What is a constitution? What purpose does it serve? There are at least two answers to these questions, both of which reflect some principal theoretical differences with regards to the normative model of a liberal constitution and its functions. I will call these approaches the instrumentalist and the reflexive.

According to proponents of the first, instrumentalist approach, a constitution should act upon a society, or even against it, as an instrument of state strategy first and foremost. As it is noted,

Constitutions can be understood as precommitment strategies, being used as a founding document for practical and concrete purposes, including the provision of protection against the most likely problems in the usual political process. Constitutions should therefore work against each particular country’s own most threatening tendencies. We might think of constitutions as counter-cultural in this respect (Sunstein 1996: 226).

In light of the proposition that such a document is a precommitment strategy, its framers and interpreters construct it and act upon the society “from above,” before any constitutional community has a chance to organize itself. Therefore, the formation of constitutionalism also consists of actions imposed upon a society in order to implement reforms, to eliminate “threatening tendencies,” or simply to initiate – also from the top down – a process of political nation-forming. Similar suggestions are formulated by those authors who stress constitutional constraints (Holmes 1996), and debate the new constitutions in light of institutional engineering (Zielonka 2002) in new democracies, i.e., those being made “from scratch” (Fish 1996).

The best historical illustration of a precommitment strategy is the constitution of the United States of America. There, the Founding Fathers debated and proclaimed a constitution indeed as the founding document of the American political nation. A more contemporary illustration of a precommitment strategy is the West German liberal-democratic constitutionalism initiated by its “Founding Fathers” in 1949, after important decisions on the future of the western territories were made by the Allied Forces.
With respect to postcommunist constitutionalism, a substantial body of empirical findings exists which would certainly support a critical evaluation of the existing legal and constitutional cultures. It would justify the Hobbesian concept of postcommunist societies as “nasty, brutish and poor,” and a constitution as a necessary “counter-cultural” instrument of their transformation into “civilized” democratic liberal polities. One can quote offhand hundreds of examples of organized crime, corruption of public servants, contempt for law, a lack of democratic competence, and populism. It would also not be so difficult to justify assessments of the new constitutions as unhealthy compromises and point to their actual negative impact on the construction of effective government (Sunstein 1993: 225–232). Inspired by such criticism and an assumed public wasteland after the collapse of communism, many Western advisers and legal reform policymakers have supported the concept of imposed constitutions in initiating processes of reconstruction. They used to bring drafts of constitutions to Eastern Europe, encouraging a copying of the general ideal of “Western constitutionalism” according to a simplistic vision in which the “consolidated” democracies serve as a benchmark for judging how far transition has advanced (Sadurski 2005: 9).

A contrasting, reflexive approach could be summarized in the slogan, “People, your power has returned to you.” That slogan was used by Thomas Masaryk in his inaugural address as the first President of Czechoslovakia in 1918, and it was adapted by Vaclav Havel for his New Year’s address after being elected President of Czechoslovakia in late December 1989. As we have been reminded by a Czech author, this slogan was also used in a Czechoslovak pop tune from 1968 and became the most popular motto of the “Velvet Revolution” (Priban 1999: 38).

In response to the initial question on the purpose of a constitution, one assumes here that such a document represents a broad, basic, societal and political consensus enabling a society to resolve future conflicts, protect values, fulfill expectations, and, most importantly, define itself anew as a liberal constitutional community. Thus, a constitution comprises an institutional framework for consolidation and enhancement of the civil society and the existing social and cultural capital. As a result, according to such a view, liberal democratic constitutionalism consists of a most difficult process of communication, as well as the mutual adjustment of the various expectations, world-views,