



Christoph Bezemek, Introduction

## Part I: Aspects

### Matthias Klatt, Democracy

The contribution will ask how the constitutional principle of democracy, understood as a main tenet of global constitutionalism, should look like in 2030. First it will focus upon the concept of global constitutionalism and demonstrate what role the principle of democracy plays within this concept. The paper will then categorise the main challenges democracy faces today and will face, presumably, in the next decade. In the last part, the paper will develop a normative theory of democracy that is capable of providing guidelines and normative orientation for the practice of democrats, so that the main challenges identified could be met with ease. That way, the ultimate conclusion will be that despite current struggles and challenges, the principle of democracy will outlive, perhaps in a modified version, the next decade.

### Yaniv Roznai, Rule of Law

The rule of law is a complex concept. The complexity derives from its different formal, jurisprudential and substantive aspects. The formal aspect focuses on the rule of law and not the rule of men that legal rules would exist, that everyone would be bound by them and that these rules would be equally enforced. The jurisprudential aspects concern certain characteristics that the rules of a legal system must conform to, such: generality, clarity, publicity, stability, and prospectivity (see, for example, Fuller's Inner Morality of Law, but there are other accounts). Substantive aspects of the rule of law focus on the content of law and include certain substantive values that are to be based on, or derived from, the rule of law, such as justice, individual rights and even democracy. Evidently, there is much less agreement among scholars on the substantive aspect of the rule of law.

The chapter will focus on three movements which influence how 'the rule of law' would be conceived in 2030. The first one is the move from 'the rule of law' to 'the rule by law' (see, e.g. Ta-manaha). If the rule of law, as an idea, elevates law above politics, portraying law as constraining political power, rule by law expresses the instrumental use of law at the hands of political actors. Instead of regarding law as controlling state authorities, we shall increasingly witness how state authorities use law to control citizens and to promote narrow political interests. The second move is the weakening of substantive aspects of the rule of law, such as democracy and human rights – which are evidently more contentious. An example for such a move has recently appeared in Israel, where new pedagogic instructions attached to the program of civic studies in the national school system had removed the mention of human rights from the topic of the rule of law, emphasizing the autonomy of the latter from any substantive values. This third move is the weakening of jurisprudential aspects such as generality and stability towards personalized 'tailor-made' and adaptive law-making (see University of Chicago Law Review Symposium on Personalized Law). Nowadays, with the assistance of data science, it is much easier to create personalized legal rules tailored to specific circumstances or individuals. For example, technology can assist law enforcers detect patterns and future misconduct based on past data and statistics. While such personalization of law may carry great efficiency benefits, they would also significantly undermine the rule of law, as a general set of norms to be equally applied. Also, new applications of artificial intelligence and machine learning may assist law to more quickly adapt to changing circumstances, thereby undermining the stability of law. These three movements create serious challenges to the concept of the rule of law as we know it.

## **Bilyana Petkova, Federalism**

Federalism, broadly understood as a principle of separation of powers both above and below the state, is an underlying functional mechanism of constitutionalism. Seemingly, power sharing within larger, quasi-federated entities seem to have indeed lost its appeal. Recently in Europe, Brexit established a precedent shaking the constitutional foundations of the European Union, with the United Kingdom becoming the first country to leave the supranational organization that has shaped developments on the continent for the past fifty years. Scottish and Catalan separatism are easily inflammable too showing the same trend of dissolution or at least precariousness on the level of sovereign states. This trend, however, runs parallel to the rise of what sociologist Saskia Sassen has aptly coined as “global cities”. In North American federations such as the USA and Canada, cities and localities, habitually given the status of “creation of their states” (See, e.g., *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907)) have gradually emancipated themselves under an ever-expanding variations of what is known as “home rule”, a provision inserted in state constitutions that allows cities larger autonomy. The policies of populous North American cities sometimes boosting the GDP of entire states have simultaneously provoked a strand of academic research now established as progressive federalism while law faculties have started introducing chairs in urban studies. Back in Europe, post-Brexit London is flexing its muscle to keep an influential status while in China and the Middle East cities built from the bottom-up aspire to become new financial, sports and technological hubs. Urbanization is therefore here to stay, and so is the growing interest in the City. This chapter will trace the turn from federalism above the state to federalism below the state, arguing first, that a crossing point between the two – call it horizontal federalism (attempts for global cooperation on the level of city councils and mayors) is likely to become a prominent feature of constitutionalism in 2030. We shall see attempts for legal recognition and prerogatives for the City under both domestic constitutional and under international law. Second, I look into the concept of urban citizenship and possible resulting tensions between not only the City and the Nation State but also between urban and supranational constitutional ordering. Third, I discuss the role of technology in the context of the now trope “smart city” and the social credit score as an emerging mechanism of “sorting” city inhabitants. Against this background, using the familiar terminology of Hirschman, I finally argue for the normative importance of Voice over Exit, as well as the necessary co-existence of both federalism above and below the state.