Werner Gephart/
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Dynamics of Constitutional Cultures

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Dynamics of Constitutional Cultures

The Cultural Manifestation and Political Force Field of Constitutionalism

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Constitutional Cultures beyond the State:
The Forces of Society

Werner Gephart / Jan Christoph Suntrup

Introduction: Analyzing Constitutions from a Cultural Perspective

Just a few years ago, Neil Walker proclaimed the »global age of constitutionalism«.[1] Although he did not embed this formula in a teleological narrative of progress, but rather sought to elaborate the intricate relation between the principles of constitutionalism and democracy in the context of globalization, this catchy slogan alluded to two developments: first, the worldwide spread of the idea of constitutionalizing national political authority and second, the emergence of constitutionalist constructions beyond the nation-state. Writing in 2020, this undeniable dispersion of constitutionalist ideas and practices hardly gives reason to unclouded enthusiasm: Even more than the crisis-struck European Union and the frailty of the United Nations' integrative forces, the repressive backlash in many countries enchanted by the democratic promises of the Arab Spring, the triumph of populist leaders in some of the world's oldest democracies, and the open rejection of basic principles of liberal constitutionalism in Eastern Europe have proven that the idea of constitutionalism might not be dead, but strongly contested.

While it is still possible to claim that »constitutionalism has become an almost universal template for democratic and even non-democratic governmental regimes«,[2] it becomes more and more imperative to ask whether this concept actually amounts to more than a hollow shell. When Austria's former far-right Minister of the Interior, Herbert Kickl from the Freedom Party of Austria (FPÖ), questioned the validity of international human rights conventions by stating »I believe that it is up to the law to follow politics and not for politics to follow the law«[3] in January 2019, it was a stunning reminder that the boundaries of politics and law are always contested, not least in democratic regimes that trust in their constitutional foundations. As worrying as many of these developments certainly are, they should not generally be dismissed as outright rejections of legal norms and procedures; although law may lose its role of limiting power, it often remains in

1 Walker: Constitutionalism and the Incompleteness of Democracy, pp. 223 ff.

2 Blokker / Thornhill: Sociological Constitutionalism. An Introduction, p. 1.

3 Ralf Bosen: Austrian Interior Minister Accused of »Attacking Rule of Law« (*dw.com [Deutsche Welle]*, January 24, 2019) <https://www.dw.com/en/austrian-interior-minister-accused-of-attacking-rule-of-law/a-47224454-0> last accessed July 13, 2020.

the game as a tactical device. These transformations have thus prompted new academic interest in hybrid regimes, »dual states«,[4] and »autocratic legalism«,[5] and they have even inspired new reflections on the possibility of an »authoritarian constitutionalism«.[6]

At the very least, constitutions neither appear as uniform models nor as uncontested means of setting the rules of the game in the political, economic, or religious domain. Martin Loughlin arguably gives a fair description of the current political and legal landscape in his article »The Constitutional Imagination« when he states that »[w]e live today in an age marked simultaneously by the widespread adoption of the idea of constitutionalism, of ambiguity over its meaning, and of anxiety about its continuing authority.«[7] This review of the situation calls for inventorying our analytical toolboxes. While comparative constitutional law is a well-established research area, its focus often remains quite limited. Thus, Ran Hirschl has pointed to the unease with which legal scholars often encounter the methods and perspectives of the social sciences. Accordingly, comparative lawyers would tend to adopt a rather technical and institutionalist perspective on law and constitutions by neglecting cultural foundations as well as strategic questions and power constellations. As a result, »any attempt to portray the constitutional domain as predominantly legal, rather than imbued in the social or political arena, is destined to yield thin, ahistorical, and overly doctrinal or formalistic accounts of the origins, nature, and consequences of constitutional law«.[8]

To be sure, Hirschl's observation should not be taken as an opportunity to blame insufficient knowledge of constitutionalism entirely upon comparative lawyers, as social scientists often lack, for their part, expertise of legal complexes. In any case, Hirschl's plea for a turn from comparative constitutional *law* to comparative constitutional *studies* can only be authentically supported by offering innovative analytical means that allow an understanding of modern constitutional dynamics to be advanced. While the anthropology and sociology of law have come up with countless empirical and theoretical insights since the days of Max Weber, Émile Durkheim, and Eugen Ehrlich, a genuine political sociology of constitutions is still in its infancy.[9] This also holds true for a genuine cultural analysis of constitutions. Although the term »constitutional culture« has gained – at least to a modest degree – currency in academia, it is far from being used coherently or even being

4 See Ernst Fraenkel's classical study *The Dual State* as well as the recent attempts to shape the concept of »dual state« as an analytical tool for comparative research by Meierhenrich: The Remnants of the Rechtsstaat, pp. 225 ff., and Suntrup: Between Prerogative Power and Legality.

5 Scheppele: Autocratic Legalism.

6 Alviar García / Frankenberg (eds.): Authoritarian Constitutionalism.

7 Loughlin: The Constitutional Imagination, p. 25.

8 Hirschl: Comparative Matters, p. 152.

9 See Gephart: Constitutions as Culture, pp. 4 f.; Blokker / Thornhill (eds.): Sociological Constitutionalism, and Paul Blokker's contribution in this volume.

molded into a concrete research design. Largely unconvincing is the suggestion to regard culture as a »mental model«[10] and to construe »constitutional culture« as »an attitude about constitutional constraints and constitutionalism«, which »includes the implicit and explicit, stated and unstated, conscious and subconscious thoughts, feelings, beliefs, impressions, and norms a group holds about the nature, scope, and function of constitutional constraints«.[11] Such a mentalist approach is attended by the same pitfalls as the well-established research on political culture as initiated by Gabriel Almond and Sidney Verba in the 1960s,[12] for neither the genesis and reproduction of such a group culture can be assessed in this way, nor is there any awareness of the cultural practices from which constitutional norms, institutions, and interpretations are constructed.

This book aims to convince readers of a cultural perspective on constitutions that defies the temptation of mentalist reductionism as well as the compartmentalization of »culture« into a clearly delimited region of cultural (distinguished from economic, religious, or political) objects. Tying in with the research approach of the Käte Hamburger Center »Law as Culture«,[13] the term »constitutional culture« evokes the multidimensional life of a constitution that cannot be restricted to its textual normative provisions and its authorized interpreters, although they are clearly essential to the institution of law.

However, grasping the foundational force and societal influence of constitutions by means of cultural sociology also calls for the analysis of narratives, symbols, rituals, and places in which constitutions are framed and reproduced. For historical research, for instance, Barbara Stollberg-Rilinger has demonstrated the promises of writing »constitutional history as cultural history«, as pre-modern constitutions – given the absence of a clear legal hierarchy and the rigorous distinction between facts and norms – were essentially »enacted« in symbolic-ritual forms, which performatively constituted and reconfigured the political body.[14] Since the great revolutions of the 18th century, constitutions have been endowed a greater degree of technicality and binding force, but there is nevertheless a basic consensus that they not only have an instrumental, but symbolic function. Thus, Hans Vorländer rightly claims that constitutions are to be regarded as specific institutions characterized »by an implicit meaning and value structure; that is by their significance. Yet, this needs to be made explicit in some form – medial, emblematic, ritual, mythical, narrative – in order to give the order arrangement

10 See Wenzel: From Contract to Mental Model.

11 Ibid., p. 61.

12 See Almond / Verba: The Civic Culture; critically Suntrup: Umkämpftes Recht, pp. 44 ff.

13 See Gephart: Rechtsanalyse als Kulturforschung; Gephart / Suntrup: Rechtsanalyse als Kulturforschung II; Suntrup: Umkämpftes Recht.

14 See Stollberg-Rilinger: Verfassungsgeschichte als Kulturgeschichte, pp. 12 f.; Des Kaisers alte Kleider.

permanence«.[15] These cultural processes transcend the traditional calls for order, as articulated in Rudolf Smend's constitutional theory,[16] by seeking symbolic integration through the force of the constitution. Given the »ongoing validity problem«[17] of constitutions, which is not resolved by an original act of decision-making or a foundation, it is not just »pre-modern« constitutions that face the task of perpetual re-enactment.

Accordingly, for a sociological view of constitutions that suits a culture-oriented comparison of constitutional orders, it becomes possible, by relying on the »Law as Culture« program, to differentiate between various aspects[18]:

1. Constitutions reveal a SYMBOLIC level which aims directly at the order of collective symbolism; grounds the collective identity of a nation; and expresses itself through visible signs, often a flag and a figure (i. e. an emperor, a president, etc.), that symbolize the unity of the political system. How competing symbolisms are treated, both inclusively and exclusively, signifies an important dimension of intercultural constitutional varieties. Constitutional charters can be read as the materialization of such strategies. Furthermore, the locations of their preservation offer valuable clues to differences in their socio-cultural significance. To Bellah, the United States Constitution, viewed as a manuscript, is a component of civil religion in America: »The Declaration of Independence and the Constitution were the *sacred scriptures* and Washington the divinely appointed Moses who led his people out of the hands of tyranny.«[19] Constitutional images are capable of condensing the overflow of meaning regarding their idea of order and thus contribute to the »validity« of a constitution.[20]
2. At the same time, constitutions are – in a simplifying way, because this would not be true for Great Britain, for example – conceived as the NORMATIVE SUPERIOR ORDER of society, the »norm of the norms« resting on the peak of the Leges hierarchy, often setting high bars for democratic change or even precluding future alterability. Such practices of eternization are facilitated when constitutions, as normative orders, are oriented toward the unalterable past of a narratively-spread founding myth. (This corresponds to the normative constitutional term.) This hierarchical idea repeatedly raises the question of the *Hüter der Verfassung*, or guardian of the constitution, who is also an interpreter

15 Vorländer: Constitutions as Symbolic Orders, p. 213.

16 See Smend: Verfassung und Verfassungsrecht.

17 Vorländer: Constitutions as Symbolic Orders, p. 213.

18 These distinctions apply a sociological concept of law, which is oriented to Durkheim's theory of social life, to the analysis of constitutions; see final chapter in Gephart: Recht als Kultur.

19 Bellah: Civil Religion in America, p. 9 (emphasis added).

20 For a comparative approach, see Schulz: Verfassungsbilder.

and, with his/her »power of interpretation«,[21] grows beyond the role of the interpreter of legal norms and often becomes a political actor.

3. Constitutions are furthermore an ORGANIZATIONALLY-FORMED order of the political-institutional system, as the division of competencies of certain state institutions (*Staatsanstalt*), which simultaneously institutionalize the superior constitution, is propped up by constitutional courts and other judicial inventions such as that of constitutional interpretation.[22]
4. Constitutions are the code of the legitimate use of power as a symbolically generalized medium of communication that regulates the creation of power in processes of generating and applying norms of legitimate rule[23] (constitution as PROCESS/RITUAL). This level appears in transitional phases of special meaning, for example, when old orders dissolve and new plans for the creation of meaning of society take on a normative-constitutional form.
5. Constitutions are the place where the structural decisions of a society become visible. These decisions embrace the societal system and its subdivisions according to their specific culture of STRUCTURAL AND FUNCTIONAL DIFFERENTIATION, thus determining the hierarchical and heterarchical social architecture (societal concept of constitution).
6. Finally, the EPISTEMICAL DOUBT that repeatedly bothered us during the first phase of the *Law as Culture* project may not be left unmentioned: If we simply put occidental speech into completely different living conditions and constitutional circumstances, must we not contextualize the emergence and validity of the notion of the »constitution« more intensely from a cultural-sociological perspective?

In this respect, a multi-dimensional cultural analysis of law that takes notice of social actors' struggles to shape, implement, or sometimes also defy constitutions is a timely and promising undertaking. The following chapters were initially presented in Fall 2017 in Bonn at a conference by the Center »Law as Culture« that assembled internationally distinguished scholars specialized in the analysis of constitutions as well as several renowned justices of constitutional and supreme courts. They all were committed to illuminating, conceptually and empirically (beyond the »usual suspects« of North America and Western Europe), general fundamental aspects as well as divergent paths of constitutional orders in a globalizing world.

While constitutions can be conceived as foundations of legal and political order, the first part of this book is comprised of articles that complementarily shed light on the question of what constitutes a constitution. For this purpose, contributions

21 In comparison see Vorländer: Die Deutungsmacht der Verfassungsgerichtsbarkeit.

22 See Christoph Möllers' works, eg. The Three Branches.

23 In the sense of Parson's theory of power as generalized medium of interaction/communication (Parsons: Concept of Political Power).

in this section do not look at the democratic or heteronomous founding act of constitutions, but rather at the multiple forms and techniques by which a constitutional culture is reproduced and becomes manifest. *Lawrence Solan* compares two judicial cultures by scrutinizing how the US Supreme Court and the Court of Justice of the European Union (CJEU) construe and rely on precedent. Solan holds the view that the distinction between »the common law judge making public law decisions, and the justices in the CJEU is the relentless use of judicial precedent by the former, at times burying the statute being construed under a mountain of exegesis of the language used in judicial opinions«. While Solan reminds readers of the French roots of the CJEU's jurisdiction, which would establish some barriers to judicial activism and extensive exegetical efforts, he cautions about hasty judgments. As he shows in detail, the CJEU also relies on coherence and legal precedent, yet does not follow the Supreme Court's »textualization of precedent« and a proliferation of verbatim quotations – the necessity of multilingual publication in the EU has a direct effect on judicial style.

The following texts in this segment more deeply explore the symbolic forms of constitutions. According to *Patrícia Branco*, courthouse architecture has the double purpose of stating the normative order of society and representing the power of the law. But beyond such a general observation, Branco reveals through a comparative analysis of prominent and lesser-known examples of constitutional and supreme courts how their architecture contributes to the social imagery of a constitution, devising a complex spatio-temporal representation of law. Thus, Branco discusses the place of courthouses and their relational semiotics in urban spaces; the ambition to link the power of the constitution to a higher, transcendent realm; and different manifestations of the will to express the power of law in classical architectural form (such as in the United States) in contrast to other projects such as in Germany or South Africa, where constitutional courthouses are a materialized reflection of past injustices as well as current legal aspirations and are hence keystones of a »transformative constitutionalism through architecture«. The direction and installation of light and the use of materials are further attributes by which constitutional representations can be distinguished – in any case, Branco shows that constitutions can follow different paths besides being »petrified« or written in stone, as historical sensitivity and the sovereign mastering of architectural forms enable courts to turn from abstract entities into »meaningful places« with social resonance.

Werner Gephart's contribution presupposes that the world has to be viewed not only through abstract categories, but also by way of concrete senses: Law is color, smell, gesture, reading, discussion, logical argumentation, and seduction and not just a text. According to Gephart, we must take seriously the fact that the mediums – the windows through which we see, the organs through which we smell and feel and suffer – are also the arts. Without reducing constitutional cultures to their

materialities by neglecting the linguistic form of well-formed wordings, it seems quite revealing how an ascetic materialism of the *Grundgesetz*, as expression of the post-war Rhenanian Democracy, contrasts with the American constitutional cult circling around the Constitutional Charter, or misses the pathos of the French constitutional tradition, while the liberation impulse of the Indian Constitution, formulated by Ghandi and Ambedkar, requires nothing more than a container of helium in order to preserve the eternal validity of its text, written over five years by artistic calligraphs! Therefore, the senses gain a new role in the understanding of constitutional law: the eye, the ear, the nose, the skin, and last but not least the sense of justice, which is so much reviled by lawyers.

Daniel Schulz provides new insights into the nexus of political order and constitutional imagery. Starting with a discussion of the *Leviathan*, he underlines that law, as a written document, is absent on the iconic frontispiece of Hobbes' treatise, which is concerned with the security-granting enforcement of law assured by an absolute power. While this led to the sovereign being portrayed as a personalized, artificial god in the *Leviathan*, Schulz's contribution focuses on French attempts to visualize a new political order after the Revolution of 1789. Besides staging revolutionary ideas in an allegoric fashion, the constitution itself was visualized as »source of impersonal power and legitimacy«. The *Déclaration des droits de l'homme et du citoyen*, presented in the form of mosaic stone tablets, was the most prominent example of this visualization of laws derived from rationalistic universalism, ultimately leading, after the decapitation of Louis XVI, to a »hegemony of the text«. On the other hand, this void entailed a new »battle of symbolization« in which the symbolic incarnation of the people and the foundations of the political order were at stake. Commenting on selected images that accompanied the frequent constitutional transformations in France, Schulz reveals how the centrality of the text and attempts to re-personify authority contributed to ongoing competition about constitutional representation.

While Schulz's contribution evidences how profane struggles about the political order are transferred to the dimension of political culture and symbolism, the next section focuses even more on contemporary political clashes of competing constitutionalist (and anti-constitutionalist) projects and the dynamics of living constitutions. *Marta Bucholc* and *Daniel Witte* address the autocratic backlash in Hungary and Poland by reflecting more generally on the features, problems, and potential of post-socialist constitutionalism. The authors show how socialist protagonists, inspired by legal theoretician Evgeny Pashukanis in particular, initially tried to debunk the rule of law as a repressive element of bourgeois society, before realizing that an entirely a-legal society was doomed to fail. At the same time, the Stalinist constitutional model, which was imposed on the Soviet Union in its entirety, was a huge project of homogenization that disregarded local sensibilities and cut the link to all forms of pre-war constitutionalism. A »negative con-

stitutional consensus« (Grażyna Skąpska), which foreshadowed today's low level of trust in positive law in many Eastern European countries, was the result. After the demise of the Soviet Union, contrary to the hopes of universalist thinkers, liberal constitutionalism stood on shaky grounds, as a respective constitutional culture failed to be anchored normatively and symbolically. Despite some differences in the degree of constitutional transformation, Bucholc and Witte show how Hungarian and Polish power-holders are fighting with different strategies for a model of illiberal and populist constitutionalism.

Menachem Mautner focuses on the »culture war« in Israel, which has been rattling the country for several decades. Mautner reveals that the times of British rule over Palestine entailed a far-reaching anglicization of legal culture, which also left its mark on the political and legal consciousness of the early days of the state of Israel, especially on the legal profession. Consequently, the Israeli Supreme Court became a main protagonist and can be credited with introducing »liberalism's core values into the state's political culture« as well as – in the face of a cumulative and incomplete basic law – the creation of an »unwritten constitution«. The decline of the cultural, political, and social hegemony of the Labor Movement as well as the rise of religious Zionism, however, has allowed the Court to assume a much more activist role since the 1980s in order to defend the corroded liberal values a majority had previously supported. Mautner reconstructs the major steps of the Court's self-empowerment and change of judicial style as well as their fragile legitimacy from a democratic perspective, as they »could not have been perceived by the religious and nationalist groups in Israel as anything but coercive, confrontational, and insulting moves«. Therefore, the Court has come under fire from the nationalist and religious right, which has been on a mission to re-define national identity and the core of law in opposition to the liberal tradition, culminating in the nation-state law of 2018 that once again shifts the balance of Israel's hybrid identity as a »Jewish and democratic state«.

Mirjam Künkler scrutinizes the dynamic constitutional system of the Islamic Republic of Iran, founded in 1979, which stands out as the only civil law system in the world entirely based on positivized Islamic law. After illuminating the genesis and basic principles of Iran's constitution as well as the adherence to the principle of constitutional ordering, which Künkler argues is an integral part of Iranian constitutional culture, she analyzes the processes of constitutional adaptation, which reset the boundaries of religious and secular law. Fierce struggles between the parliament and the cleric-dominated Guardian Council in the 1980s gave rise to a series of crafty legislative arguments that aimed to circumvent the Guardian Council's veto. Eventually, they even led to the establishment of the Expediency Council, a non-clerical council appointed by the Supreme Leader empowered to overrule the Guardian Council. While Künkler does not consider this innovative reconstruction of the political and legal architecture a genuine secularization of

the lawmaking process, she sees it as a form of constitutional thinking, where pragmatic adaptation of the constitution with regard to social, political, and economic challenges trumps dogmatism – although the circle of legitimate discourse remains restricted to regime insiders. As the power struggles continue, there is, in Künkler's view, at least a common consensus that the constitution is »the key vehicle for securing, or thwarting, political change«.

Jan Christoph Suntrup examines Western intervention in Afghanistan since 2001 and the related project of democratic peacebuilding and constitutionalism. By scrutinizing political strategies, power struggles involved in the process of constitution-building, and the complex constellation of legal pluralism in Afghanistan, he illustrates that a technocratic vision of constitutionalism and a narrow institutionalist understanding of law expressed historical ignorance and cultural insensitivity, which represent the main failures of the transformative approach. As legitimate as many of the aims of the intervention may have been, the case of Afghanistan shows, when illuminated by means of cultural and political sociology, the normative, symbolic, epistemic, and infrastructural preconditions of an effective constitution. By revealing, through a multidimensional perspective, the irreducible plurality of law and the many prerequisites of a constitutional and legal culture, this contribution also expresses skepticism about the feasibility of legal transplants and more or less imposed constitutional projects.

Matthias Herdegen both stresses the importance of the historical background of constitutional orders in order to understand their respective normative construction, and links socio-economic realities to specific cultures of constitutionalism, as liberal societies »require a reliable constitutional framework with a minimum of fundamental freedoms and effective judicial protection of physical liberty, free speech, and property rights«. The main ambition of his contribution is, however, to reveal political prerequisites of constitutions as well as different political choices about their reach and the role of their guardians, namely constitutional and supreme courts. From a comparative perspective, significant differences appear with regard to the separation of powers, the recognition of human rights, and the techniques by which courts try to induce legal and political change. In Herdegen's opinion, the highly competitive relation between politics and the legal sphere occasionally tends to be stabilized in a problematic fashion: »Increasing pre-emption of political choices by a ›juridification‹ of issues reduces the space for democratic processes and open debate. All too often, the political class and the citizenship at large may feel that there is no longer a political choice to be made on controversial issues because the decision has already been taken, embedded somewhere within a constitutional text or international instrument.« As an example, Herdegen points to the case of in vitro fertilization, which resulted in contradictory judgments by the Constitutional Chamber of Costa Rica and the Inter-American Court of Human Rights, neither of which left sufficient room for political

debate. Thus, Herdegen also supplements the perspective by Bucholc and Witte: Political strategies of undermining and hollowing out constitutional guarantees by populist and authoritarian protagonists are one possible side of a destabilized constitutional culture; transgressive judicial activism, which Herdegen and also Mautner describe, represents another angle.

While Herdegen suggests a »global perspective« on constitutionalist principles, which he adopts by mainly comparing different national constitutional orders, the last section is comprised of two texts that deal with theoretical and analytical perspectives on the project of constitutionalism beyond the state. Both authors argue against a too narrow legal-institutionalist account of constitutionalism and demand a stronger sociological view with important methodological implications. *Gunther Teubner* advises a paradigmatic shift in the observation of constitutions. The model of transnational constitutional pluralism that he proposes is meant to overcome three main limitations of traditional thinking about constitutions: first, law-centrism, which primarily regards constitutions as simple higher-order norms; second, state-centrism, which prioritizes the public sector; and third, methodical nationalism, which loses sight of transnational and even global processes of constitutionalization in both the public and the private sector. Picking up David Sciulli's concept of societal constitutionalism, Teubner engages in a debate about nine major theoretical discussions of the compositional principles and developments of this constitutionalism beyond the state, which cautions against one-sided conceptions of domination by a single rationality and obsolete visions of constitutional unity. Teubner ends with the provocative idea of a reflexive constitution, which introduces disorder into routines of order: »The constitution protests against itself – in the name of society, people and nature – but does so not from the outside but from within, from the inner constitution of the social system itself.«

Paul Blokker accords with Teubner in lamenting a legalist reductionism in the dominant discourse on constitutionalism. In his view, the emphasis on the rule of law and legal stability and hierarchies does not sufficiently take account of the constituent dynamics involved in constitutionalism. Therefore, Blokker supports a sociological approach to transnational constitutional pluralism. While a historical-sociological approach could reveal different cultural pathways of constitutional orders, he particularly emphasizes the role of discursive pluralism in his contribution, which he addresses by focusing on transnational social movements and constitutional mobilization. By underlining the importance of civil society, Blokker's political sociology aims to do justice to »the societal consequences of transnational constitutionalism, the societal embeddedness of constitutional orders, and the social reactions, criticism, and forms of constitutional mobilization that have emerged in recent times«, especially in the European context. While Blokker alludes to »nationalist-populist backlash«, which was partly animated by a technocratic vision of constitutionalism in the EU, he also scrutinizes one

example of a »bottom-up« constitutionalist project: the transnational organization of DiEM25, which projects a future constituent assembly for a transformed EU and thus attests »to the constitutional engagement of civil society actors, in terms not only of a reproduction of the existing legalist-constitutional order […] but also of a comprehensive and at times radical contestation of the order itself«.

As a result, Blokker's chapter once again underlines how constitutionalism remains a politically and scientifically contested concept. While many of the contributing authors seek ways to non-conventionally analyze constitutions, they do not always follow a common path. Nevertheless, even when they occasionally (or in some cases structurally) disagree, they collectively contribute to the aim of this book, which is to provide new theoretical, conceptual, methodological, and empirical insights into the cultural life of constitutions that may inspire future research. After all, the corona crisis has ushered in new challenges for the character of constitutional cultures. How do we deal with the inescapable need for a state of emergency,[24] even though Article 35 of the Basic Law in Germany is not intended for a »sanitary emergency« as Olivier Beaud and Cécile Guérin Bargues[25] have described it for the French tradition? Are the basic ideas of the constitutional culture of modernity, human rights, and separation of powers stable enough to hold their own throughout the crisis? Is the basic order of society, which is reflected in a guarantee of functional differentiation, being overrun by the crisis, or does it remain steadfast in the stream of transformations of a »pandemic culture of validity«[26] determined by statistics and R-factors? – This crisis will reveal to what extent »constitution« is also a value-laden concept and whether it still has a material, substantial meaning for a just society.

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24 See Werner Gephart (ed.): In the Realm of Corona-Normativities, especially the contributions by Jan Suntrup (Biopolical models) and Alexander Filippov (States, Bodies and Corona-Crisis).

25 See Beaud / Guérin Bargues: L'état d'urgence sanitaire.

26 See Gephart: Conclusion.