



Constitutionalism 2030

A Prediction

The Crisis

Constitutionalism is in crisis. And the crisis unfolds not only on a national or a regional level. It is a global phenomenon. To emphasize this, runs the risk of stating the obvious; nowadays at least, when every second article, monograph or edited volume in the field seems to lament this fact.¹ And, of course: Disillusion (if not worse) seems warranted. The edifice of Constitutionalism, object of wide-spread admiration and firm support in a not too distant past, appears dilapidated. The current condition, it seems, has essentially been brought about by three distinct – even if interdependent – causes.

1) The foundations on which the concept of Constitutionalism rests have been weakened: In some communities, it seems, democracy has successfully parted ways with liberalism; and those responsible for it are not even ashamed to admit as much. The rule of law is threatened by political actors who openly call for expedience to take precedence over legality. Power sharing within larger entities seem to have lost its appeal with newly established polities crumbling and century old commonwealths on the brink of dissolution, making way for what appear to be smaller and smaller communities.

2) The building blocks of Constitutionalism are at imminent risk to become corroded: Far too often, and in far too cavalier a manner, human rights are held in disregard if not in disrepute when the going gets tough. The tough then, of course, get going. But they seem to wander further and further from the basic principles of liberty, equality and dignity. At the same time the will of the international community to hold those responsible who caused suffering beyond repair seems to fade; while globalization in general, and global trade in particular, far more often are perceived as a problem than as the solution they seemed to offer only a decade ago.

3) Those in charge of maintaining (and extending) the edifice of Constitutionalism are not (perceived) as reliable as they used to be: Formal state and inter-state institutions are often tainted by appearing partisan, prejudiced and falling short of pursuing the common good. Political parties, that is: traditional political parties, seem to have lost not only their appeal to but also the trust of their former adherents who appear just too willing to follow those who offer easy solutions for complex problems. With the trust in parties their ability to serve as a pillar of liberal democracy faded. Ever new popular movements seem on the rise, riding the waves of public opinion only to be washed away by the tide every now and then.

¹ Just for the latter see i.a. the various contributions in in Graber, Levinson, and Tushnet (eds) *Constitutional Democracy in Crisis?* Oxford University Press, 2018, in Nanopoulos and Vergis (eds) *The Crisis Behind the Crisis: The European Crisis as a Multi-Dimensional Systemic Failure of the EU* (Cambridge University Press, 2018), or in Alviar García, Frankenberg (eds), *Authoritarian Constitutionalism: Comparative Analysis and Critique*, Edward Elgar 2019.