008) (explaining how new institutional economics extend the analytical framework of institutional economics to include mainstream economics’ emphasis on efficiency).

51. See generally Chris Philo & Hester Parr, *Institutional Geographies: Introductory Remarks*, 31 GEOFORUM 513 (2000).

52. See *id.* at 514 (explaining that “geography of institutions, indicating how the worldly locations of asylums [qua institutions] relative to other peoples, land-uses, towns and resources can be included in an analysis seeking to expose the complexity of the will to develop a widespread social and spatial separation of such places” (citation omitted)).

53. See *id.* (explaining that “there is a concern for the geography in institutions, implicating the internal arrangements of space inside asylums. This is partly because of the intriguing constructions of such interior institutional geographies which can be recovered from the historical record, and partly because the plans, layouts and architectures involved have evidently mirrored many different discourses about the formation of a ‘proper’ human society.” (citation omitted)).

54. See Tom Ginsburg, *Constitutions as Political Institutions*, in ROUTLEDGE HANDBOOK OF COMPARATIVE POLITICAL INSTITUTIONS 101, 101 (Jennifer Gandhi & Rubén Ruiz-Rufino eds., 2015) (analyzing “large-C” Constitutions, i.e., “formal documents that have become part of the script of the nation-state . . .”).

55. See Tom Ginsburg, *Thirty Years After the Fall: An Academic Perspective*, 17 INT’L J. CONST. L. 510, 511 (2019) (“Constitutions eventually became a major focus of institutional analysis, since they serve as a kind of meta-institution, the rules whereby rules are made.”).

56. Karl N. Llewellyn, *The Constitution as an Institution*, 34 COLUM. L. REV. 1, 18 (1934).

role of a constitution in shaping separation between polities in the way it regulates the behavior of citizens. The geography-of-constitutions can be understood as a specialized form of the concept of jurisdiction. Jurisdiction, in contrast, is “normative, not empirical, and it primarily concerns the competence to control and alter the legal relations of those subject to that competence through the creation and application of legal norms.”⁵⁷ The geography-in-constitutions, in the above quote, is explained by the role of the constitution as a symbol, including attitudes towards geographical location and orientation of a given polity.

Notwithstanding the distinction between geography-of-constitutions and geography-in-constitutions, there is no general theory of constitutional geography.⁵⁸ One can only find fragmented literature on the intersection of geography and constitutions.⁵⁹ Next, the Article canvases some examples of these approaches to analyzing constitutional geography.

1. Geography-of-Constitutions

Harold Wolman furnishes an example of analyzing the geography-of-constitutions. He argues that the geographical constraints on political institutions affect the efficiency of interactions between different levels of political organization.⁶⁰ Similarly, Jane Wills explains the geography-of-constitutions using the concept of the “geo-constitution.”⁶¹ She uses the geo-constitution to analyze the intersec-

57. Stephen Allen, Daniel Costelloe, Malgosia Fitzmaurice, Paul Gragl & Edward Guntrip, *Introduction: Defining State Jurisdiction and Jurisdiction in International Law*, in THE OXFORD HANDBOOK OF JURISDICTION IN INTERNATIONAL LAW 3, 4 (Stephen Allen et al. eds., 2019).

58. See generally Chimène Keitner, Kal Ruastiala & Douglas Letter, *A Comparative Look at Extraterritoriality: Bagram and Beyond*, 104 PROC. ANN. MEETING AM. SOC'Y INT'L L. 103 (2010) (explaining that there is no general theory of constitutional geography in relation to the extraterritoriality of constitutional law); see also Allan Erbsen, *Constitutional Spaces*, 95 MINN. L. REV. 1168, 1242 (2011) (suggesting that constitutional geography includes questions that resist a “formulaic resolution linked to labels and lines on a map”).

59. See generally Clarence N. Stone, *Systemic Power in Community Decision Making*, 74 AM. POL. SCI. REV. 978 (1980) (explaining the role of geography in influencing institutions through the lens of urban regime theory); CLARENCE N. STONE, REGIME POLITICS: GOVERNING ATLANTA 1946-1988 (1989) (examining how institutional geography enables local elites to foster economic growth); Clarence N. Stone, *Urban Regimes and the Capacity to Govern: A Political Economy Approach*, 15 J. URB. AFFS. 1 (1993) (providing a definition of urban regime as a network of elite with shared socio-economic objectives); GERRY STOKER, THE POLITICS OF LOCAL GOVERNMENT (2d ed. 1991) (examining the impact of institutional geography on achieving social strategy).

60. See Harold Wolman, *Local Government Institutions and Democratic Governance*, in THEORIES OF URBAN POLITICS 135, 156–57 (David Judge et al. eds., 1995).

61. See generally Jane Wills, *The Geo-Constitution: Understanding the Intersection of Geography and Political Institutions*, 43 PROGRESS HUM. GEOGRAPHY 416 (2019).

tion “between geography and political institutions in the constitution of government.”⁶² By putting emphasis on the geographic nature of representative democracy and the geographic nature of the jurisdiction of any political institution, Wills explains a decoupling of political institutions from their socio-cultural context.⁶³ She expounds the concept of the geo-constitution as follows:

The spatial architecture and the internal power-geometry of political institutions determine political authority and responsibility with implications for accountability and related forms of encounter, organizing and mobilization. In their constitutional documents, nation-states determine the way in which political power is constituted and geographically differentiated, shaping the practice and possibilities of politics at all spatial scales. . . . The concept of the geo-constitution can be used to provide a framework to explore the ways in which institutions have developed in context, coming to shape government, politics and the practice of citizenship. Of course, such institutional geography generates powerful path-dependencies that make it difficult to implement change and/or to generate new institutions.⁶⁴

The geography-of-constitutions, therefore, is seen by Wills as shaping a distribution of power that determines the evolution of institutions within the polity. This approach to constitutional geography resulted in a research agenda that focuses on analyzing the effect of geography on decentralization.⁶⁵ It also led to a geography-based framework for analyzing constitutional crises.⁶⁶ This “geographical imagination can bring important insight into a fast-changing policy field that is designed to reconfigure the geography of political power.”⁶⁷

Note that the use of the phrase “constitutional geography” in the geography-of-constitutions sense has been extended to discussing the spatial arrangements of polities. For example, Ming-Sung Kuo explains Ron Hirschl’s constitutional geography as enabling the city to

62. *Id.* at 416; *see also* JANE WILLS, *LOCATING LOCALISM: STATECRAFT, CITIZENSHIP AND DEMOCRACY* 1–5 (2016) (explaining constitutional geography as the geographical division of powers).

63. *See* Wills, *supra* note 61, at 416–17, 430.

64. *Id.* at 425.

65. *See, e.g.*, Jean-Paul Faguet, *Decentralization and Governance*, 53 *WORLD DEV.* 2 (2014) (explaining constitutional geography as a specific analytical focus that begins with a historical analysis of the geography of the institutions of a given polity and extends to analyzing subnational institutions and their interaction with national and supranational institutions as envisaged by national constitutions). In other words, one must consider a country’s geography before proposing a certain design for decentralization. *See id.* at 2–3.

66. *See, e.g.*, CLAUDIA CHWALISZ, *THE POPULIST SIGNAL: WHY POLITICS AND DEMOCRACY NEED TO CHANGE* xii, 33 (2015) (analyzing populism and the rise of social media in the context of geography).

67. Wills, *supra* note 61, at 431.

find its own constitutional space, independent of the nation-state.⁶⁸ Similarly, Günter Frankenberg looks at constitutional geography in the context of polities' territorial partition.⁶⁹ There is also an application of constitutional geography in the context of First Nations rights. For example, Kalpana Kannabiran looks at the constitutional geography of the human rights of indigenous communities in India.⁷⁰ A more general formulation of this concept comes from Konrad Lachmayer, who suggests a reciprocal relationship between constitutional law and territory, where constitutional law can be interpreted as signaling a specific social understanding of territory, as much as understanding territory itself is a constitutional construct.⁷¹

2. Geography-in-Constitutions

One of the closest analyses to a general statement of geography-in-constitutions comes from Dmitry Khudoley. He explains that “the right [constitutional] geographical sign plays [an] important role.”⁷² Signaling, according to Khudoley, is the essential characteristic of geography-in-constitutions.⁷³ An example of such signaling can be found in the US Constitution, where the name of the polity itself signals a continental identity: “[E]stablish this Constitution for the United States of America.”⁷⁴ Another example, a hybrid ethnic-geographic identity, can be found in the Constitution of Canada, where

68. See, e.g., Ming-Sung Kuo, *Making Constitutionalism Progressive Again: A Primer on City Constitutionalism and State (Re)Formation in a New Constitutional Geography*, 85 MOD. L. REV. 801, 803 (2022) (reviewing RON HIRSCHL, *CITY, STATE: CONSTITUTIONALISM AND THE MEGACITY* (2020) (questioning the origins of city disempowerment)).

69. See Günter Frankenberg, *Constitutional Geography and Geopolitics*, PRIV. INT'L L. AS GLOB. GOVERNANCE (Feb. 21, 2018), <http://blogs.sciences-po.fr/pilagg/2018/02/21/friday-23-february-2018-constitutional-geography-and-geopolitics-by-professor-gunter-frankenberg/> [<https://perma.cc/F3US-UR9J>] (archived Oct. 5, 2022).

70. See generally Kalpana Kannabiran, *Constitutional Geographies and Cartographies of Impunity: Human Rights and Adivasis/Tribes in Contemporary India*, ECON. & POL. WKLY., Nov. 5, 2016, at 92.

71. See KONRAD LACHMAYER, *CONSTITUTIONAL LAW AND GEOGRAPHY* 11–16 (Sept. 22, 2016), https://www.federalism.eu/assets/2015/01/Lachmayer_ConstLawAndGeo.pdf [<https://perma.cc/YXY9-9U37>] (archived Oct. 5, 2022). See generally Ben Clifford & Janice Morphet, *Afterword: The Scottish Referendum, the English Question and the Changing Constitutional Geography of the United Kingdom*, 181 GEOGRAPHICAL J. 57 (2015) (analyzing the fallout from the Scottish referendum of 2014 as part of a wider continental constitutional geography).

72. Dmitry M. Khudoley, *About the Subject and the Method of the Comparative Constitutional Law*, 20 PERM UNIV. HERALD JURID. SCIS. 84, 92 (2013) (in Russian with an English synopsis).

73. See *id.*

74. U.S. CONST. pmb1. Only a few countries have adopted the name of their continent as part of their names. These include South Africa, the Central African Republic, and Australia.

the union is part of “British North America.”⁷⁵ Note that, unlike the US Constitution, which seems to imagine one American continent extending from Alaska to Argentina,⁷⁶ the Canadian Constitution envisages a national identity that is confined to the British-controlled part of North America. These continental constitutional identities became the essential characteristic of each federation, sewn into the fabric of their historical role in international relations. Arguably, the geographic imagination inherent in the US Constitution reflects the “manifest destiny” hypothesis, namely, “the right of our manifest destiny to spread over this whole continent.”⁷⁷ In fact, when this manifest destiny is understood as continentalism, the Civil War could be understood as a climax of the clash between two continental projects.⁷⁸

Similar continental context can be found in the preamble to the Australian Constitution: “And whereas it is expedient to provide for the admission into the Commonwealth of other *Australasian* Colonies and possessions of the Queen.”⁷⁹ This constitutional geography signals that the Commonwealth of Australia is situated in Australasia, which together with Micronesia, Melanesia, and Polynesia form the continent of Oceania.⁸⁰ In fact, Australasia was the name of the first union formed in Oceania, the *Federal Council of Australasia*, which was replaced by the extant commonwealth in 1900.⁸¹ The change from “Australasia” to “Australia” is informative. It suggests a strategic intent for a national identity that goes beyond Oceania—even divorced from Oceania. Australia was being reimagined as part of a wider

75. Constitution Act, 1867, 30 & 31 Vict., c 3, pmb. (U.K.), reprinted in R.S.C. 1985, app II, no 5 (Can.).

76. The US Constitution refers to “the United States of America,” rather than to “North America.” For example, Article II states that “The executive Power shall be vested in a President of the United States of America.” U.S. CONST. art. II, § 1.

77. Julius W. Pratt, *The Origin of ‘Manifest Destiny’*, 32 AM. HIST. REV. 795, 795 (1927) (quoting Robert C. Winthrop, APPENDIX TO THE CONG. GLOBE 99 (Jan. 3, 1846)) (emphasis omitted).

78. Andrew Holman, *Something Old, Something New: Canada and the American Civil War*, ACADIENSIS, Autumn/Automne 2001, at 164, 166 (arguing that the Civil War was a sequel to the unfinished War of Independence; “British North America became an anticipated (if not real) battleground in the Civil War and many contemporaries fully expected a victorious North to use the occasion to finish the work of the American Revolution left undone in 1781. The Civil War made British North Americans anxious about their identities, defences and futures.”).

79. *Australian Constitution* pmb. (emphasis added). An earlier attempt at federation was the Federal Council of Australasia. See Federal Council of Australasia Act 1885, 48 & 49 Vict. c. 60 (UK).

80. See *Subregions of Oceania*, AUSTRALIAN NAT’L UNIV., <https://asiapacific.anu.edu.au/maponline/base-maps/subregions-oceania> (last visited Oct. 5, 2022) [<https://perma.cc/T2NS-HC3S>] (archived Oct. 5, 2022). See generally FRANK HARARY & PER HAGE, EXCHANGE IN OCEANIA: A GRAPH THEORETIC ANALYSIS (1991).

81. See The Federal Council of Australasia Act, 1885, 48 & 49 Vict. c. 60 (UK). The Act was repealed in 1900. See Commonwealth of Australia Act 1900, 63 & 64 Vict. c. 12, § 7 (UK).

Global South. Dropping the “-asia” part was also a signifier of the White Australia policy that continued to inform migration policies in Australia until the 1970s.⁸² This form of continental misalignment left a void for China to fill. For example, in 2022, as a response to closer security cooperation between the United States, the United Kingdom, and Australia, China signed a security agreement with the Solomon Islands, which “created much alarm in the region.”⁸³

From the above examples, a *continental constitutional identity* is where a constitution signals a national identity by reference to a continent. In other words, a continental constitutional identity is an explicit reference in the constitution of a polity to a continent, thus asserting the polity’s national collective consciousness—what could be understood as the national ethos of belonging to a continent.⁸⁴ The reference is intended to declare the polity’s identity in relation to its geographic location.

Other examples, this time from Europe, can illustrate the difference between first-order and second-order types of continental constitutional identity. In the German Constitution one finds:

Article 24 [Transfer of sovereign powers—System of collective security]

(2) With a view to maintaining peace, the Federation may enter into a system of mutual collective security; in doing so it shall consent to such limitations upon its sovereign powers as will bring about and *secure a lasting peace in Europe* and among the nations of the world.⁸⁵

Article 24 illustrates how the German Constitution expresses a continental identity. Article 24(2) introduces an explicit reference to “Europe.” This reference to Europe comes as part of the transfer of sovereign powers for the objective of collective security. To achieve this

82. See, e.g., Gwenda Tavan, *The Dismantling of the White Australia Policy: Elite Conspiracy or Will of the Australian People?*, 39 AUSTRALIAN J. POL. SCI. 109, 109, 118–21 (2004) (arguing that the White Australia Policy continues to influence immigration policy in Australia).

83. Larissa Stünkel & Marc Lanteigne, *The Geopolitical Aftershocks of the China-Solomon Islands Security Agreement*, DIPLOMAT (Apr. 13, 2022), <https://thediplomat.com/2022/04/the-geopolitical-aftershocks-of-the-china-solomon-islands-security-agreement/> [<https://perma.cc/872L-ZEFY>] (archived Oct. 5, 2022) (explaining that the envisaged agreement seeks to allow “stationing Chinese military and police personnel in the island state and allowing Chinese vessels to replenish supplies there”).

84. For the use of national ethos as an aid to constitutional interpretation, see Robert Post, *Theories of Constitutional Interpretation*, 30 REPRESENTATIONS (SPECIAL ISSUE) 13, 33 (1990) (explaining why “denying the existence of a national ethos . . . transforms the . . . Constitution . . . into a form of ‘repressive law’ that ‘gives short shrift to the interests of the governed’” (quoting PHILIPPE NONET & PHILIP SELZNICK, *LAW AND SOCIETY IN TRANSITION: TOWARD RESPONSIVE LAW* 29 (1978))).

85. GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND (BASIC LAW), art. 24(2) (emphasis added), translation at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0136 (last visited Oct. 5, 2022) [<https://perma.cc/ZS7H-7BY4>] (archived Oct. 5, 2022).

objective, Germany consents to limit its own sovereignty to enable a lasting peace in Europe. The article envisages peace. It therefore requires coordination on a continental scale. In other words, the reference to “Europe” is to a geographic location. This is not a reference to European institutions, but to the geographic extent of the European continent. It extends to all European countries, including countries such as Ukraine and Russia. Therefore, Article 24(2) is an example of a first-order continental identity because the reference is to the geographic location itself. In comparison, a second-order continental identity is one that relates to geographic institutions, that is, to institutions based on the conventional definition of a particular continent. For example, in the preamble to the German Constitution, we read, “[c]onscious of their responsibility before God and man, Inspired by the determination to promote world peace *as an equal partner in a united Europe*, the German people, in the exercise of their constituent power, have adopted this Basic Law.”⁸⁶ The qualifier “united” suggests that the reference is not only geographic but also political, referring to a political union, specifically to the EU.⁸⁷ The German Constitution makes similar reference to European institutions another thirty-three times.⁸⁸

In contrast to the German Constitution, the French Constitution has only a second-degree continental identity. The first mention of

86. *Id.* pml. (emphasis added).

87. For amendments to the Preamble of the German Constitution, see Micheal Silagi, *The Preamble of the German Grundgesetz—Constitutional Status and Importance of Preambles in German Law*, 52 ACTA JURIDICA HUNGARICA 54, 60–61 (2011) (explaining that the current Preamble was introduced in 1990; hence it is safe to suggest that the reference to “united Europe” is a reference to the EU).

88. See GRUNDGESETZ, art. 16(2) (“a member state of the European Union”); *id.* art. 16a(2) (“member state of the European Communities” and “states outside the European Communities”); *id.* art. 16a(5) (“member states of the European Communities”); *id.* art. 23 (“European Union – Protection of basic rights – Principle of subsidiarity”); *id.* art. 23(1) (“With a view to establishing a united Europe,” “the development of the European Union,” and “[t]he establishment of the European Union”); *id.* art. 23(1a) (“the Court of Justice of the European Union,” “a legislative act of the European Union,” and “the contractual foundations of the European Union.”); *id.* art. 23(2) (“matters concerning the European Union”); *id.* art. 23(3) (“legislative acts of the European Union”); *id.* art. 23(6) (“a member state of the European Union”); *id.* art. 28(1) (“member state of the European Community” and “in accordance with European Community law”); *id.* art. 45 (“Committee on the European Union,” “a Committee on European Union Affairs,” and “the contractual foundations of the European Union”); *id.* art. 50 (“in matters concerning the European Union”); *id.* art. 52(3a) (“matters concerning the European Union” and “Chamber for European Affairs”); *id.* art. 87d(1) (“in accordance with European Community law”); *id.* art. 88 (“The European Central Bank,” “the framework of the European Union,” and “the European Central Bank”); *id.* art. 104a(6) (“financial corrections by the European Union”); *id.* art. 106(7) (“the framework of the European Communities”); *id.* art. 108 (“the framework of the European Communities”); *id.* art. 109(2) (“legal acts of the European Community” and “the Treaty Establishing the European Community”); *id.* art. 109(5) (“Sanctions imposed by the European Community” and “the Treaty Establishing the European Community”).

Europe in this constitution is this: “The Republic may enter into agreements with *European States* which are bound by undertakings identical with its own in matters of asylum and the protection of human rights and fundamental freedoms, for the purpose of determining their respective jurisdiction as regards requests for asylum submitted to them.”⁸⁹ The rest of the French Constitution has another twenty-five references to European institutions, and hence is always limited to a second-order constitutional identity.⁹⁰

In contrast to the constitutions of Germany and France, a continental constitutional identity is completely missing from some European constitutions. Explaining this phenomenon requires a case-by-case analysis.

For example, one can attempt to explain the absence of a continental constitutional identity in relation to the Russian Federation.⁹¹ This omission could be partly due to Russia being a transcontinental country, straddling both Europe and Asia. Two-fifths of the European continent is part of Russia.⁹² In contrast, only one-third of Asia is in Russia.⁹³ Given these proportionalities, it would be reasonable to

89. 1958 CONST. art. 53-1 (Fr.). For an unofficial translation, see *France 1958 (rev. 2008)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/France_2008?lang=en (last visited Oct. 5, 2022) [<https://perma.cc/KG9A-6T65>] (archived Oct. 5, 2022).

90. See 1958 CONST. tit. XV (“On the European Union”); *id.* art. 88-1 (“participate in the European Union,” “the Treaty on European Union,” and “the Treaty on the Functioning of the European Union”); *id.* art. 88-2 (“the rules relating to the European arrest warrant” and “acts adopted by the institutions on the European Union”); *id.* art. 88-3 (“the Treaty on European Union”); *id.* art. 88-4 (“drafts of European legislative acts,” “acts of the European Union,” “the Council of the European Union,” “European resolutions may be passed,” “document issuing from a European Union Institution,” and “in charge of European affairs”); *id.* art. 88-5 (“the accession of a state to the European Union”); *id.* art. 88-6 (“a draft proposal for a European Act,” “the Presidents of the European Parliament,” “the Council of the European Union,” “the European Commission,” “the Court of Justice of the European Union” (twice), and “European Act”); *id.* art. 88-7 (“Acts of the European Union,” “Treaty on European Union,” and “Treaty on the Functioning of the European Union”); CHARTE DE L’ENVIRONNEMENT (CHARTER FOR THE ENVIRONMENT) art. 10 (“This Charter shall inspire France’s actions at both a European and an international level.”).

91. Other European countries, including those with overseas territories, can also be analyzed. The Republic of Türkiye is especially relevant to this European misalignment.

92. See *Map of European Russia*, NATIONSONLINE, <https://www.nationsonline.org/oneworld/map/European-Russia-map.htm> (last visited Nov. 19, 2022) [<https://perma.cc/DPS5-8VHC>] (archived Nov. 19, 2022) (stating that “the western 23% of [Russia] is located in Europe. European Russia occupies almost 40% of the total area of Europe”); see also Vladimir Baranovsky, *Russia: A Part of Europe or Apart from Europe?*, 76 INT’L AFFS. 443, 443 (2000) (analyzing the entanglement of the political landscape of the European continent with its geographical extent).

93. See MIKHAIL S. BLINNIKOV, GEOGRAPHY OF RUSSIA AND ITS NEIGHBORS 1 (2d ed. 2021). Russia has an area of around 17 million square kilometers, while Asia’s is around 44 million square kilometers. *Id.* at 1. For the area of Asia, see SIMON ADAMS & ANITA GANERI, GEOGRAPHY OF THE WORLD, Asia (DK Publishing 2009).

expect that Russia would have a Western orientation. Potentially, the occultation of its European constitutional identity is due to an ideological divide in Russia's political collective consciousness.⁹⁴ Hence, the Constitution of the Russian Empire in the lead up to World War I had no continental identity.⁹⁵ This constitution was by and large an affirmation of the "Supreme Sovereign Power" of the emperor.⁹⁶ The Russian identity emanated from the "sacrosanct and inviolable" emperor.⁹⁷ Notwithstanding, one finds reference to "[t]he Grand Duchy of Finland," where the constitution affirms the special status of Finland within the "Russian State."⁹⁸ Arguably, the closest expression of a geography in this constitution can be found in Article 1, which states that "[t]he Russian State is one and indivisible."⁹⁹ This idea of indivisibility suggests that the Russian State is constituted of subnational entities, although, except for Finland, there is no mention of these entities anywhere in this constitution. Similarly, there is no evidence of any continental identity in the Constitutions of the Union of Soviet Socialist Republics (USSR).¹⁰⁰

Another transcontinental country that suffers from an obscuration of its continental constitutional identity is Türkiye. The only continental reference in the Turkish Constitution is in Article 148. This article explains that "[e]veryone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed."¹⁰¹ This second-order European continental identity coincides only with the European part of Türkiye. It is reflective of a national identity that looks westwards rather than to the east—only to clash with geographic boundaries. Anatolia itself remains, per continental convention, part of Asia rather than Europe. This Asian continental identity continues to be occulted in the Turkish Constitution.¹⁰²

Contrast the occultation of continental identities found in the Russian and Turkish constitutions with the Ukrainian Constitution,

94. See generally ALEXANDER LUKIN, BROOKINGS INST., *RUSSIA BETWEEN EAST AND WEST: PERCEPTIONS AND REALITY* (2003) <https://www.brookings.edu/wp-content/uploads/2016/06/lukin20030328.pdf> [<https://perma.cc/7U89-T3EQ>] (archived Oct. 5, 2022) (explaining Russia's post-communist orientation).

95. See generally RUSSIAN FUNDAMENTAL LAWS 1906, *supra* note 11.

96. *Id.* art. 4.

97. *Id.* art. 5.

98. *Id.* art. 2.

99. *Id.* art. 1.

100. See KONSTITUTSIJA SSSR (1924) [KONST. SSSR] [USSR CONSTITUTION]; KONSTITUTSIJA SSSR (1936) [KONST. SSSR] [USSR CONSTITUTION]; KONSTITUTSIJA SSSR (1977) [KONST. SSSR] [USSR CONSTITUTION].

101. See TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TÜRKİYE], art. 148, amended by Act No. 6771, Jan. 21, 2017.

102. See *id.*

where it is stated that “[t]he Verkhovna Rada [Parliament] of Ukraine, on behalf of the Ukrainian people - citizens of Ukraine of all nationalities, expressing the sovereign will of the people . . . confirming the *European identity* of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine.”¹⁰³ When this 2019 version of the Ukrainian Constitution is contrasted with the 2016 version, it becomes clear that the latter had no references to Europe. The introduction of a continental identity into the constitution was through the 7 February 2019 amendment, which was passed by 334–17 votes in the Ukrainian Parliament, the Verkhovna Rada, under the former Ukrainian President Petro Poroshenko. This continental constitutional identity was intended to reflect the Ukraine’s aspiration to join the EU and the NATO.¹⁰⁴ Earlier, in February 2014, Russia-backed President Viktor Yanukovich was ousted after wide protests for withdrawing from an Association Agreement with the EU.¹⁰⁵ Since then, Russia annexed the Crimean Peninsula and backed separatists in the regions of Donetsk and Luhansk, collectively known as the Donbas region, east of Ukraine.¹⁰⁶ On 21 February 2022, Russia formally recognized the Republics of Donetsk and Luhansk, and the next day, on 22 February 2022, began invading Ukraine under the guise of protecting Russian nationals in the Donbas region.¹⁰⁷

The Russo-Ukrainian war illustrates the geopolitical ramifications of the presence (and absence) of continental constitutional identities. In the following subpart, I unpack this problem using social psychology.

B. *Why Is a Constitutional Occultation of Continental Identities a Problem?*

Constitutions are ideal for signaling the collective consciousness of polities because of their role as meta institutions (see above). One can therefore interpret constitutional signaling as a form of identifica-

103. Конституція України [CONSTITUTION OF THE UKRAINE] pmb. (emphasis added). For an unofficial translation, see CONSTITUTION OF UKRAINE, REFWORLD, <https://www.refworld.org/pdfid/44a280124.pdf> (last visited Oct. 5, 2022) [<https://perma.cc/6LX5-UMR5>] (archived Oct. 5, 2022).

104. See *Ukrainian Parliament Passes Constitutional Amendment to Reflect EU, NATO Aspirations*, RADIO FREE EUR. (Feb. 7, 2019), <https://www.rferl.org/a/ukraine-parliament-passes-constitutional-amendment-to-reflect-eu-nato-aspirations/29756695.html> [<https://perma.cc/SG3M-YFBB>] (archived Sept. 30, 2022).

105. See, e.g., Serhii Plokyh, *The Return of the Empire: The Ukraine Crisis in the Historical Perspective*, 35 S. CENT. REV. 111, 115 (2018).

106. See *id.* 116–18.

107. See Quint Forgey, *Russia-Ukraine Crisis: Where Things Stand After 1 Week of War*, POLITICO (Mar. 3, 2022, 12:10 PM), <https://www.politico.com/news/2022/03/03/russia-ukraine-crisis-where-things-stand-00013728> [<https://perma.cc/CT97-53LY>] (archived Sept. 30, 2022).

tion.¹⁰⁸ For example, assume there are three countries, *A*, *B*, and *C*. Countries *A* and *B* signal in their constitutions Africa as their continental identity, while *C*'s constitution is silent on its continental identity. One can say that countries *A* and *B* identify themselves as African, making them the ingroup, while *C* becomes the outgroup. This occultation of continental identities is the result of diversity within a given continent.¹⁰⁹ This intracontinental misalignment effects conflict between polities, just like diverse societies are prone to intergroup clashes. Identification with a continent plays a role analogous to that of identification within groups, for example, as explained by social identity theory.¹¹⁰ According to this theory, evaluation of others involves three mental stages. The first is categorization, where each group is assigned a category, such as American, Canadian, or Australian. This categorization would then help with the second stage: identification. In this stage, people identify with the group they belong to, to the exclusion of other groups. Once identification occurs, our self-esteem is inextricably linked to our group, and to how we perceive this group relative to other groups. This then is the third stage of social identity theory, comparison, where self-esteem can be maintained only through competing with rival groups. Continental conventions could result in an occultation of continental identities in constitutions. This creates rivalry between the outgroup (country *C*) and the ingroup (countries *A* and *B*) (i.e., with polities having explicit continental constitutional identities).¹¹¹

108. See generally Patrick Thaddeus Jackson, *Relational Constructivism: A War of Words*, in *MAKING SENSE OF INTERNATIONAL RELATIONS THEORY* 152 (Jennifer Sterling-Folker ed., 2013) (using the invasion of Iraq in 2003 to explain how public rhetoric can influence identification); see also Emanuel Adler, *Constructivism and International Relations*, in *HANDBOOK OF INTERNATIONAL RELATIONS* 95, 103–04 (Walter Carlsnaes et al. eds., 2002) (explaining that identities could be situated outside the “core of national and transnational interests”). But see Bernd Bucher & Ursula Jasper, *Revisiting ‘Identity’ in International Relations: From Identity as Substance to Identification in Action*, 23 *EUR. J. INT’L RELS.* 391, 393 (2017) (suggesting a post-structuralist understanding of identification as a process that is not necessarily preceded by the formation of stable identities).

109. See Victoria M. Esses, Lynne M. Jackson, John F. Dovidio & Gordon Hodson, *Instrumental Relations Among Groups: Group Competition, Conflict, and Prejudice*, in *ON THE NATURE OF PREJUDICE: FIFTY YEARS AFTER ALLPORT* 227, 228 (John F. Dovidio et al. eds., 2005) (explaining Gordon Allport’s proposition that “diverse societies are particularly vulnerable to intergroup clashes because salient group differences . . . help define group boundaries and mark others as potential competitors.” (citation omitted)).

110. See, e.g., Henri Tajfel & John Turner, *An Integrative Theory of Intergroup Conflict*, in *THE SOCIAL PSYCHOLOGY OF INTERGROUP RELATIONS* 33, 40–41 (William G. Austin & Stephen Worchel eds., 1979) (asserting that individuals create their own identities).

111. See D. ROBERT WORLEY, *TAJFEL AND TURNER: INTERGROUP CONFLICT THEORIES* 1997, at 1–3 (Jan. 2021), https://www.researchgate.net/publication/348648205_Tajfel_and_Turner_Intergroup_Conflict_Theories_1997 [<https://perma.cc/6T-WU-BERP>] (archived Oct. 6, 2022); Gazi Islam, *Social Identity Theory*, in *ENCYCLOPEDIA OF CRITICAL PSYCHOLOGY* 1781–83 (Thomas Teo ed., 2014).

When a continental identity is occulted, as in country *C*, the polity is positioned as an outgroup. The instrumental model of group conflict explains the consequences of this positioning by unpacking the interaction between an ingroup and an outgroup.¹¹² The ingroup represents countries that have adopted an explicit continental constitutional identity.¹¹³ The outgroup represents countries with no continental constitutional identity, and are seen as distinct from the ingroup, which results in intergroup competition (see above). The model explains that “resource stress and the salience of a potentially competitive outgroup leads to perceived group competition for resources. This perceived group competition, in turn, motivates strategies to remove the source of competition.”¹¹⁴ These strategies include “outgroup derogation, discrimination, and avoidance . . . discrimination and opposition to policies and programs that may benefit the [outgroup] and . . . decreasing proximity with the other group so that the competition, or the salience of the competition, is reduced.”¹¹⁵ This competition, therefore, becomes the source of a reciprocally perceived threat.

In summary, a misalignment between the geographic definition of a continent and that continent’s sociopolitical extent leads to an occultation of continental identities. This in turn creates competition between ingroup countries and outgroup countries, which could become the source of armed conflict between these countries.

C. *The Solution: Nestedness*

The common ingroup identity model to international relations can help identify a solution to the competition between ingroup and outgroup countries as explained above.¹¹⁶ The key idea is that once a country, such as country *C* from my example above, is treated as part of the ingroup, the perceived threat and the competition between this country and the ingroup is eliminated. This is the essence of nestedness—as an integration strategy to remove the competition between groups. To allow for this kind of integration, country *C* must exhibit conformity to the practices of the ingroup. This conformity can be achieved through nesting this country within ingroup institutions. Signaling the continental constitutional identity of the ingroup by country *C* is concurrent with this nestedness.

112. See Victoria M. Esses, John F. Dovidio, Lynne M. Jackson & Tamara L. Armstrong, *The Immigration Dilemma: The Role of Perceived Group Competition, Ethnic Prejudice, and National Identity*, 57 J. SOC. ISSUES 389, 390–94 (2001).

113. See *id.* at 390.

114. *Id.* at 393–94.

115. *Id.* at 394.

116. See SAMUEL L. GAERTNER & JOHN F. DOVIDIO, REDUCING INTERGROUP BIAS: THE COMMON INGROUP IDENTITY MODEL 46–49 (2000).

The origins of the nesting principle can be traced back to the late 1930s in the study of biogeography.¹¹⁷ In non-mathematical terms, nestedness of a node in a network can be defined as “tendency for nodes to interact with subsets of the interaction partners of better-connected nodes.”¹¹⁸ This feature of networks informs their “robustness against external perturbations and [their] dynamic stability.”¹¹⁹ In international relations, nestedness can therefore be used to design stable institutions, that is, ones with “a high degree of conformity” to rules and procedures.¹²⁰ Where a polity is nested within a continental identity, its worldview converges to the worldview of the other polities within this continent.¹²¹ This occurs through a process of socialization.¹²² This convergence, in turn, reduces the likelihood of intracontinental conflict.

In political science, there are three versions of the nesting principle.¹²³ The first is nested systems, where mathematical tools, such as game theory, can generate insights as to how structural nesting in systems can help generate a stable equilibrium.¹²⁴ Robert Flood and Ewart Carson canvas early research that “uses the concept of nested systems and subsystems to examine conflict (the long-term structural antecedent of war) within and between states.”¹²⁵ A pertinent example of this approach is the Braumoeller model.¹²⁶ According to this model, the worldview of the constituency is aggregated in a national constitution.¹²⁷ This aggregation becomes the basis on which the political leaders of this polity act in the

117. See Manuel Sebastian Mariani, Zhuo-Ming Ren, Jordi Bascompte & Claudio Juan Tessone, *Nestedness in Complex Networks: Observation, Emergence, and Implications*, 813 PHYSICS REPS. 1, 3 nn.19–22 (2019).

118. *Id.* at 1. For the seminal work, see generally ERIC HULTÉN, *OUTLINE OF THE HISTORY OF ARCTIC AND BOREAL BIOTA DURING THE QUATERNARY PERIOD* (1937).

119. Mariani, Ren, Bascompte & Tessone, *supra* note 117, at 58 (emphasis omitted).

120. See, e.g., INSTITUTIONAL DESIGNS FOR A COMPLEX WORLD 5–7 (Vinod K. Aggarwal ed., 1998) (discussing nesting in the context of the General Agreement on Tariffs and Trade and tariff reductions).

121. See *id.* at 41.

122. See, e.g., ALEXANDER WENDT, *SOCIAL THEORY OF INTERNATIONAL POLITICS* 170 (1999) (explaining that “[t]he process by which identities and interests get formed is called ‘socialization.’ Socialization is in part a process of learning to conform one’s behavior to societal expectations . . . and as such it is possible to study it without studying identity and interest-formation . . .”).

123. See MICHAEL SLOBODCHIKOFF, *STRATEGIC COOPERATION: OVERCOMING THE BARRIERS OF GLOBAL ANARCHY* 33 (2013).

124. See *id.* at 33.

125. ROBERT L. FLOOD & EWART R. CARSON, *DEALING WITH COMPLEXITY* 141, 145 (Springer 2d ed. 1993) (1993).

126. See BEAR F. BRAUMOELLER, *WEATHERHEAD CTR. FOR INT’L AFFS., NESTED POLITICS: A NEW SYSTEMATIC THEORY OF IR* 14–15 (Sept. 5, 2004), https://wcfia.harvard.edu/files/wcfia/files/887_braumoellerapsa04.pdf [<https://perma.cc/39YZ-U59T>] (archived Sept. 30, 2022).

127. See *id.* at 14.

international system.¹²⁸ Through the anarchy of this system,¹²⁹ changes in the constituency's worldview, as exemplified in constitutional amendments, would then result in "a shift in the distribution of power [in the international system], the spread of an ideology, or a reduction in trade barriers."¹³⁰

The second version is based on nested institutions or regimes, where emphasis is on analyzing organizational hierarchies and how some organizations can be embedded in more encompassing institutions.¹³¹ For example, in their study of the nesting of international organizations, Spyros Blavoukos and Dimitris Bourantonis emphasize the importance of nested connections in geographic regions where there are spillovers.¹³² Another example is Erin Jenne's theory of nested security.¹³³ The theory explains that internal conflicts are "horizontally and vertically 'nested' in regional and/or global conflict processes."¹³⁴ According to this theory, a stable polity requires a stable external environment.¹³⁵ By extension, a stable continental environment is a prerequisite for stabilizing intracontinental conflicts.¹³⁶ A key insight from this approach is that

each successive nested regime will erode the meta [overarching] regime until the point that a new meta regime must be established to replace the prior meta regime. This was the case with the World Trade Organization (WTO) replacing [the General Agreement on Tariffs and Trade] as the meta regime, as well as the

128. *See id.* at 15.

129. This Article uses the term "anarchy" to mean "lack of common government." *See* Robert Axelrod & Robert O. Keohane, *Achieving Cooperation under Anarchy: Strategies and Institutions*, 38 *WORLD POL.* 226, 226 (1985) (explaining that "[a]narchy also needs to be defined clearly. As used here, the term refers to a lack of common government in world politics, not to a denial that an international society—albeit a fragmented one—exists."). *But see* Helen Milner, *The Assumption of Anarchy in International Relations Theory: A Critique*, 17 *REV. INT'L STUD.* 67, 70–71 (1991).

130. BRAUMOELLER, *supra* note 126, at 15.

131. *See* SLOBODCHIKOFF, *supra* note 123, at 20–26.

132. *See* Spyros Blavoukos & Dimitris Bourantonis, *Nested Institutions*, in PALGRAVE HANDBOOK OF INTER-ORGANIZATIONAL RELATIONS IN WORLD POLITICS 303, 314 (Joachim A. Koops & Rafael Biermann eds., 2017). In international relations theory, a spillover is where "a given action, related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and a need for more action, and so forth." LEON N. LINDBERG, *THE POLITICAL DYNAMICS OF EUROPEAN ECONOMIC INTEGRATION* 10 (1963).

133. *See* ERIN K. JENNE, *NESTED SECURITY: LESSONS IN CONFLICT MANAGEMENT FROM THE LEAGUE OF NATIONS AND THE EUROPEAN UNION* 14–22 (2015).

134. *Id.* at 14.

135. *See id.* at 18.

136. *See id.* at 18–22 (discussing "regional security regimes").

European Union (EU) replacing the European Community (EC), which had previously replaced the European Coal and Steel Community.¹³⁷

The third version is known as nested treaties.¹³⁸ This modeling approach focuses on the role of international treaties as the primary source of international law.¹³⁹ The approach emphasizes geographical proximity as a source of armed conflict.¹⁴⁰ This approach emphasizes that “[t]he ‘nesting’ of one treaty in another, the joining of inter-connected (nested) treaties into broader ‘treaty networks,’ and the bridging of interrelated treaty networks into broader ‘treaty complexes’ all combine to advance intergovernmental cooperation even as states’ interests clash.”¹⁴¹ Sometimes, networks of treaties can be interpreted as institutions and analyzed under the second approach.¹⁴²

While all three modeling approaches are useful in analyzing the effects of nestedness on socioeconomic interactions, the Article focuses on institutions so that one can have a direct link between the concept of continental constitutional identity and insights into the stability of intracontinental institutions. Given the predictive value of nestedness when it comes to international relations, one can use this criterion to guide the architecture of continental organization. For example, think of the European continent as a network, with countries as nodes within this network. The nesting principle explains that the stability of this network can be enhanced by ensuring that each country interacts with the better-connected nodes in this network. This architecture can be achieved through an alignment between the geographic definition of the European Continent, based on geographic proximity, and its political definition based on the group of treaties that define its institutions—in other words, by ensuring that every country that is part of Europe is integrated into European institutions. The issue arises from having transcontinental countries, such as the Russian Federation, where geographic proximity cannot secure the proposed alignment. The following Part expands on this point by demonstrating the possible solution in the relatively simpler context of the African Continent.

137. SLOBODCHIKOFF, *supra* note 123, at 21–22. For the path from General Agreement on Tariffs and Trade to WTO, see generally CRAIG VANGRASSTEK, WORLD TRADE ORG., THE HISTORY AND FUTURE OF THE WORLD TRADE ORGANIZATION (2013), https://www.wto.org/english/res_e/booksp_e/historywto_e.pdf (last visited Oct. 7, 2022) [<https://perma.cc/Z5ZK-ACYN>] (archived Oct. 7, 2022).

138. See SLOBODCHIKOFF, *supra* note 123, at 20.

139. See, e.g., STEPHEN HALL, PRINCIPLES OF INTERNATIONAL LAW 12–14 (6th ed. 2019).

140. See SLOBODCHIKOFF, *supra* note 123, at 34–36.

141. John P. Willerton, Michael O. Slobodchikoff & Gary Goertz, *Treaty Networks, Nesting, and Interstate Cooperation: Russia, the FSU, and the CIS*, 15 INT’L AREA STUD. REV. 59, 60 (2012).

142. See SLOBODCHIKOFF, *supra* note 123, at 31–33.

III. THE AFRICAN MISALIGNMENT

In this Part, I elaborate on observed and occulted African constitutional identities. An analysis of the constitutions of North African countries reveals an explicit African continental constitutional identity west of the Sinai Peninsula, but a systematic omission of any continental constitutional identity east of the peninsula. As I explain below, this alienation is contributing to the continued tension in the so-called Middle East. The origin of this tension can be found in the colonial definition of Africa. On 16 May 1916, Britain and France signed the Sykes-Picot Agreement to partition Arabia and the Levant,¹⁴³ just like they partitioned the rest of Africa in the nineteenth century.¹⁴⁴ These European powers invented a new region to describe this part of Africa: the Middle East.¹⁴⁵ In fact, some argue that Africa itself is nothing

143. See Annabelle Quince, *Drawing a line in the sand: 100 years of the Sykes-Picot Agreement*, AUSTRALIAN BROAD. CORP. (May 19, 2016), <https://www.abc.net.au/radionational/programs/rearvision/100-years-of-the-sykes-picot-agreement/7423030> [<https://perma.cc/KSL4-TZ8U>] (archived Nov. 19, 2022); see also MICHAEL D. BERDINE, REDRAWING THE MIDDLE EAST: SIR MARK SYKES, IMPERIALISM AND THE SYKES-PICOT AGREEMENT 147–49 (2018).

144. See Henri Brunschwig, *Conclusion*, in FRANCE AND BRITAIN IN AFRICA: IMPERIAL RIVALRY AND COLONIAL RULE 397, 405 (Prosser Gifford & William Roger Louis eds., 1971) (stating that “[i]t thus appears that the partition was completely achieved by Europeans living, thinking, and reacting within their European framework”); MURIEL EVELYN CHAMBERLAIN, THE SCRAMBLE FOR AFRICA 44 (2014) (explaining that “[i]n 1870 barely one tenth of Africa was under European control. By 1914 only about one tenth—Abyssinia (Ethiopia) and Liberia—was not. Most of the partition of Africa . . . had taken place during a period of only six years, between the Berlin West Africa Conference of 1884–5 and a series of ‘tidying up’ agreements in 1890.”); see also BASSIL A. MARDELLI, SYKES-PICOT (1916): ACTING FOR THE DOTTED LINES 6–7 (2017).

145. See Nick Danforth, *How the Middle East Was Invented*, WASH. POST (May 19, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/05/19/the-modern-middle-east-is-actually-only-100-years-old/> [<https://perma.cc/6953-EEPJ>] (archived Sept. 30, 2022) (“Some have suggested that the term ‘Middle East’ is problematic because it is, undeniably, a Western term reflecting a Western perspective.”); Yatana Yamahata, *(Re)Shaping Territories to Identities: Is the Middle East a Colonial Invention?*, E-INT’L RELS. (Oct. 7, 2018), <https://www.e-ir.info/2018/10/07/reshaping-territories-to-identities-is-the-middle-east-a-colonial-invention/> [<https://perma.cc/U5VA-BYYD>] (archived Sept. 30, 2022) (canvassing some of the literature where “[t]he Middle East is [seen as] a colonial invention ‘serving the West’s Eurocentric purpose’ to extend its sphere of influence through ‘civilising’ the Orient” (quoting Pinar Bilgin, *Whose ‘Middle East’? Geopolitical Inventions and Practices of Security*, 18 INT’L RELS. 25, 26 (2004)); Rashid Khalidi, *The ‘Middle East’ as a Framework of Analysis: Re-Mapping a Region in the Era of Globalization*, COMPAR. STUD. S. ASIA, AFR. & MIDDLE E., Spring 1998, at 74, 74 (“In recent years, there has been increasing dissatisfaction among many scholars with the term ‘Middle East’ . . . This dissatisfaction results in part from the fact that the term is one of many relics of an earlier, Eurocentric era, when things were ‘near,’ or ‘far,’ or in the ‘middle,’ in relation to the privileged vantage point of Europe.”). However, some have seen the term as a transitional reference point for future geographical imagination, for possibilities of regional reintegration. See Karin Loevy, *Railways, Ports, and Irrigation: The Forgotten Regional Landscape of the Sykes-Picot Agreement*, 36 B.U. INT’L L.J. 287,

more than a European invention.¹⁴⁶ No wonder, therefore, that its map continues to be defined by ex-colonial powers. However,

[e]ven a cursory examination of maps or encyclopedias quickly reveals that the Middle East and the various criteria that have been used to define it are variable and ambiguous. Nevertheless, the region has been naturalized as a real and definable place. Indeed, popular and political discourses on the Middle East are so commonplace that we rarely scrutinize their socially constructed origins and connotations.¹⁴⁷

I argue that Africa is no more of an invention than Europe is.¹⁴⁸ In this Part, I explain why nesting in the context of Africa requires a redefinition of the African Continent. For example, in French, “l’Hexagone” refers to Metropolitan France due to its shape.¹⁴⁹ In comparison, the African Continent could be called “the Diamond,” also due to its shape, although, a quick glance at any atlas would suggest that the top right corner that gives the continent its diamond-like contour is missing. See Figure 2 below. That missing part, hereafter referred to as trans-Sinai (North) Africa, is comprised of the Sinai Peninsula, the Levant (including Israel), Iraq, and the Arabian Peninsula—which, according to European convention, are said to be part of (Western) Asia. The rest of the Part elaborates on why this Diamond can furnish the envisaged nesting.

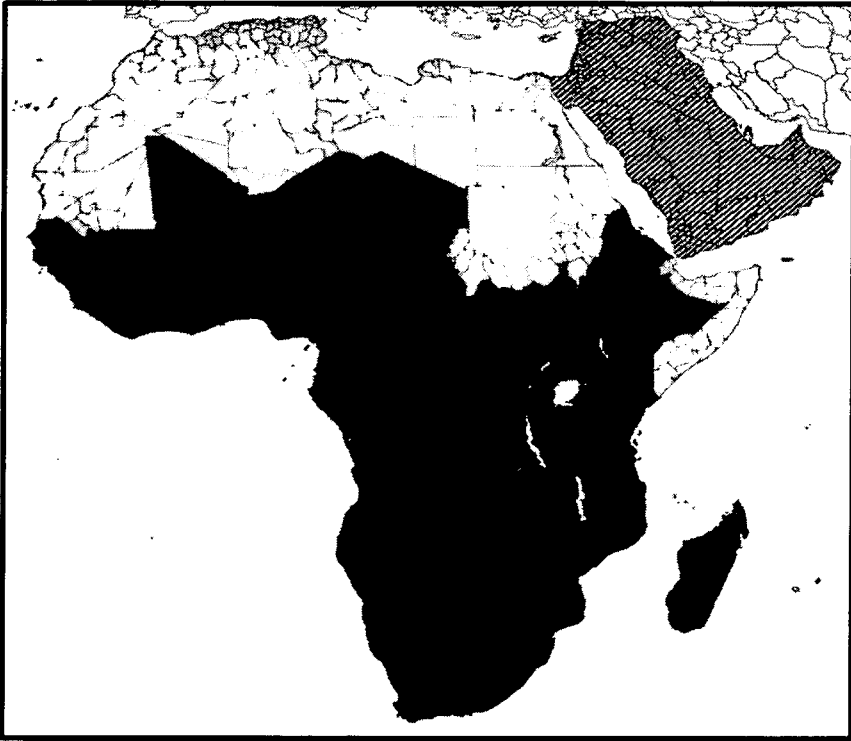
340 (2018) (explaining the Sykes-Picot Agreement as an opportunity to “think more creatively about the geopolitical space” east of the Red Sea).

146. See generally VALENTIN-YVES MUDIMBE, *THE IDEA OF AFRICA* (1994) (arguing that the idea of Africa was invented in Western libraries); VALENTIN-YVES MUDIMBE, *THE INVENTION OF AFRICA: GNOSIS, PHILOSOPHY, AND THE ORDER OF KNOWLEDGE* (1988) (looking for regional epistemes to textualize the idea of an African Continent).

147. Karen Culcasi, *Constructing and Naturalizing the Middle East*, 100 *GEOGRAPHICAL REV.* 583, 583 (2010).

148. See *supra* Part II.

149. For the history of this geographic geometry, see generally Nathaniel B. Smith, *The Idea of the French Hexagon*, 6 *FRENCH HIST. STUD.* 139 (1969) (tracing the origins of the Hexagon description of France to a 1795 monograph by German geographer Eberhard A.W. Zimmermann).

Figure 2: The Diamond¹⁵⁰

A. *Africa as a Constitutional Identity in Arab League Countries*

The following analysis explains how the current definition of the African Continent informs the constitutional identities of Arab League countries west of the Sinai Peninsula.¹⁵¹ I start by looking at the only transcontinental country in Africa, under the current definitional convention. The preamble to the Egyptian Constitution states that “[Egypt] is the *tip* of Africa on the Mediterranean.”¹⁵² Here one sees acknowledgement of Egypt’s African continental identity, as well as of

150. The lighter color countries are part of the Arab League. The hashed area is Trans-Sinai North Africa.

151. Most of the English versions of the constitutions in Part II.A. were obtained from the Constitute Project database. See CONSTITUTE PROJECT, <https://www.constituteproject.org/> (last visited Sept. 30, 2022) [<https://perma.cc/5S2D-R34V>] (archived Sept. 30, 2022).

152. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, Jan. 18, 2014, pmbl. (emphasis added). For an unofficial translation, see *Egypt 2014 (rev. 2019)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Egypt_2019?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/77FR-F3JC>] (archived Oct. 8, 2022).

Africa's colonial geography. The preamble to the Egyptian Constitution also states that

[t]he July 23, 1952 revolution that was led by the leader Gamal Abdel Nasser and was embraced by the popular will achieved the dream of generations for evacuation and independence. As a result, Egypt affirmed its Arab allegiance, opened up to its *African continent* and Muslim world, *supported liberation movements across continents*, and took firm steps on the path of development and social justice.¹⁵³

Similarly, Article 1, explaining the nature of the Egyptian Republic, states that “Egypt is part of the *Arab nation* and enhances its integration and unity. It is part of the Muslim world, belongs to the *African continent*, is proud of its *Asian dimension*, and contributes to building human civilization.”¹⁵⁴

While the Egyptian Constitution provides a clear signal on Egypt's continental identity, it is also explicit in acknowledging an “Asian dimension.” The latter can be understood as an acknowledgement of Africa's colonial geography, thus suggesting that the achievements of the “1952 revolution” are still a work in progress. Notwithstanding this, as I show below, this constitution is the best example of signaling an African identity in North Africa, given its specific reference to the “African continent.”¹⁵⁵

Moving westward along the Mediterranean, one sees in the Maghreb a similar constitutional consciousness of an African continental identity. However, unlike the Egyptian Constitution, the draft Libyan Constitution has only one reference to Africa. The draft states that “[t]he Libyan Republic is a part of the Arab and Muslim World, Africa, and the Mediterranean Basin.”¹⁵⁶ In comparison, the 1951 Libyan Constitution states that “[t]he Kingdom of Libya is a part of the Arab Home Land and a portion of the African Continent.”¹⁵⁷ The 1951 Constitution is a clear example of a first-order identity. This identity preceded Africa's institutional presence, beginning in 1958 with the

153. *Id.* (emphasis added).

154. *Id.* art. 1 (emphasis added).

155. *See id.* Another clear signal of continental alignment from the 1952 revolution was the adoption of a new flag that discarded the Ottoman star and crescent found in the flag of the Kingdom of Egypt. *See* Elie Podeh, *The Symbolism of the Arab Flag in Modern Arab States: Between Commonality and Uniqueness*, 17 *NATIONS & NATIONALISM* 419, 435–36 (2011). However, one can still see this Ottoman symbol in the flags of Libya, Tunisia, Algeria, Mauritania, and the Union of the Comoros.

156. For an unofficial translation, see LIBYA'S DRAFT CONSTITUTION OF 2016 art. 2, CONSTITUTE PROJECT (Mar. 2, 2016), https://www.constituteproject.org/constitution/Libya_2016D.pdf?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/9FQY-T2JU>] (archived Oct. 8, 2022) [hereinafter LIBYA 2016 DRAFT CONSTITUTION].

157. CONSTITUTION OF THE KINGDOM OF LIBYA, Oct. 7, 1951, art. 3 (abolished in 1969). For an unofficial translation, see CONST. NET, LIBYA'S CONST., https://constitutionnet.org/sites/default/files/1951_-_libyan_constitution_english.pdf (last visited Oct. 30, 2022) [<https://perma.cc/8MBP-Z4D5>] (archived Oct. 30, 2022).

first Conference of Independent African States.¹⁵⁸ In comparison, the draft constitution is looking for a national identity beyond an African geography, especially as part of the “Mediterranean basin.”¹⁵⁹

Further to the west, like the draft Libyan Constitution, there is only an orphan reference to Africa in the Tunisian Constitution.¹⁶⁰ This constitution explains a commitment to “strengthening Maghreb unity as a step towards achieving Arab unity, towards complementarity with the Muslim and African peoples, and towards cooperation with all the peoples of the world.”¹⁶¹ To the west of Tunisia, however, the Algerian Constitution furnishes evidence of a deeper continental identity, closer to that found in the Egyptian Constitution. In the preamble, it is stated that “Algeria, land of Islam, an integral part of the Great Arab Maghreb and an Arab, Mediterranean and *African country*.”¹⁶² In comparison, the Moroccan Constitution contrasts Arab and African identities only in relation to the Mediterranean. The constitution states that “the Kingdom of Morocco . . . [has] one and indivisible national identity . . . forged by the convergence of its Arab-Islamist, Berber [amazighe] and Saharan-Hassanic [saharo-hassanie] components, nourished and enriched by its African, Andalusian, Hebraic and Mediterranean influences [affluents].”¹⁶³

A clarification of the African identity seems to be given as part of the commitments enumerated under the constitution: “[T]he Kingdom of Morocco . . . commits itself . . . [t]o consolidate relations of cooperation and of solidarity *with the peoples and the countries of Africa, notably the sub-Saharan countries and the [countries] of the Sahel*.”¹⁶⁴

158. See generally George Shepperson & St. Clair Drake, *The Fifth Pan-African Conference, 1945 and the All African People's Congress, 1958*, 8 CONTRIBUTIONS BLACK STUD. 35 (1986) (discussing Pan-African conferences leading up to the 1958 Congress).

159. LIBYA 2016 DRAFT CONSTITUTION, *supra* note 156, art. 2.

160. See generally CONSTITUTION OF THE REPUBLIC OF TUNISIA, Feb. 10, 2014. For an unofficial translation, see *Tunisia 2014*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Tunisia_2014?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/W6XG-BY9X>] (archived Oct. 8, 2022). Of note, Tunisia recently held a constitutional referendum and voted to adopt a new constitution. See Leo Sands & Matt Murphy, *Tunisia referendum: Voters give president near unchecked power*, BBC (July 27, 2022), <https://www.bbc.com/news/world-africa-62314305> [<https://perma.cc/VYH9-LXS2>] (archived Oct. 30, 2022). This Article only addresses the 2014 Constitution.

161. CONSTITUTION OF THE REPUBLIC OF TUNISIA, Feb. 10, 2014, pmb1.

162. CONSTITUTION OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA, as amended 2020, pmb1. (emphasis added). For an unofficial translation, see *Algeria 2020*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Algeria_2020?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/X4R4-NSQ4>] (Oct. 8, 2022).

163. CONSTITUTION OF THE KINGDOM OF MOROCCO, July 29, 2011, pmb1. For an unofficial translation, see *Morocco 2011*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Morocco_2011?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/2EY3-WEP9>] (archived Oct. 8, 2022).

164. *Id.* (emphasis added).

The same differentiation between Arab and African identities can be seen in the Mauritanian Constitution. The preamble describes “the Mauritanian people” as “Muslim people, Arab and African.”¹⁶⁵ The constitution also states that “the Mauritanian people . . . will work for the realization of the unity of the Grand Maghreb, of the Arab Nation and of Africa and for the consolidation of peace in the world.”¹⁶⁶

To the south of Egypt, there is a noteworthy distinction in the Sudanese Draft Constitutional Charter. It does not recognize an African identity, or at least a first-order identity.¹⁶⁷ The only references in the constitution are to “African support” as part of the mandate of the transitional period after the 2018 Sudanese Revolution,¹⁶⁸ and to “African Union resolutions” in relation to women, peace, and security.¹⁶⁹ In comparison, if one goes back to the 1998 Sudanese Constitution, the word “Africa” or its derivatives does not appear anywhere in that constitution.¹⁷⁰ The only explicit identity is a religious one, and even this identity is without any geographic reference to the Muslim world. Next, moving to the strait of Bab-el-Mandeb, roughly 30 kilometers from Yemen, one finds Djibouti, which also has no clear reference to an African identity in its constitution. The Constitution of Djibouti makes only one reference to Africa, in the preamble, as follows: “The Djiboutian People solemnly proclaim their attachment to the principles of . . . the *African Charter of the Rights of Man and of Peoples*.”¹⁷¹

Further to the south, there is a clear continental identity in the Somalian Constitution. This constitution states that “[t]he Federal Republic of Somalia is a Muslim country which is a member of the African and Arab Nations.”¹⁷² Last but not least, the fundamental principles of the Comorian Constitution also make an explicit reference

165. CONSTITUTION OF THE ISLAMIC REPUBLIC OF MAURITANIA, as amended Mar. 20, 2012, pmbi. For an unofficial translation, see *Mauritania 1991 (rev. 2012)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Mauritania_2012?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/SJC3-BYBY>] (archived Oct. 8, 2022).

166. *Id.*

167. See generally DRAFT CONSTITUTIONAL DECLARATION, Aug. 4, 2019 (Sudan). For an unofficial translation, see *Sudan 2019*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Sudan_2019?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/B4BE-6N2S>] (archived Oct. 8, 2022).

168. *Id.* art. 8(16).

169. *Id.* art. 68(3).

170. See generally CONSTITUTION OF THE REPUBLIC OF SUDAN, July 1, 1998.

171. CONSTITUTION OF THE REPUBLIC OF DJIBOUTI, as amended 2010, pmbi. (emphasis added). For an unofficial translation, see *Djibouti 1992 (rev. 2010)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Djibouti_2010?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/73ZM-53AE>] (archived Oct. 8, 2022).

172. CONSTITUTION OF THE FEDERAL REPUBLIC OF SOMALIA, Aug. 1, 2012, art. 3(2). For an unofficial translation, see *Somalia 2012*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Somalia_2012?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/4BQ7-7X49>] (archived Oct. 8, 2022). The Somalian Constitution was subsequently amended June 15, 2016.

to a continental identity. The constitution states that “[t]he Union of the Comoros commits to reinforcing *African identity*, unity and integration.”¹⁷³

In summary, Arab countries west of the Sinai Peninsula have a clear consciousness of their continental identity. There is an “existential insideness.”¹⁷⁴ For these countries, Africa is “experienced without deliberate and self-conscious reflection,”¹⁷⁵ because it is part of the national ethos as reflected in their constitutions. Query whether a similar Asian continental identity is also present in the Arab countries east of the Sinai Peninsula based on the current colonial geography. As pointed out by Ali Mazrui, “[w]e live in an age when a people’s perception of themselves can be deeply influenced by which continent or region they associate themselves with.”¹⁷⁶ In the next subpart, I look at this question also in relation to Israel.

173. CONSTITUTION OF THE UNION OF COMOROS, 2018, art. 11 (emphasis added). For an unofficial translation, see *Comoros 2018*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Comoros_2018?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/J4MT-TKRP>] (archived Oct. 8, 2022).

174. EDWARD RELPH, *PLACE AND PLACELESSNESS* 55 (1976), explains “existential insideness” in the following terms:

To be inside a place and to experience it as completely as we can does not mean that existentially we are insiders. The most fundamental form of insideness is that in which a place is experienced without deliberate and selfconscious [sic] reflection yet is full with significances. It is the insideness that most people experience when they are at home and in their own town or region, when they know the place and its people and are known and accepted there. Existential insideness characteri[z]es belonging to a place and the deep and complete identity with a place that is the very foundation of the place concept.

Existential insideness is part of knowing implicitly that *this* place is where you belong—in all other places we are existential outsiders no matter how open we are to their symbols and significances. Thus Bruce Hutchison (1943, p.36) writes of Quebec City: “It is the houses, not the monuments, squares, and public buildings that hold the life of Quebec But it must forever escape the stranger, so that looking at the shuttered window, the bolted door, he can only sense it, like a distant perfume, like the sound of voices behind a garden gate, forever closed to him.” The person who has no place with which he identifies is in effect homeless, without roots. But someone who does experience a place from the attitude of existential insideness is part of that place and it is part of him. Then there exists between place and person a strong and profound bond like the tie between farmer and property expressed by the dirt farmer in John Steinbeck’s *The Grapes of Wrath* (1969, p.39).

See also David Seamon & Jacob Sowers, *Place and Placelessness* (1976): Edward Relph, in *KEY TEXTS IN HUMAN GEOGRAPHY* 43, 45 (Phil Hubbard et al. eds., 2008) (explaining insideness as “[i]f a person feels inside a place, he or she is here rather than there, safe rather than threatened, enclosed rather than exposed, at ease rather than stressed. Relph suggests that the more profoundly inside a place a person feels, the stronger will be his or her identity with that place.”).

175. RELPH, *supra* note 174, at 55.

176. Ali A. Mazrui, *Afrabia: From Divergence to Afro-Arab Convergence*, ARENA J., Jan. 2009, at 222, 234.

B. *Continental Occultation East of the Sinai*

The analysis in this subpart shows that, unlike the collective consciousness west of the Sinai Peninsula, including the explicit reference to Egypt's Asian dimension—arguably because of its African identity—east of the peninsula, there is no continental constitutional identity. Unlike their North African counterparts west of the peninsula, these North African countries have no collective consciousness of any continental identity.

I will follow the map, starting from Egypt and heading east. While Israel does not have a written constitution, its Knesset Basic Law governs the workings of its parliament. This basic law makes no reference to any continental identity. The only geographic anchor is a reference to the Knesset place of sitting: “The seat of the Knesset is Jerusalem.”¹⁷⁷ Similarly, the Palestinian Constitution does not acknowledge any continental identity. It simply refers to “the Arab Palestinian people.”¹⁷⁸ The same pattern can be found in the Jordanian Constitution, which simply confirms that it is part of an “Arab Nation.”¹⁷⁹ The Syrian Draft Constitution is also silent as to continental identity. The draft refers to responsibilities under the “Charter of the League of Arab States,”¹⁸⁰ as well as confirms that Arabic is the official language of the state.¹⁸¹ Also, the Lebanese Constitution has no continental anchor, stating instead that “Lebanon has an Arab identity.”¹⁸²

The same pattern repeats in the Iraqi Constitution, which also does not have any mention of a continental identity. Notwithstanding,

177. Basic Law: the Knesset 2 (Isr.). For an unofficial translation, see *Basic-Law: The Knesset*, KNESSET, <https://m.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawTheKnesset.pdf> (last visited Sept. 9, 2022) [<https://perma.cc/H9PW-8JRN>] (archived Sept. 29, 2022).

178. CONSTITUTION OF THE STATE OF PALESTINE, 2005, pmb. For an unofficial translation, see *Palestine 2003 (rev. 2005)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Palestine_2005?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/B8YS-WWJT>] (archived Oct. 8, 2022).

179. CONSTITUTION OF THE HASHEMITE KINGDOM OF JORDAN, as amended May 4, 2016, art. 1 (emphasis added). For an unofficial translation, see *Jordan 1952 (rev. 2016)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Jordan_2016?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/985V-3QPU>] (archived Oct. 8, 2022).

180. For an unofficial translation, see *Syrian Arab Republic's Draft Constitution of 2017* pmb., CONSTITUTE PROJECT (Jan. 23, 2017), https://www.constituteproject.org/constitution/Syria_2017D.pdf?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/M66W-6MKJ>] (archived Oct. 8, 2022).

181. See *id.* art. 4(1).

182. CONSTITUTION OF THE REPUBLIC OF LEBANON, as amended 2004, pmb.(B). For an unofficial translation, see *Lebanon 1926 (rev. 2004)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Lebanon_2004?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/KDE7-SACN>] (archived Oct. 8, 2022).

it states that “Mesopotamia . . . [is the] cradle of civilization,”¹⁸³ although without any explicit reference to Africa. However, scientific evidence today suggests that the African Continent, not West Asia, is the cradle of civilization. For example, a 2018 study found that stone artifacts found in North Africa are as old as those found in East Africa, dated over two million years ago.¹⁸⁴ In line with our current understanding of the origin of humans, Iraq has a clear continental identity: Africa.¹⁸⁵

In the Arabian Peninsula, there is a similar omission of an African, or any other, continental identity. Hence, in the Kuwaiti Constitution, identity is based on being part of an Arab nation: “Kuwait is an Arab, independent, fully sovereign State.”¹⁸⁶ The Constitution of the Kingdom of Bahrain also states that Bahrain is “part of the *Arab nation* and whose territory is part of the great Arab homeland.”¹⁸⁷ The Qatari Constitution states that “Qatar is an Arab State.”¹⁸⁸ The United Arab Emirates’ Constitution also has no reference to a continental identity. There is only a reference to the “greater Arab nation.”¹⁸⁹ In the Omani Constitution, we find that “[t]he Sultanate of Oman is an Arab, Islamic, Independent State with full sovereignty and Muscat is

183. Preamble, *Dustūr Jumh. ūrīyat al-‘Irāq* [The Constitution of the Republic of Iraq] of 2005. For an unofficial translation, see *Iraq 2005*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Iraq_2005?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/Z5D2-4L5H>] (archived Oct. 8, 2022).

184. See generally Mohamed Sahnouni, Josep M. Parés, Mathieu Duval, Isabel Cáceres, Zoheir Harichane, Jan van der Made, Alfredo Pérez-González, Salah Abdessadok, Nadia Kandi, Abdelkader Derradji, Mohamed Medig, Kamel Boulaghrif & Sileshi Semaw, *1.9-Million- and 2.4-Million-Year-Old Artifacts and Stone Tool-Cutmarked Bones from Ain Boucherit, Algeria*, 362 *SCI.* 1297 (2018).

185. See, e.g., Hua Liu, Franck Prugnolle, Andrea Manica & Francois Balloux, *A Geographically Explicit Genetic Model of Worldwide Human-Settlement History*, 79 *AM. J. HUM. GENETICS* 230, 230 (2006).

186. CONSTITUTION OF THE STATE OF KUWAIT, 1992, art. 1. For an unofficial translation, see *Kuwait 1962 (reinst. 1992)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Kuwait_1992?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/MYR8-D5EC>] (archived Oct. 8, 2022).

187. CONSTITUTION OF THE KINGDOM OF BAHRAIN, as amended 2017, art. 1(a) (emphasis added). For an unofficial translation, see *Bahrain 2002 (rev. 2017)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Bahrain_2017?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/725B-AJQR>] (archived Oct. 8, 2022).

188. CONSTITUTION OF THE STATE OF QATAR, Apr. 29, 2003, art. 1. For an unofficial translation, see *Qatar 2003*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Qatar_2003?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/G9V9-5UQR>] (archived Oct. 8, 2022).

189. CONSTITUTION OF THE UNITED ARAB EMIRATES, as amended 2009, art. 6. For an unofficial translation, see *United Arab Emirates 1971 (rev. 2009)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/United_Arab_Emirates_2009?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/8QP2-Z5MS>] (archived Oct. 8, 2022).

its Capital.”¹⁹⁰ The Saudi Arabian Constitution is limited to stating that “[t]he Kingdom of Saudi Arabia is a sovereign Arab Islamic State.”¹⁹¹ Yemen also has no continental identity in its constitution. Article 1 of the Draft Yemeni Constitution states that “[t]he Federal Republic of Yemen is a federal State, civil, democratic, Arab Islamic, independent and a sovereign country . . . Yemen is part and parcel of the Arab and Islamic nations.”¹⁹²

How can one explain the lack of any acknowledgement of Asia as part of the constitutional identity of these countries? Why, in comparison, is Egypt explicit in acknowledging its African identity—even its Asian dimension? Could it be that there is an institutional vacuum in Asia, where there is no union comparable to the Organization of African Unity (OAU) and its successor, the African Union (AU), which could explain this lack of constitutional identity? But if this is true, why is it that the Libyan Constitution of 1951 is explicit on a continental identity, given that the OAU was established only in 1963? Could it be only a matter of colonial influence on the drafting of these constitutions? Why then does the Egyptian Constitution continue to refer to Africa more than fifty years after the 1952 revolution? I argue that the absence of any continental identity east of the Sinai signifies an alienation of these countries from their continental home: Africa. The next subpart explains the scientific, empirical rationale for this trans-Sinai definition of the African Continent, and how this definition can rectify the constitutional occultation discussed above.

C. *The Trans-Sinai Geography*

The present definition of the African Continent is the product of a European convention: “In contemporary usage, continents are understood to be large, continuous, discrete masses of land, ideally separated by expanses of water. Although of ancient origin, this convention is both historically unstable and surprisingly unexamined; the required

190. CONSTITUTION OF THE SULTANATE OF OMAN, as amended 2011, art. 1. For an unofficial translation, see *Oman 1996 (rev. 2011)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Oman_2011?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/DXM3-WWZE>] (archived Oct. 8, 2022).

191. CONSTITUTION OF THE KINGDOM OF SAUDI ARABIA, as amended 2013, art. 1. For an unofficial translation, see *Saudi Arabia 1992 (rev. 2013)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Saudi_Arabia_2013?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/VK6P-5MGN>] (archived Oct. 8, 2022).

192. For an unofficial translation, see *YEMEN'S DRAFT CONSTITUTION OF 2015*, CONSTITUTE PROJECT (Jan. 15, 2015), https://www.constituteproject.org/constitution/Yemen_2015D.pdf?lang=en (last visited Oct. 8, 2022) [<https://perma.cc/6RG5-869G>] (archived Oct. 8, 2022).

size and the requisite degree of physical separation have never been defined.”¹⁹³

Today, however, there is a scientific definition of continents, furnished by geology. This geological definition states that a continent is “[o]ne of the Earth’s major land masses, including both dry land and continental shelves.”¹⁹⁴ To understand the idea of discrete land masses in the context of this geological definition, one needs to understand the meaning of orogens. Etymologically, the word comes from the Greek words for mountain (ὄρος) and origin (γένεσις) signifying “a usually elongated region of the Earth’s crust which has undergone an orogeny.”¹⁹⁵ An “orogeny” is “the process of mountain-building, often lasting for hundreds of millions of years, involving deformation and the subsequent uplift of rocks within the mountains.”¹⁹⁶ By studying continental orogeny, one can ascertain the boundaries between continents as based on the era of each continent’s orogenesis.

One such endeavor is the 2018 United Nations Educational, Scientific, and Cultural Organization International Geoscience Programme Project 667, a project to create a “World Map of the Orogens.”¹⁹⁷ The 2021 update of this project provides a map of the world that shows clearly the inter-continental boundaries of the African Continent.¹⁹⁸ Given this existing knowledge, trans-Sinai Africa belongs to the same Neoproterozoic (Paleozoic) Era as the East African orogeny.¹⁹⁹ In contrast, Türkiye and Iran belong to the more recent Mesozoic Cenozoic Era.²⁰⁰ Israel, the Levant, Iraq, and Arabia are an

193. MARTIN W. LEWIS & KÄREN E. WIGEN, *THE MYTH OF CONTINENTS: A CRITIQUE OF METAGEOGRAPHY* 21 (1997).

194. KLAUS K.E. NEUENDORF, JAMES P. MEHL JR. & JULIA A. JACKSON, *GLOSSARY OF GEOLOGY* 139 (5th ed. 2005).

195. *Orogen*, CHAMBERS, <https://chambers.co.uk/search/?query=orogen&title=21st> (last visited Sept. 29, 2022) [<https://perma.cc/NB3Y-32KN>] (archived Oct. 8, 2022). For the etymology of the word, see A.M. CelâlŞengör, *Plate Tectonics and Orogenic Research after 25 Years: A Tethyan Perspective*, 27 *EARTH-SCI. REVS.* 1, 8 (1990) (explaining that the etymology of orogeny “from classical Greek oros = mountain, genna = birth”).

196. *Orogeny*, CHAMBERS, <https://chambers.co.uk/search/?query=orogeny&title=21st> (last visited Sept. 29, 2022) [<https://perma.cc/T4VB-RKZU>] (archived Oct. 8, 2022).

197. For background information on IGCP projects, see *IGCP Projects*, UNESCO, <https://en.unesco.org/international-geoscience-programme/projects> (last visited Sept. 29, 2022) [<https://perma.cc/4RDT-DEPV>] (archived Sept. 29, 2022). IGCP 667, *World Map of the Orogens*, is part of the geodynamic series on control of our environment. *See id.*

198. *See Project 667 – World Map of the Orogens*, UNESCO, <https://en.unesco.org/international-geoscience-programme/projects/667> (last visited Sept. 29, 2022) [<https://perma.cc/R7XE-UPPX>] (archived Sept. 29, 2022). The map is too complex to provide a simple rule for defining continents, but it can help ascertain boundary issues in the Ancient World, between Africa and Asia, and between Asia and Europe.

199. *See* Douwe J. J. Van Hinsbergen, Susanne J. H. Buitert, Trond H. Torsvik, Carmen Gaina & Susan J. Webb, *The Formation and Evolution of Africa from the Archaean to Present: Introduction*, 357 *GEOLOGICAL SOC’Y SPECIAL PUBL’NS* 1, 2 fig.1 (2011).

200. *See id.*

extension of the East African Orogen.²⁰¹ If a continent is a discrete mass of land, one can look to geology to ascertain where one mass ends and the other begins. The demarcation is not necessarily by water. The East African Orogen ends at the Taurus Mountains south of Türkiye, forming a land border between Africa and Europe, and the Zagros Mountains west of Iran, forming a land border with Asia.

Based on this orogenic understanding of continents, my argument is that Arabia and the Levant are part of Africa, not Asia. The argument can be reformulated as suggesting that (intra- and intercontinental) borders “are not ultimate, universal or unchanging. They are products of a geographical imagination that change according to the vantage point of the one imagining the geography.”²⁰² A post-colonial “vantage point” traverses not only the arbitrary intracontinental boundaries imposed by European powers on this continent, but also the intercontinental boundaries that isolate Africa from other parts of the Ancient World.

There is also an existential geography that militates against a colonial definition of Africa. The colonial geography has been formulated as a theoretical, *sui generis* African problem: “Africa poses several major obstacles to the establishment of ‘rational’ national frontiers. By rational frontiers, I mean boundaries which correspond to some already existing division of people and which would lead to significantly fewer political problems than the current boundary system presents.”²⁰³

Claiming that the African Continent extends eastwards to the southern border of Türkiye and to the western border of Iran is intended to rectify the irrational “existing division of people,”²⁰⁴ where Semites are represented as indigenous of Asia rather than Africa.²⁰⁵ Africa is not

201. For the benefit of the reader, a “craton” in geology is derived from the Greek word for strength (Κράτος) and refers to “a relatively rigid and immobile part of the Earth’s crust that has been stable for at least 1500 [million] years.” *Craton*, CHAMBERS, <https://chambers.co.uk/search/?query=craton&title=21st> (last visited Sept. 29, 2022) [<https://perma.cc/XZ5V-S3BN>] (archived Oct. 8, 2022). A “craton” refers to stable continental crust while an “orogen” is more specific to the formation of mountains on this crust.

202. Sahar Ullah, *Crossing the Border: Afrabia and Alternative Cosmopolitanisms*, BARAZA (Mar. 18, 2012), <https://baraza.cdrs.columbia.edu/crossing-the-border-afrabia-and-alternative-cosmopolitanisms/> [<https://perma.cc/5HNL-UWUB>] (archived Sept. 29, 2022) (discussing the Arab and African identities in Libya to analyze the Libyan conflict since 2011 Arab Spring).

203. Jeffrey Herbst, *The Creation and Maintenance of National Boundaries in Africa*, 43 INT’L ORG. 673, 678–79 (1989) (arguing that there is likely to be future efforts to rearrange the map of Africa).

204. *Id.*

205. See *Semite*, MACQUARIE DICTIONARY ONLINE, https://www.macquarie.com.au/features/word/search/?search_word_type=Dictionary&word=semite (last visited Sept. 30, 2022) [<https://perma.cc/M7VT-B2VB>] (archived Oct. 8, 2022)

defined by schemes of skin pigmentation. The cultural linkages between sub-Saharan Africa and North Africa, both east and west of the Red Sea, have been ebbing and flowing for the past twelve centuries.²⁰⁶ In terms of population, “Black people constitute a significant percentage of the global Arab population.”²⁰⁷ Pre-colonial and post-colonial Africa are characterized by strong trans-Saharan and trans-Sinaitic economic relations:

Trade relations between Arab and Sub-Saharan African countries have a long history. Despite the geographical constraints, they have established strong ties since the 9th century . . . During the colonial period, these economic and trade links have loosened, as the majority of the colonised African countries had to meet the demand of European countries for raw materials. Starting in the 1950s, the independence of these African countries was marked by a resumption of Arab-African relations promoting economic, social and cultural solidarity.²⁰⁸

Consequently, there is nothing putative in stating that “Semites are Africans.” The Semites can be found in North Africa and the African Horne, and geologically, extend to Arabia and the Levant, where one also finds other Semitic languages.²⁰⁹ Nor is the statement that “all Semites are Africans” beyond empirical objectivity. All Semites are African, North African to be precise.

(defining a Semite as “someone who is a native speaker of one of the languages of the Semitic language family”); see also GEORGE ANTON KIRAZ, *COMPUTATIONAL NONLINEAR MORPHOLOGY: WITH EMPHASIS ON SEMITIC LANGUAGES* 25 (2004) (explaining that “[t]he term ‘Semitic’ is borrowed from the Bible. It was first used by the Orientalist A. L. Schlözer in 1781 to designate the languages spoken by the Aramaeans, Hebrews, Arabs, and other peoples of the Near East. Before Schlözer, these languages and dialects were known as *Oriental languages*.” (citations omitted)).

206. See generally Ali A. Mazrui, *Black Africa and the Arabs*, 53 *FOREIGN AFFS.* 725 (1975) (looking at the economic and cultural connections between black Africa and the Arab World).

207. See Amir Al-Azraki, *Uncovering Anti-Blackness in the Arab World*, *THE CONVERSATION* (June 10, 2021), <https://theconversation.com/uncovering-anti-blackness-in-the-arab-world-162060> [<https://perma.cc/Z8WQ-G4E4>] (archived Sept. 30, 2022).

208. Mihoub Mezouaghi, *Sub-Saharan Africa and the Arab World: Disconnected Agricultural Regions*, in *MEDITERRA: LOGISTICS AND AGRO-FOOD TRADE. A CHALLENGE FOR THE MEDITERRANEAN* 55, 55 (Cosimo Lacirignola ed., 2014).

209. See generally JOHANN M. FLAD, *THE FALASHA (JEWS) OF ABYSSINIA* (S. P. Goodhart trans., 1869) (recounting his observations about Jewish life in East Africa during his journeys to Abyssinia in the early to middle nineteenth century); Sheryl Silver Ochayon, *The Jews of Algeria, Morocco and Tunisia*, YAD VASHEM, <https://www.yadvashem.org/articles/general/the-jews-of-algeria-morocco-and-tunisia.html> (last visited Sept. 30, 2022) [<https://perma.cc/G53E-HFDY>] (archived Sept. 30, 2022) (discussing the situation of the Jews in France’s North African colonies at the eve of World War II); Sheryl Silver Ochayon, *The Jews of Libya*, YAD VASHEM, <https://www.yadvashem.org/articles/general/the-jews-of-libya.html> [<https://perma.cc/XKJ4-3YLH>] (archived Sept. 30, 2022) (explaining that “[n]ot a single Jew remains in Libya today”).

Moreover, there is a Pan-Africanism logic in the historical influence of the Abrahamic religions.²¹⁰ After all, Moses, arguably the most important prophet in Judaism after Abraham, is African by birth.²¹¹ Hence, in Dimona, Israel, “[t]he Black Hebrew Israelite Community” explains the continental identity of Israel as African, especially before “the excavation of the Suez Canal (1859-69),” when “African people lived and moved freely throughout this region of the world,” adding that “European historians, Biblical scholars and translators conspired to disassociate Israel and Egypt from Africa.”²¹² This continental identity extends the map of Africa east of the Red Sea “to include Sinai and the Arabian Peninsula, the Levant, and Biblical Babylonia up to the Tigris and Euphrates Rivers—encompassing all the lands in which the ancient Israelites dwelled, according to the Five Books of Moses.”²¹³ Similarly, Arabs are half-African through their patriarchal father, Ismael—born to an Egyptian mother, Hagar.²¹⁴ There is historical evidence that ancient Arabs considered themselves, and were considered by others, to be Black.²¹⁵ Even looking at old European maps of Africa, we can see that until the late sixteenth century, the African Continent extended east to the Persian Gulf.²¹⁶ It was the Dutch mapmaker Abraham Ortelius who first drew the eastern border of the continent along the Red Sea.²¹⁷

D. *Towards Trans-Sinai Integration*

Just as European map makers could decree that on the map Europe was above Africa instead of below (an arbitrary decision in relation to the cosmos), those map makers could also dictate that Africa ended at the Red Sea instead of the

210. See, e.g., Omari H. Kokole, *African-Arab Relations: A Cultural Perspective*, 40 INDIA Q. 1, 1–2 (1984) (explaining the role of Islam as a factor in developing Pan-Africanism).

211. See AVIVAH GOTTLIEB ZORNBERG, *MOSES: A HUMAN LIFE* 9 (2016).

212. Fran Markowitz, *Israel as Africa, Africa as Israel: “Divine Geography” in the Personal Narratives and Community Identity of the Black Hebrew Israelites*, 69 ANTHROPOLOGICAL Q. 193, 193 (1996) (quoting HEBREW ISRAELITE CMTY. PUB. RELS. DEPT, THE HISTORICAL CONNECTION OF THE HEBREW ISRAELITE COMMUNITY TO THE HOLY LAND; BEN AMMI, *GOD, THE BLACK MAN, AND TRUTH* 116–17 (2d ed. 1990)).

213. *Id.*

214. See, e.g., David Tuesday Adamo & Eriwwierho Francis Eghwubare, *The African Wife of Abraham (Gn 16:1-16, 21:8-21)*, 18 OLD TESTAMENT ESSAYS 455, 455–56 (2005) (furnishing evidence of Hagar’s Africanness).

215. See generally ANU M’BANTU & GERT MULLER, *THE ANCIENT BLACK HEBREWS AND ARABS* (2013); GERT MULLER, *THE ANCIENT BLACK HEBREWS* (2013).

216. See *Evolution of the Map of Africa*, PRINCETON UNIV., https://library.princeton.edu/visual_materials/maps/websites/africa/maps.html (last visited Sept. 30, 2022) [<https://perma.cc/FG5N-6WX8>] (archived Sept. 30, 2022).

217. See Abraham Ortelius, *Theatrum Orbis Terrarum (1584)*, BNF GALlica (Nov. 11, 2013), <https://gallica.bnf.fr/ark:/12148/btv1b55007367v/f39.item#> [<https://perma.cc/4SSX-HDXM>] (archived Oct. 9, 2022).

Persian Gulf. Is it not time that this dual tyranny of the sea and Eurocentric geography was forced to sink to the bottom?²¹⁸

On 22 July 2021, the Commission of the African Union granted Israel observer status at the AU.²¹⁹ Legal submissions were made on 4 October 2021 to withdraw this observer status, citing “gross violations of human rights.”²²⁰ AU leaders discussed revoking this status during the 35th ordinary session of the AU Assembly (5-6 February 2022).²²¹ On 6 February 2022, the AU suspended the debate on Israel’s observer status, and decided to set up a committee to study the issue and report back to the AU at the next year’s summit.²²² Earlier, it took fifty years for an Israeli head of state to visit Africa after Levi Eshkol, Israel’s

218. Mazrui, *supra* note 176, at 234–35. My proposition, however, should be distinguished from that of Mazrui’s Afrabia, who represents the African identity of Arabia and the Levant as a form of Afro-Arab Convergence, where there is a Semitic divergence between a European identity for the Jews, and an African identity for the Arabs. See Ali A. Mazrui & James N. Kariuki, *On the Concept of Afrabia*, PAN AFR. VISIONS, <https://panafricanvisions.com/2014/03/concept-afrabia/> (last visited Sept. 30, 2022) [<https://perma.cc/GF7H-NLWK>] (archived Sept. 30, 2022). See generally Guy Martin, *Africa and the Ideology of Eurafria: Neo-Colonialism or Pan-Africanism?*, 20 J. MOD. AFR. STUD. 221 (1982); BAT YE’OR, EURABIA: THE EURO-ARAB AXIS (2005). My proposition is based on an empirical and existential geography rather than a theoretical geography. Arabia is part of Africa, making the term ‘Afrabia’ a geographic faux pas as much as the terms ‘Eurafria’ or ‘Eurabia’. For a primer on these types of geography, see generally David R. Lee, *Existentialism in Geographic Education*, 73 J. GEOGRAPHY, no. 6, 1974, at 13. The trans-Sinai thesis is simply updating our understanding of the boundaries of the continent based on existing scientific knowledge. Alternatively, the thesis could be called the trans-Erythraean thesis, where the Erythraean Sea is the Greek, pre-colonial, designation of the seas between Arabia and the Horn of Africa. See generally THE PERIPLUS OF THE ERYTHRAEAN SEA (Wilfred H. Schoff trans., 1912).

219. *Israel Granted Official Observer Status at the African Union*, AL JAZEERA (July 23, 2021), <https://www.aljazeera.com/news/2021/7/23/israel-granted-observer-status-at-the-african-union> [<https://perma.cc/VW63-SXPF>] (archived Sept. 30, 2022).

220. *African Union: Withdraw Israel’s Observer Status*, DEMOCRACY FOR THE ARAB WORLD NOW (DAWN) (Oct. 4, 2021), <https://dawnmena.org/african-union-withdraw-israels-observer-status/> [<https://perma.cc/5B87-A7SV>] (archived Sept. 30, 2022); see Dalila Henache, *Algeria Succeeds in “Reviewing” Granting Israel an Observer Status at AU*, ECHOROUK (Aug. 7, 2021), <https://www.echoroukonline.com/algeria-succeeds-in-reviewing-granting-israel-an-observer-status-at-au> [<https://perma.cc/2NZF-3XGW>] (archived Sept. 30, 2022) (explaining that seven countries rejected the granting of observer status to Israel: Algeria, Egypt, Comoros, Tunisia, Djibouti, Mauritania, and Libya).

221. See *African Union to Discuss Revoking Israel’s Observer Status*, MIDDLE E. MONITOR (MEMO) (Jan. 28, 2022), <https://www.middleeastmonitor.com/20220128-african-union-to-discuss-revoking-israels-observer-status/> [<https://perma.cc/JN5L-KA2N>] (archived Sept. 30, 2022).

222. See Agence France-Presse & Lazar Berman, *African Union Suspends Debate on Israel’s Observer Member Status*, TIMES OF ISR. (Feb. 6, 2022), <https://www.timesofisrael.com/african-union-suspends-debate-on-israels-observer-member-status/> [<https://perma.cc/9RF2-MBZ7>] (archived Sept. 30, 2022).

third prime minister, did so in 1966.²²³ This is notwithstanding that Israel enjoyed the same observer status under the OAU until 2002, when the OAU was replaced by the AU.²²⁴ It is hoped that the geographies presented above can recontextualize the underlying issues as part of African unity, more so than an observer status enjoyed by a non-African country.

An inclusive continental definition of Africa is an existential issue for all Africans, north and south of the Sahara, and east and west of the Red Sea. Léopold Sédar Senghor, the first president of Senegal, expressed this need to assert the African lineage of Arabia and the Levant as essential to challenging the Eurocentric identity of the African Continent.²²⁵ The current definition of the continent signals “the absence of any multilateral framework for managing peace and security in the Red Sea arena.”²²⁶ In addition, “[g]lobal trends in the New Global Order are dictating speed in African–Arab reconciliation and integration.”²²⁷ There is a need for a new form of continentalization that combines economic geography and political economy to realize a new frontier of trans-Sinai cooperation and

223. See Michael Bishku, *In Search of Advantages: Israel’s Observer Status in the African Union*, THE CONVERSATION (Aug. 15, 2021), <https://theconversation.com/in-search-of-advantages-israels-observer-status-in-the-african-union-165773> [<https://perma.cc/XMH8-CXAF>] (archived Sept. 30, 2022) (stating that “most African countries have chosen to separate the issue of the Palestinians from economic cooperation with Israel, even though a number still vote against Israel on political issues at international forums such as the United Nations”).

224. See Steven Gruz, Carmel Rawhani & Larry Benjamin, *Israel’s Ties with Africa: A Focus on Ethiopia, Kenya, Nigeria and South Africa* 5 (S. Afr. Inst. of Int’l Affs., Occasional Paper No. 284, 2018) (stating that “Israel continued to enjoy observer status at the Organization of African Unity (OAU). This was only rescinded at the insistence of Libyan leader Muammar Gaddafi when the OAU became the AU in 2002.”); Michael B. Bishku, *Israel’s Relations with the East African States of Kenya, Uganda, and Tanzania from Independence to the Present*, 22 ISR. STUD. 76, 91 (2017) (stating that “Israel continue[d] to pursue . . . observer status in the African Union, something it lost in 2002 when that organization replaced the OAU”); cf. Arye Oded, *Africa’s duality*, JERUSALEM REP. 6 (Aug. 8, 2016), <https://www.jpost.com/jerusalem-report/africas-duality-462220> [<https://perma.cc/4GV2-HKUL>] (archived Nov. 19, 2022) (“[I]t is important to note that Israel never in fact held observer status at the OAU . . . Israel, in the 1960s held ‘Invited Guest’ status that allowed it to attend the forum’s opening and closing ceremonies, but the Arab countries managed to get that status rescinded in 1970.”).

225. See Boima Tucker, *A’na Afriki: The Connections and Shared Lineage Between Africa and the Countries of the Arabian Peninsula*, AFR. IS A COUNTRY (Feb. 24, 2011), <https://africasacountry.com/2011/02/ana-afriki> [<https://perma.cc/5XRM-22TX>] (archived Sept. 30, 2022).

226. ALEX DE WAAL, WORLD PEACE FOUND., PAX AFRICANA OR MIDDLE EAST SECURITY ALLIANCE IN THE HORN OF AFRICA AND THE RED SEA? 13 (Jan. 2019), <https://sites.tufts.edu/reinventingpeace/files/2019/01/Pax-Africana-or-Middle-East-Security-Alliance-finaL-2.pdf> [<https://perma.cc/T54K-GZRG>] (archived Sept. 30, 2022).

227. Mazrui, *supra* note 176, at 228; see also Ali M. Mazrui, *Afrabia: Africa and the Arabs in the New World Order*, 20 UFAHAMU, no. 3, 1992, at 51, 62 (1992) (envisaging “linking languages, religions, and identities across both the Sahara Desert and the Red Sea in a historical fusion of Arabism and Africity in the New World Order”).

harmonization.²²⁸ This continentalization furnishes a huge incentive for Israel and Palestine, and the whole Arab World, to bring their conflict to an end, and focus on the strategic dimension of intracontinental relations. My earlier analysis in Part III.B of the constitutions of Israel and Palestine indicates the absence of any continental identity. My analysis in that subpart also explains that both countries are outgroups, in terms of the instrumental model of group conflict. Africa can provide a shared placeness for both by integrating trans-Sinai North Africa into the African Union.²²⁹

Since the end of apartheid in 1994, South Africa has been actively seeking “a new Pax Africana” that includes bolstering Afro-Arab relations in what could be interpreted as a strategic new physical geography towards integrating the Arab World (east and west of the Red Sea) into Africa.²³⁰ Hence, “[s]ince 1999, South Africa’s economic interaction with the [Arabian Gulf] region has expanded significantly. . . . The region has now developed into a valued trading partner and source of [Foreign Direct Investment (FDI)].”²³¹ Similarly, since the 2000s, the Gulf Cooperation Council States (Saudi Arabia, Oman, United Arab Emirates, Qatar, Bahrain, and Kuwait) have been looking for ways to bolster their economic ties with Africa, especially south of the Sahara. Even during the Global Financial Crisis of 2008, “Gulf investors . . . committed to pouring billions of dollars into sub-Saharan Africa.”²³² Fast forward to 2022 and “[i]nvestor interest in Africa from the Arabian Gulf continues to gain momentum as government-backed investments encourage private-sector entities to enter the continent.”²³³

228. See generally Detlef Lorenz, *Economic Geography and the Political Economy of Regionalization: The Example of Western Europe*, AM. ECON. REV., May 1992, at 84 (arguing for a European continental regionalization or deeper integration through economic geography and political economy).

229. See *infra* Part IV.

230. See CHRIS LANDSBERG, THE NEW AFRABIA: SOUTH AFRICA’S AFRICAN, ARAB AND MIDDLE EAST AGENDAS 1–3 (2007) (emphasis omitted) (“In recent years, South Africa has emerged as a pivotal—although non-hegemonic—African state—one which seeks to give meaning and substance to the notion of ‘Afrabia,’ by gearing its already crowded foreign policy agenda towards advancing strategic Afro-Arab relations.”).

231. *Id.* at 42.

232. Margaret Coker, *World News: Persian Gulf States Bet on Africa Despite Downturn*, WALL ST. J. (Feb. 23, 2009), <https://www.wsj.com/articles/SB123535584342445343> [<https://perma.cc/T7K2-FRB6>] (archived Sept. 30, 2022) (stating that “[f]rom 2007 until mid-2008, Gulf states and their government-backed corporate entities spent \$15 billion in foreign direct investment in sub-Saharan Africa, according to the Dubai-based Gulf Research Center”).

233. Heba Hashem, *GCC Governments Spur Investment in Africa*, AFR. BUS. (Nov. 28, 2019), <https://african.business/2019/11/economy/gcc-governments-spur-investment-in-africa/> [<https://perma.cc/RH2K-PTZ3>] (archived Sept. 30, 2022) (explaining that “[w]ith stakes in all four corners of the continent, the UAE is the second-largest investing country in Africa, second only to China, according to the Financial Times’ fDI

Notwithstanding, the current level of trans-Sinai cooperation remains at a transactional level: “[T]he relations between Arab and African countries do not form part of a strategic framework likely to foster trade and economic integration.”²³⁴ The re-Africanization of trans-Sinai Africa is critical for such a framework. The “new era in Africa’s development journey” that was brought about on 1 January 2021, when the African Continental Free Trade Area came into force,²³⁵ foretells the strategic role of Africa’s land borders with Europe, through Türkiye, and with Asia, through Iran. The agreement “will work towards a continental customs union.”²³⁶ The proposed geography allows nesting Israel and the Arab League into the African Union. Put simply, nesting, reminiscent of the famous Russian Matryoshka dolls, helps mitigate the anarchy that dominates international relations by reducing the payoff from defecting from cooperation.²³⁷ In this context, evolutionary economic geography explains “that place-specific legacies and conditions play a critical role in supporting the emergence of new economic activities.”²³⁸ A key driver of economic change in Africa is an “indigenous path creation” mechanism where redefining the African Continent can lead to “the growth of new industries.”²³⁹ Moreover, the trans-Sinai geography creates a strategic coupling of continental assets to global networks through the land borders with Europe and Asia. Put differently, there is complementarity between the knowledge, technology, and investment east of the Red Sea with the rest of the continent.²⁴⁰

Intelligence. Abu Dhabi Fund for Development (ADFD) has been at the forefront of this activity, having funded more than 66 projects in 28 African nations to a value of \$16.6bn.”).

234. Mezouaghi, *supra* note 208, at 55.

235. Teniola Tayo, *Africa’s Free Trade Agreement: Great Expectations, Tough Questions*, INST. FOR SEC. STUD. (Jan. 5, 2022), <https://issafrica.org/iss-today/africas-free-trade-agreement-great-expectations-tough-questions> [https://perma.cc/825X-MNE5] (archived Oct. 9, 2022).

236. Amanda Shendruk, *What Is the African Continental Free Trade Area (AfCFTA)?*, QUARTZ (July 20, 2022), <https://qz.com/1951523/what-is-the-african-continental-free-trade-area-afcfta/> [https://perma.cc/9MMK-VMBF] (archived Sept. 30, 2022).

237. See generally NEOREALISM AND NEOLIBERALISM: THE CONTEMPORARY DEBATE (David A. Baldwin ed., 1993) (discussing “international anarchy, reliance on self-help, the utility of military force, and the importance of balance-of-power calculations” versus “international economic interdependence, international law and institutions, international communication, and societal norms” and the goals of international institutions and regimes).

238. Danny MacKinnon, *Rethinking Path Creation: A Geographical Political Economy Approach*, 95 ECON. GEOGRAPHY 113, 113 (2019).

239. *Id.* at 115.

240. For strategic coupling, see generally Michaela Trippel, Markus Grillitsch & Arne Isaksen, *Exogenous Sources of Regional Industrial Change: Attraction and Absorption of Non-Local Knowledge for New Path Development*, 42 PROGRESS HUM.

IV. CODA

The concept of continental constitutional identity is a gloss on the use of geography-in-constitutions. A constitutional occultation of continental identities can be seen in transcontinental countries such as the Russian Federation. This occultation is due to a misalignment between the geographic definition of a given continent and its socio-political extent. This misalignment could lead to armed conflict, either directly, as in the Russo-Ukrainian conflict (since 2014), or indirectly, as in the proxy wars in North Africa (Libya, Lebanon, Syria, and Yemen in particular). This Article's focus is on illustrating this causal link through an analysis of the misalignment of continental constitutional identities in Africa. Mitigating armed conflict in the Middle East requires a redefinition of the African Continent to include trans-Sinai countries that share socio-political ties with North Africa. The Article calls for trans-Sinai Pan-Africanism.²⁴¹ This is a call for solidarity with Africans east of the Red Sea, who continue to labor under a colonial identity: the Middle East. On the other hand, this is also a call on countries east of the Sinai to join the African renaissance by re-writing their histories from a continental, rather than a colonial, perspective.²⁴²

This continental constitutional identity recuperates Africa's land borders with Europe and Asia to remake the renaissance that once introduced *Homo sapiens* to the Ancient World. There is evidence of continental alienation in the Basic Laws of Israel and the constitutions of the Arab League countries east of the Sinai Peninsula. This contrasts with explicit continental constitutional identities found west of the Sinai Peninsula. The Article applied the principle of nesting to explain how eliminating this misalignment can reduce the likelihood of armed conflict. This nesting is descriptive and normative. The African Continent according to scientific and existential geographies includes Bahrain, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Palestine, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen.

GEOGRAPHY 687 (2018); Danny MacKinnon, *Beyond Strategic Coupling: Reassessing the Firm-Region Nexus in Global Production Networks*, 12 J. ECON. GEOGRAPHY 227 (2012) (explaining strategic coupling as an evolutionary process).

241. See MUNYARADZI MAWERE & TAPUWA R. MUBAYA, *AFRICAN PHILOSOPHY AND THOUGHT SYSTEMS: A SEARCH FOR A CULTURE AND PHILOSOPHY OF BELONGING* 88–90 (2016) (explaining Pan-Africanism).

242. See Michael Witgen, *Rethinking Colonial History as Continental History*, 69 WM. & MARY Q. 527, 528 (2012) (explaining the importance of this point and suggesting that “[w]e should stop trying to write colonial histories that include Indians and start writing early American histories that embrace a continental perspective”). See generally CHEIKH ANTA DIOP, *TOWARDS THE AFRICAN RENAISSANCE: ESSAYS IN AFRICAN CULTURE AND DEVELOPMENT: 1946-1960* (Egbuna P. Modum trans., 1996) (the original work on African renaissance).

Based on this post-colonial geography, these countries are entitled to join the AU.

To be clear, this is not an argument for these countries to gain AU observer status. These are African countries that should join the AU. The Article proposes a trans-Sinai Africa that nests Israel and the Arab League inside the AU based on an existential geography for all Semites. Both empirical and existential geographies suggest revising the current definition of the African Continent. The current definitional convention is based on a theoretical geography that partitioned this continent along arbitrary borders, north and south of the Sahara, as much as east and west of the Red Sea. *En revanche*, a scientific approach to defining the African Continent, in addition to evidence of a long history of trans-Sinai cultural links, leaves little doubt as to the Africanness of the missing part east of the Sinai Peninsula. An analysis of the constitutions of Arab League countries, east and west of the Sinai Peninsula, explains the continental alienation caused by the colonial geography.

The AU can play a key role in mitigating tensions in North Africa by adopting a trans-Sinai definition of the African Continent, thus enabling these countries to join the AU. The AU can help countries east of the Sinai nurture their continental identity. The AU Agenda 2063 is “rooted in Pan Africanism and African Renaissance [and] provides a robust framework for addressing past injustices and the realisation of the 21st Century as the African Century.”²⁴³ However, while “[the Agenda] articulates the need for a paradigm shift,” it does so “without necessarily elaborating on a clear epistemological and ideological foundation of such a change.”²⁴⁴ AU law has a role to play in integrating the African Continent.²⁴⁵ Part of fulfilling this role requires a post-colonial, trans-Sinai legal definition of the continent. The preamble to the Constitutive Act of the African Union is clear on the objectives of “unity, solidarity, cohesion and cooperation among the peoples of Africa and African States.”²⁴⁶ However, notwithstanding that the word “continent” appears eleven times in the Constitutive Act, nowhere does the act define the “African Continent.”²⁴⁷ Article 27 simply states that “[the Constitutive Act] shall be open to signature, ratification and accession by the Member States of the OAU in accordance with their

243. AFR. UNION COMM'N, AGENDA 2063: THE AFRICA WE WANT ¶ 1 (Sept. 2015), https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf [<https://perma.cc/9KFE-LFWU>] (archived Sept. 30, 2022).

244. NDLOVU-GATSHENI, *supra* note 32, at 251.

245. See Michèle E. Olivier, *The Role of African Union Law in Integrating Africa*, 22 S. AFR. J. INT'L AFFS. 513, 513 (2015) (explaining that, in comparison to the European Union, “the term ‘African Union law’ is largely unknown”).

246. Constitutive Act of the African Union pmb.

247. See generally *id.*

respective constitutional procedures.”²⁴⁸ Under the Charter of the OAU, Article I explains that “[t]he Organization shall include the Continental African States, Madagascar and other Islands surrounding Africa,”²⁴⁹ and Article IV states that “[e]ach independent sovereign African State shall be entitled to become a Member of the Organization.”²⁵⁰ Article 29 of the Constitutive Act states that “[a]ny African State may, at any time after the entry into force of this Act, notify the Chairman of the Commission of its intention to accede to this Act and to be admitted as a member of the Union.”²⁵¹ Some have interpreted this article as suggesting that “the AU can be regarded as a ‘closed organisation’ because of its geographical restriction.”²⁵² The failed bid by Haiti to obtain associate membership in 2016 confirms the understanding that only African States can join the AU.²⁵³

In sum, the AU has a critical role to play in affirming the proposed definition of the African Continent. Doing so opens the door for an institutional nesting of Israel and the Arab League within the AU.

The concept of continental constitutional identities can be extended to analyzing other continents, including in a historical context. This Article opens the door for extending the analysis, especially in relation to Europe. In a nutshell, there is a European continental misalignment. The proposition is that some, if not all, armed conflict in this continent can be traced back to said misalignment, where the geographic definition of the European continent is not aligned with its socio-political extent, which leads to an occultation of continental identities in the constitutions of countries conventionally considered part of a given continent, but not accepted as part of that continent’s socio-economic extent. Transcontinental countries, such as the Russian Federation and the Republic of Türkiye, are prime examples of this misalignment. To reduce the potential for armed conflict, the Article envisages continental nesting.²⁵⁴ Nesting is, in essence, a solution to a problem of scale. This solution requires identifying a continental gauge that minimizes (intra- and intercontinental) conflict. This nesting can materialize through two mechanisms. First, the modification of national borders. Second, the modification of continental geographic conventions. Revising national borders or revising continental conven-

248. *Id.* art. 27, ¶ 1.

249. Org. of African Unity [OAU] Charter art. 1, ¶ 2.

250. *Id.* art. 4.

251. Constitutive Act of the African Union art. 29, ¶ 1.

252. OLUFEMI AMAO, *AFRICAN UNION LAW: THE EMERGENCE OF A SUI GENERIS LEGAL ORDER* 50 (2019).

253. *See Haiti Will Not Be Admitted as African Union Member State at Next Summit in Kigali, Rwanda*, AFR. UNION (May 18, 2016), <https://au.int/en/pressreleases/20160518-0> [<https://perma.cc/96PW-T4UZ>] (archived Sept. 30, 2022) (explaining that “[a]ccording to Article 29.1 of the AU’s Constitutive Act, only African States can join the African Union”).

254. *See supra* Part II.C.

tions would allow for nesting a country within its continent (i.e., moving this country closer to the shared values of that continent, and finally integrating it into continental institutions).

For example, under the first mechanism, the national borders of the Russian Federation would be reimagined to allow for the emergence of new independent European and Asian countries. Under this mechanism, allowing the geographic definition of the European continent to coincide with its political extent requires replacing the transcontinental (Eurasian) identity of the Russian Federation with a nested identity. In other words, Russia itself is reimagined as a “World” within the larger Slavic World, the latter being analogous to the “Arab World.” Therefore, Russia is reimagined as a bundle of independent states that belong either to Europe, that is west of the Ural Mountains, or to Asia, east of these mountains. Currently, the Arab World is split into two continental parts, an African part west of the Sinai Peninsula, and an Asian part east of this peninsula. Similarly, in the “Russian World,” national identities west of the Ural Mountains would thus become nested, like the rest of the Slavic World, within European identities. Through this realignment, the eastern part of this Russian World, stretching north of China and Mongolia to the North Pole, would mirror Australasia at the antipode. I refer to this geographic area as “Nordasia,” an area larger than the whole of Europe, including the European part of present-day Russia.²⁵⁵

At first blush, the geographic extent of Nordasia suggests that the second nesting mechanism is not suited to resolving Russia’s constitutional misalignment. The only option, it would seem, is for Nordasia and Australasia to become part of an expanded Asian continent.²⁵⁶ Russian territories west of the Urals would become fully integrated into European institutions. However, the geographic extent of the “Russian World” might also weigh against a solution based on dividing the Russian Federation into European and Asian parts. Given Russia’s capacity for military action, this geographic fission is likely to exact a high price—one that could be disastrous for the whole planet.

255. The total area of Russia is around 17 million square kilometers. See BLINNIKOV, *supra* note 93, at 1 (detailing the physical geography of Russia). The European part is around 4 million square kilometers. See *Map of European Russia*, *supra* note 92. In comparison, Europe, including the Russian part, is only 10 million square kilometers. See JOHN PAXTON, *THE PENGUIN ENCYCLOPEDIA OF PLACES*, Europe (3d ed. 1999).

256. As currently defined, Asia has a total area of 44 million square kilometers. See ADAMS & GANERI, *supra* note 93, at 1. The proposed new definition would see Nordasia accounting for around a quarter of the total area. In comparison, China would account for seventeen percent of this new Asia. In comparison, the Americas have a total area of 42 million square kilometers. See *7 continents*, WORLDOMETER, <https://www.worldometers.info/geography/7-continents/> (last visited Nov. 19, 2022) [<https://perma.cc/7Q79-PQJ2>] (archived Nov. 19, 2022).

Therefore, the alternative, under the second nesting mechanism, might need to be pursued instead. Under this alternative, the European Continent is reimagined as a Global North, where all members of the European Union become nested in a Eurasian Union extending eastwards to the Bering Strait that separates Russia from the United States, thus encompassing the Slavic World in its entirety, but also, potentially, extending to include all countries in northern Asia, that is, China, the Korean Peninsula, and Japan.²⁵⁷ On the other hand, this second-mechanism fusion throws up a host of other issues, especially whether a stable world order could emerge from competition between Eurasia and an American continental identity forming a Global West. Under this second mechanism, Asia is divided into northern and southern parts, with the north, including what I called Nordasia under the first nesting option, becomes “Ostenland,” joining Europe, and Asia’s south combining with Oceania to form a Global East.

Is Europe still relevant in the twenty-first century? The rise of China, and the salience of Eurasia (*qua* Mackinder’s Homeland) seem to militate towards a re-imagination of the European Continent and its institutions. The war waged by the Russian Federation on Ukraine should also be analyzed using the same lens of constitutional geography. In the context of the armed conflict between Ukraine and Russia (since 2014), there is evidence of continental alienation in the Russian Constitution. In contrast, the Ukrainian Constitution, since 2019, adopted an explicit European identity. Future research should look at the misalignment of continental identities in Europe through a detailed analysis of the constitutions of Russia and Ukraine. There is need to delineate the continental identities of Imperial Russia leading up to World War I and the Soviet Union in World War II. Given the sheer size of the Russian Federation, nestedness could necessitate a Eurasian continental identity to be favored over splitting the Russian Federation into states belonging exclusively either to Europe or Asia.

Similarly, future research of the European misalignment should analyze the Turkish Constitution, where there is an orphan reference to the European Convention on Human Rights. In the case of the Republic of Tükiye, research needs to ascertain whether there is a problem of scale, and whether a redefinition of the European continent

257. This union can be thought of as an extension of the Eurasian Economic Union. See, e.g., Golam Mostafa & Monowar Mahmood, *Eurasian Economic Union: Evolution, Challenges and Possible Future Directions*, 9 J. EURASIAN STUD. 163, 170–71 (predicting that the Eurasian Economic Union is likely to at best continue with limited and minimum activities). While the imagined alignment is economic rather than in the nature of the EU, the current European continental identity, long imagined in the footsteps of Greek and Roman civilization, would have to be discarded in favour of a Eurasian identity, one that is much more diverse in its espousal of ideals, including the democratic ideal. This identity would be less inclined towards humanism, and possibly more focused on resurrecting Constantinople as the centre of both Christendom and Islam.

can achieve the envisaged nesting. Türkiye can be fully integrated into a redefined European Continent, or for that matter, into Eurasia. Modifying the definition of the European Continent, or replacing it with a Eurasian continental identity, could help nest Türkiye by adopting an explicit continental identity in its constitution, thus signaling a new collective consciousness that is aligned with its continent. Historically, however, like the Russian Federation today, the Ottoman Empire had to be partitioned for a more secure Europe. Even opting for a Eurasian identity will usher in new uncertainties as to potential armed conflict when reevaluating the place of Constantinople in Christendom and its continued association with the Muslim world.
