

Preface

The recognition of authority as a basic force of social praxis attacks the very roots of human freedom . . . Yet bourgeois philosophy put the autonomy of the person right at the center of its theory . . . These antagonisms appear in the most varied forms in the ambivalence of bourgeois relationships of authority: they are rational, yet fortuitous, objective, yet anarchic, necessary, yet bad.

Herbert Marcuse, *A Study on Authority* (1936)

The end of history, allegedly marked by the post-Cold War triumph of both liberalism and global capitalism, will have to be postponed again. After democratic advances, albeit neither linear nor sustained nor unequivocal, authoritarian regimes and rhetoric appear to be making a comeback in the twenty-first century. Some observers argue that authoritarianism is ‘the dominant form of rule in modern times despite the dip in democratization’.¹ Others count more than 40 authoritarian (autocratic, despotic, dictatorial, tyrannical) regimes worldwide, and yet others consider roughly one third of the world’s population to be living under illiberal and nondemocratic rule.² Whatever the actual numbers may be, they warrant serious analysis and critique of political authoritarianism.

Constitutions – their rhetoric and texts, doctrines and practices – are part and parcel of the ‘culture of authoritarianism’.³ Authoritarian regimes invariably come with constitutions that are dismissed in the dominant discourse as deficient or deviant versions of liberal democratic charters – nothing but façades or shams to camouflage the dark side of autocracy, the rulers’ bad intentions

¹ Hans-Joachim Lauth (2012) ‘Authoritarian Regimes. InterAmerican Wiki: Terms – Concepts – Critical Perspectives’, www.uni-bielefeld.de/cias/wiki/a_Authoritarian%20Regimes.html/, accessed 13 July 2018.

² According to the World Democracy Index, the proportion of the world living under authoritarian regimes has been found to be 32.7 per cent, while 44.8 per cent of the combined populations of 167 countries surveyed live in flawed democracies: www.indy100.com/article/global-democracy-index-2016-study-most-authoritarian-democracy-usa-downgraded-latest-7587516/. See also ‘Is Democracy Dying? A Global Report’ (2018) 97 *Foreign Affairs* May/June issue.

³ See for example John A. Booth and Mitchell A. Seligson (1984) ‘The Political Culture of Authoritarianism in Mexico: A Reexamination’ 19 *Latin American Research Review* 106–24.

and practices. After all, if constitutionalism is defined by meaningful commitment to the rule of law, as opposed to rule by the brute will of the sovereign, then constitutionalism and authoritarianism should be anathema. Regimes that attempt to combine the two should be unstable, chimerical. These are constitutional ‘machines’ that should *not*, to borrow Michael Kammen’s famous phrase, go of themselves. However unimpeachable these propositions would appear to be a priori, in empirical fact combinations of constitutionalism and authoritarianism are more the rule than the exception in twenty-first century political organization. What explains this conjunction of law and its other? What are the varieties of authoritarian constitutionalism and what can be said about them once we suspend the presumption that any combination of the two is sham, deficient, deviant, or otherwise illiberal and normatively suspect? How might constitutionalism motivate popular support for authoritarian regimes? Under what conditions does constitutionalism itself exhibit authoritarian tendencies? If Herbert Marcuse is right that there is an inherent ‘ambivalence’ in modern relationships of authority in bourgeois society, in what other ways does that ambivalence express itself in and haunt the operation of law? In what ways does it haunt ‘global north’ readings of constitutionalism in other parts of the world?

Rather than brushing aside authoritarian constitutionalism as liberalism’s other – nothing more than the theory and practice of political windowdressing – the authors assembled here consider constitutions to be texts with purposes written for domestic and international audiences, texts that are not just formal instruments but rather expressions of ideas and values deeply implicated in the economic, political and cultural systems from which they emerge. They investigate and submit to critique the idea that authoritarian constitutionalism – its rhetoric and political techniques – is a phenomenon in its own right. As importantly, they challenge the notion of a single ‘proper sense’ of constitutionalism that is coextensive with and exhausted by the discrete elements of the liberal paradigm, notably separation of powers, enforceable rights, free and fair elections and judicial review. Instead, the authors argue that constitutionalism covers a plurality of different constitutional regimes, economic orders and cultural forms. From different perspectives and within different global contexts, they discuss crucial features of political authoritarianism, such as modalities of participation, techniques of governance and legitimation, the forms of communication between rulers and ruled, the temporality, iconography and performance of constitutional authority, the deep connections between constitutionalism and nationalism, the virtues and vices of paradigmatic liberal democratic theories of constitutionalism and the internal relationship between political and economic authoritarianism. The objective throughout is to develop critical tools for the study of authoritarian constitutionalism in diverse institutional settings.

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