

# Preface

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This book is about constitutional theory. It integrates a wide range of perspectives from across the social sciences. The central argument is that constitutions are no longer up to the tasks they are asked to fulfill in supporting democratic societies.

Constitutional theory is highly abstract and may seem a million miles distant from the way we actually experience institutions and people with authority in the real world. However, we need to recognize that there are very real human costs involved when constitutions fail.

At first sight, the costs of constitutional failure may not seem very onerous. We may simply remark that election-time debates have become more fractious, political stances more polarized, and political institutions less able to act decisively. Some people may even think that political deadlock is a ‘good thing’ because it enables people to get on with their lives undisturbed by politicians. However, there are very large costs that accumulate over time when we cannot find ways to cooperate together. Societies will find increasing difficulty in updating education systems, or in meeting rising expectations about health care, or in providing social care for aging populations. Failure can also cause more dramatic disruptions. For example, Brexit not only marks a generational change in the lives and expectations of the British, but it is also a setback for all members of the European Union (EU) when a major member state decides that the rules of association no longer work for it. Constitutional failure propels emigration. In the very worst cases, constitutional failure costs lives.

In current conditions it is easy to find scapegoats that deflect attention from constitutional frameworks. We can blame the 2008 international financial crisis, or the impact of global trade and investment flows, or immigration, or the disruption to traditional delivery systems caused by the internet, for creating the new sources of stress in our lives. The underlying social reality, however, is that we have to be able to adapt to a world where employment and living patterns are changing for reasons quite independent of the machinations of bankers and international supply chains, to a world where we live side by side in shared urban spaces with individuals and groups holding very different values and different percep-

tions of history, and to a world where concepts of our own 'private space' and our own traditional ways of doing things and associating with others are all changing irrevocably.

Democratic politics and other systems of social coordination together help us to find the pathways leading to social adaptation. But they do not work in the absence of a supportive framework of rules. In yesterday's world, many of these rules might simply have taken the form of unwritten but well-established conventions. In today's world, where the values we take for granted are challenged on a daily basis, where social relationships are much less well established and more uncertain, where chains of intermediary institutions are growing ever longer, more dispersed, and less easy to navigate, the rules must be explicit and written.

In the absence of a clear constitutional framework for relationships we cannot look to the protections of the rule of law, or to the opportunities of the market, or to match social decisions that need to be taken slowly with the fleeting attention spans of democratic politics. We become prey to cronyism in politics and the market, or to the dictates of experts and regulators, or to the quick fix, and to content-lite decision making.

The book sets out the principles that would place democratic authority in modern societies on a constitutional foundation of fairness in relationships. Fair play can be distinguished from fair distribution. Fair distribution is about social outcomes. Fair play is about the terms of social and political engagement. It underlines the importance for people to know who the new actors are with authority in their daily lives and how to gain redress if need be; it directs attention to where new rules can help make decision makers in politics more attentive to wider sources of information and to different ways of framing social choices. It also directs attention to where new institutions for participation and oversight are needed to make up for the blind spots in democratic processes. It stands against the tide of politicians, lawyers and civil society groups who claim that all deficiencies in institutional frameworks can be made good with the inclusion of ever-more extensive declarations of 'rights' which they themselves are uniquely qualified to interpret. It stands, instead, for the importance of getting institutional relationships right. It stands for the principle of consent and the possibility to say 'no' to those who manipulate positions of power to their own advantage.

The book stops short of suggesting how such principles for fair play might be put into actual constitutional practice. There are implicit messages. The British need to move to a fully written framework from a fossil field of ancient conventions; the EU needs to rebuild its framework on the basis of the democratic character it is seeking rather than on functional

goals; the United States needs, as former President Obama has suggested, to reform its system rather than complain about the personalities that the system pushes forward. How we get from where we are to where we need to be is another question entirely.