Registered in Germany Europa Revue Journal
ISSN: 1862-6564 Vol. 6 No. 4 (2026) Published April 30, 2026

LEGAL TRANSPLANTS AND CONSTITUTIONAL REFORM: A THEORETICAL ANALYSIS OF UZBEKISTAN'S 2023 CONSTITUTION

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Abstract

Legal transplants are one of the main mechanisms through which legal systems change, yet the theory of legal transplants has rarely been applied to the constitutional reforms of post-Soviet Central Asia. This article examines the new Constitution of the Republic of Uzbekistan, adopted by referendum on 30 April 2023, through the lens of transplant theory. Using doctrinal, comparative, historical and functional methods, the study identifies the foreign and international sources of key provisions, including the social state clause, the priority of international treaties, the abolition of the death penalty, habeas corpus guarantees, the right to remain silent and the right to protection of personal data. It then classifies these provisions as textual, institutional or conceptual transplants and assesses the conditions for their effective reception. The study finds that the most innovative provisions are procedural transplants of Anglo-American origin that operate as «legal irritants» in a criminal procedure with continental and Soviet roots, and that their success depends on implementing legislation, judicial interpretation and professional legal culture rather than on constitutional text alone. The article proposes a three-level reception framework (normative, institutional and cultural) and concrete recommendations for the implementation of the 2023 Constitution.

Keywords

legal transplants, constitutional reform, comparative constitutional law, Uzbekistan, habeas corpus, legal irritants, reception of law, post-Soviet legal systems.

Introduction

Legal systems rarely develop in isolation. Throughout history, rules, institutions and concepts have moved from one legal order to another, from the reception of Roman law

in medieval Europe to the global spread of constitutional review in the second half of the twentieth century. Alan Watson famously described this process as «legal transplants» and argued that borrowing is the most fertile source of legal development [6]. The idea has since become one of the central and most contested topics of comparative law and legal theory.

Constitutional reform is a field in which transplants are especially visible. Constitution-makers routinely study foreign constitutions, international human rights instruments and the recommendations of international bodies. Empirical research shows that constitutional texts around the world increasingly share common rights provisions and institutional designs, and that the sources of influence shift over time [13]. At the same time, scholars warn that constitutional texts that are borrowed without attention to the receiving context may fail to work as intended or may produce unexpected consequences [9; 12].

The Republic of Uzbekistan provides a significant and under-studied case. On 30 April 2023, a nationwide referendum approved a new version of the Constitution, which substantially expanded the catalogue of rights and introduced several new principles and guarantees [1]. Article 1 now proclaims Uzbekistan to be a «sovereign, democratic, legal, social and secular state». Article 15 affirms the unconditional supremacy of the Constitution and laws and provides that where an international treaty establishes rules different from those of a domestic law, the rules of the treaty apply. Article 25 prohibits the death penalty. Article 27 provides that no person may be detained without a court decision for more than forty-eight hours and that a detained person must be informed of their rights and of the grounds of detention in a language they understand. Article 28 enshrines the presumption of innocence and the right of a suspect or accused person to remain silent at any time. Article 31 guarantees the right to protection of personal data, and Article 33 obliges the state to create conditions for access to the Internet [1].

The 2023 text replaced the Constitution adopted on 8 December 1992, which had been amended on a number of occasions but retained its original structure. The 1992 Constitution itself was a product of transition: it combined elements of the Soviet constitutional tradition with borrowed institutions such as a presidential system and

declarations of human rights inspired by international instruments. The 2023 reform can therefore be seen as a second wave of constitutional transplantation, which differs from the first in its emphasis on procedural guarantees and on the social dimension of statehood.

Many of these provisions have identifiable foreign or international antecedents. Yet the existing literature on the 2023 reform is largely descriptive and focuses on the content of the new norms rather than on the theoretical question of how borrowed constitutional provisions are received in a legal system with a continental and Soviet legal heritage. This gap matters both for legal theory and for practice: understanding the type and origin of a transplant helps to predict where implementation difficulties are likely to arise.

Aim and objectives. The aim of this article is to analyse Uzbekistan's 2023 Constitution as a case of constitutional transplantation and to identify the conditions for the effective reception of borrowed provisions. The objectives are: (1) to systematise the main theoretical approaches to legal transplants; (2) to identify the sources of selected provisions of the 2023 Constitution; (3) to classify these provisions by type of transplant; and (4) to formulate a reception framework and recommendations for implementation.

Novelty. The article applies transplant theory systematically to the 2023 Constitution of Uzbekistan for the first time, proposes a classification of its provisions into textual, institutional and conceptual transplants, and develops a three-level model of reception (normative, institutional and cultural).

Materials and methods

The primary material of the study is the text of the Constitution of the Republic of Uzbekistan in the version adopted by referendum on 30 April 2023 [1]. Comparative materials include the Basic Law for the Federal Republic of Germany [2], the English Habeas Corpus Act 1679 [3], the decision of the United States Supreme Court in Miranda v. Arizona [4] and the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data [5]. The theoretical framework is based on the classic and contemporary literature on legal transplants and comparative constitutional law [6–15].

The study combines four methods. The doctrinal (formal-legal) method was used to establish the content of the constitutional provisions. The historical-legal method was used to trace the origin of the borrowed concepts. The comparative method was used to identify functional and textual similarities between the Uzbek provisions and their foreign or international models. Finally, the functional method was used to assess whether the receiving legal system contains the institutions and practices that the borrowed provisions presuppose.

Seven provisions were selected for analysis on the basis of two criteria: they are new or substantially revised in the 2023 text, and they have an identifiable foreign or international source. Each provision was classified according to a typology developed for this study. A textual transplant reproduces the wording or formula of a foreign rule. An institutional transplant introduces an organ or procedure modelled on a foreign one. A conceptual transplant introduces a general principle or idea whose content must be developed by domestic institutions. For each provision, the study then assessed the presence of three conditions of reception: implementing legislation, institutional capacity, and familiarity of the concept to the domestic legal profession. This last criterion draws on the finding of Berkowitz, Pistor and Richard that the effectiveness of transplanted law depends on whether the receiving country adapts the law to local conditions or already has a population familiar with its basic principles [11].

Results and discussion

Theoretical approaches to legal transplants. Analysis of the literature allows three main approaches to be distinguished. The first, associated with Watson, holds that law is largely autonomous from society and that rules can be moved easily between systems; the frequency of borrowing throughout history is taken as evidence that transplants are both possible and normal [6]. The second, associated with Otto Kahn-Freund, accepts that transplants are possible but stresses that their success depends on the degree to which the rule is linked to the political structure and power distribution of the source country; rules closely tied to political institutions are much harder to transplant than technical rules of private law [7]. The third, sceptical approach was formulated most sharply by Pierre Legrand, who argued that legal transplants are «impossible» because

a rule is inseparable from the meaning given to it by a particular legal culture; what travels is only a set of words, which acquires a different meaning in the receiving system [8].

Between these positions, Gunther Teubner proposed the influential metaphor of «legal irritants» [9]. A transplanted rule, in his view, does not simply fit into or get rejected by the receiving system; it irritates it, triggering a series of unexpected changes in which both the foreign rule and the domestic context are transformed. Günter Frankenberg, writing specifically about constitutions, described a global «stock» of constitutional ideas from which constitution-makers select components, much as in a furniture catalogue, and warned that such components are often detached from their historical context [12]. These approaches provide the analytical tools for the case study that follows.

Sources and types of selected provisions. The results of the classification are summarised in Table 1.

Table 1. Selected provisions of the 2023 Constitution of Uzbekistan as legal transplants

Provision (Article)	**Main source or model**	**Type of transplant**	**Key condition of reception**
Social state clause (Art. 1)	German Basic Law, Art. 20(1) «democratic and social federal state»	Conceptual	Development of the concept through legislation and constitutional case law
Priority of international treaties (Art. 15)	Monist constitutional models; international law doctrine	Conceptual / textual	Judicial practice of direct application of treaties
Abolition of death penalty (Art. 25)	International human rights standards (ICCPR Second	Textual	Largely ensured: abolition already in force in ordinary law

	Optional Protocol; European practice)		
48-hour judicial control of detention (Art. 27)	Habeas corpus tradition (Habeas Corpus Act 1679); international standards	Institutional	Functioning judicial control and defence counsel at detention
Right to be informed of rights; right to silence (Arts. 27–28)	Miranda v. Arizona (1966); fair trial standards	Institutional / textual	Procedural sanctions for violations (exclusion of evidence)
Presumption of innocence (Art. 28)	Universal human rights instruments	Textual	Change in investigative and judicial culture
Protection of personal data (Art. 31)	Council of Europe Convention 108; European data protection law	Conceptual	Independent supervisory authority and effective remedies

Conceptual transplants. The social state clause in Article 1 is the clearest example of a conceptual transplant. The formula of a «social state» has its classic expression in Article 20(1) of the German Basic Law [2], where it was developed through decades of scholarship and constitutional case law into a set of concrete obligations concerning social security, minimum subsistence and the fair distribution of burdens. The Uzbek text adopts the formula, but its normative content will have to be developed domestically. Without such development, the clause risks remaining a declaration. The same applies to the right to protection of personal data in Article 31, which draws on the European data protection tradition embodied in Convention 108 [5] but requires domestic institutions, in particular an effective supervisory mechanism and judicial remedies, to become operational.

Institutional and procedural transplants. The most innovative provisions from the point of view of transplant theory are the procedural guarantees in Articles 27 and 28. The rule that a detained person may not be held for more than forty-eight hours without a court decision reflects the habeas corpus tradition, whose classic statutory expression is the English Habeas Corpus Act 1679 [3]. The requirement that a detained person be informed of their rights and the explicit right of a suspect to remain silent at any time are functionally similar to the warnings required by the United States Supreme Court in Miranda v. Arizona [4]. These provisions were not developed within the continental and Soviet tradition of criminal procedure that historically shaped Uzbek law; they are institutional transplants from the Anglo-American adversarial tradition, mediated by international fair trial standards.

The analysis of reception conditions shows a clear pattern. Textual transplants such as the abolition of the death penalty face few obstacles, because they codify a state of affairs that already exists in ordinary legislation and practice. Conceptual transplants face the risk of remaining declaratory unless their content is developed by legislation and courts. Institutional and procedural transplants face the greatest risk of transformation, because they presuppose institutions, procedural sanctions and professional habits that may not exist in the receiving system. For example, the right to remain silent is effective only if statements obtained in violation of it are excluded as evidence and if defence counsel is actually available at the moment of detention.

The treaty priority clause and the rule of recognition. Article 15 deserves separate attention from the standpoint of legal theory. By providing that treaty rules apply where they differ from domestic law, the clause modifies what H.L.A. Hart called the «rule of recognition», the secondary rule that identifies valid law in a legal system [10]. Before the reform, the relationship between international treaties and domestic statutes was regulated mainly at the level of ordinary legislation. Elevating the priority of treaties to the constitutional level changes the criteria of validity that courts must apply. However, a rule of recognition exists, in Hart's account, as a social practice of officials. The constitutional text alone therefore does not complete the transplant: its effectiveness depends on whether judges actually identify and apply treaty norms in individual cases.

This is a striking illustration of the general point that conceptual transplants become law in the full sense only through the practice of domestic institutions.

Discussion

The findings support a moderate position between Watson's optimism and Legrand's scepticism. On the one hand, the 2023 Constitution confirms that constitutional rules can and do travel: the text contains provisions whose wording and function can be traced to identifiable foreign and international models. On the other hand, the analysis shows that what is transplanted is, in the first instance, a text, and that the meaning of this text will be determined by domestic institutions and legal culture. In this sense, Legrand's insight that rules are embedded in a «mentalité» [8] remains highly relevant: the right to silence will mean something different in a system where investigators traditionally regard a confession as the central item of evidence than in a system where the burden of proof is firmly placed on the prosecution.

Teubner's concept of legal irritants is particularly useful for anticipating the effects of the procedural transplants [9]. The introduction of habeas corpus and Miranda-type guarantees into a criminal procedure with inquisitorial roots is likely to produce a chain of adjustments: changes in the rules of evidence, in the organisation of the bar, in the training of investigators and in the role of judges at the pre-trial stage. These adjustments are not merely «implementation details»; they are the process through which the transplanted rule acquires its actual meaning in the receiving system. The outcome may differ significantly from the source model, and this should not automatically be regarded as a failure.

Kahn-Freund's warning about the political dimension of transplants [7] is also confirmed. The provisions analysed here concern the relationship between the individual and the state's coercive power. Their success therefore depends not only on technical legal factors but also on the distribution of power between the judiciary, the prosecution and law-enforcement bodies. Comparative research on constitution-making in post-Soviet states has noted that ambitious constitutional texts can coexist with practices that diverge considerably from them [14]. This suggests that implementation monitoring should be an integral part of constitutional reform.

The process by which the 2023 text was prepared is also relevant. A Constitutional Commission collected proposals from citizens and organisations, and the final text was approved by a nationwide referendum [1]. From the perspective of transplant theory, such participatory procedures can increase the «demand» for borrowed provisions and thus their domestic legitimacy, which Berkowitz, Pistor and Richard identified as a factor of transplant success [11]. At the same time, Partlett cautions that popular constitution-making may be used to legitimise texts whose implementation remains under the control of the executive [14]. The long-term significance of the 2023 reform will therefore depend on whether the participatory momentum of its adoption is sustained in the stage of implementation.

Frankenberg's critique of the «IKEA theory» of constitutional transfer [12] draws attention to the selectivity of borrowing. Constitution-makers choose certain components from the global stock of constitutional ideas and leave others aside. In the Uzbek case, the choice of strong procedural guarantees and a social state clause reflects a deliberate orientation towards human rights and social welfare. The theoretical question is whether the selected components form a coherent whole. For example, a strong social state clause may require active state intervention, while procedural guarantees aim to limit the state's coercive power. These two orientations are not contradictory, but their reconciliation requires a developed doctrine of proportionality, which is itself a transplant that must be received by Uzbek courts.

The «transplant effect» identified by Berkowitz, Pistor and Richard [11] offers a further insight. Their research found that legal transplants are more effective when the receiving country either adapts the borrowed law to local conditions or has a population already familiar with its basic principles. For Uzbekistan, this implies that the reception of the new constitutional guarantees requires targeted investment in legal education and professional training, as well as active adaptation through implementing legislation and judicial interpretation. The Constitutional Court and the Supreme Court are well placed to play a central role in this process by giving concrete content to constitutional concepts and by ensuring that procedural guarantees are backed by effective sanctions.

Finally, the case of Uzbekistan illustrates the global trend towards convergence in constitutional rights documented by Law and Versteeg [13] and the wider pattern of constitutional borrowing described by Elkins, Ginsburg and Melton [15]. However, convergence at the level of text does not guarantee convergence at the level of practice. The theory of legal transplants helps to explain why: the distance between the source and receiving systems is measured not only in the wording of rules but also in institutions, professional habits and legal culture.

The findings also have implications for the classification of legal systems, a traditional topic of the theory of state and law. Uzbekistan is usually placed within the Romano-Germanic legal family, with a significant post-Soviet layer. The 2023 Constitution does not change this basic affiliation: the codified structure of law, the hierarchy of normative acts and the central role of legislation remain intact. Yet the incorporation of Anglo-American procedural guarantees and European data protection concepts shows that legal families should be understood not as closed systems but as dynamic configurations in which elements of different origins coexist. For the theory of state and law, this supports a view of legal development as a process of continuous selective reception, in which the receiving system retains its basic structure while integrating foreign elements that gradually modify its operation. Studying these processes requires combining the classic comparative method with the analytical tools of transplant theory.

A practical consequence of this view is that implementation strategies should be differentiated according to the type of transplant. For textual transplants, the main task is to ensure consistency between the constitutional text and ordinary legislation. For conceptual transplants, the priority is doctrinal development by the Constitutional Court and legal scholarship. For institutional and procedural transplants, the key tasks are institution-building, professional training and the introduction of effective procedural sanctions. Treating all new constitutional provisions in the same way risks overlooking the specific obstacles that each type of transplant faces.

Limitations. This study is doctrinal and theoretical. It does not include an empirical analysis of judicial practice after the entry into force of the 2023 Constitution. Such analysis, for example of court decisions applying Articles 27 and 28, is a promising

direction for future research. [The author is encouraged to add any available data on implementation, for example statistics or illustrative court decisions.]

CONCLUSION

First, Uzbekistan's 2023 Constitution contains a significant number of provisions that can be identified as legal transplants from foreign constitutional models and international human rights standards.

Second, these provisions can be classified as textual, institutional and conceptual transplants. Each type faces different reception risks: textual transplants are the easiest to implement, conceptual transplants risk remaining declaratory, and institutional and procedural transplants are the most likely to be transformed by the receiving system.

Third, the procedural guarantees of Articles 27 and 28, which derive from the Anglo-American tradition, function as «legal irritants» in a criminal procedure with continental and Soviet roots. Their effectiveness depends on accompanying changes in rules of evidence, the availability of defence counsel and the professional culture of investigators and judges.

Fourth, the article proposes a three-level reception framework. At the normative level, each new constitutional guarantee should be backed by implementing legislation that specifies procedures and sanctions, including the exclusion of evidence obtained in violation of the right to silence. At the institutional level, independent bodies and courts should be empowered to give concrete content to conceptual provisions such as the social state clause and the right to data protection. At the cultural level, targeted training of judges, prosecutors, investigators and advocates should accompany the reform, and the implementation of key provisions should be monitored systematically.

Constitutional transplantation is therefore best understood not as a single act of borrowing but as a long-term process of adaptation. The theory of legal transplants provides a useful framework for guiding and evaluating this process in Uzbekistan and in other post-Soviet states undergoing constitutional reform.

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