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## Book Review

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**Authoritarianism. Constitutional Perspectives**

**by: Günter Frankenberg**

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**Cheltenham, Glos JL50 2JA, UK, 313pp**

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### 1 *(Liberal) constitutionalism*

Constitutionalism is one of the most successful ‘isms’ of the 20th and 21st centuries. Its triumph is reflected in the fact that almost every country on Earth has a constitution in the modern sense and in the overwhelmingly positive rhetoric appeal the term exerts over political, juridical, and scholarly discourses. Under the sign of the liberal-democratic orthodoxy, constitutionalism comes pre-packaged as the primary vehicle for promoting human rights and the rule of law. Constitutions, however, are not exclusive to liberal politics. In what would initially appear to be a paradoxical course of action, authoritarian regimes from the past and present have been more than eager to partake in the constitutionalisation business. Constitutionalism is one of the most successful ‘isms’ of the twentieth and twenty-first centuries. Its triumph is reflected not only in the fact that almost every country on Earth has a constitution in the modern sense but also in the overwhelmingly positive rhetoric appeal the term exerts over political, juridical, and scholarly discourses. Under the sign of the liberal-democratic orthodoxy, constitutionalism comes pre-packaged as the primary vehicle for promoting human rights and the rule of law. Constitutions, however, are not exclusive to liberal politics. In what would initially appear to be a paradoxical course of action, authoritarian regimes from the past and present have been more than eager to partake in the constitutionalisation business.

### 2 *The book: research objectives*

With *Authoritarianism. Constitutional Perspectives*, Günther Frankenberg sets out to shed light on the issue, which he summarises as ‘the constitutional question:’ “why do autocracies need a constitution? What purposes do they serve, and which audiences do they aim to address?”<sup>1</sup> The answer is not as straightforward as usually assumed and requires a particular methodological attitude. The all too common and long-established habit of theorists and practitioners to cynically dismiss authoritarian constitutions as shams or ‘constitutions without constitutionalism’ is correctly identified by Frankenberg as myopic and idiosyncratic. The banishment of “improper constitutionalism from the

world of study as a phenomenon of no interest”<sup>2</sup> demands a hefty price in terms of analytical and self-critical capabilities of constitutional law as a discipline. The book strives for a more sober approach, examining authoritarianism on its own terms, but also from a critical distance, presumably to avoid the correlative excesses of a pictorial method. Accordingly, authoritarian constitutions should be read as ‘hermeneutically open texts.’ Both the naive faith usually afforded to liberal constitutions and the cynical disdain reserved for authoritarian ones should be rejected as misguided.<sup>3</sup> Against such a backdrop, authoritarianism emerges as a ‘collective singular,’ “a complex ensemble shaped by the respective socio-economic environment, cultural dispositions and political constellations”<sup>4</sup> and selfishly hiding its grammar behind the occasional ambivalence of democratic forms and autocratic substance.

### 3 *Argumentative structure of the work*

In the Introduction, Frankenberg makes a preliminary distinction between, on the one hand, some ‘outlandish specimen,’ including egregious despots like Mugabe in Zimbabwe or Mengistu in Ethiopia, as well as the absolute theocratic monarchies of Saudi Arabia and Brunei Darussalam, and, on the other hand, ‘the autocratic middle road’.<sup>5</sup> Only the latter, he says, will be explored in the book. Chapters 1 to 3 feature the protagonists of the inquiry; namely: constitutions, authoritarianism, and liberalism, developing some of the themes mentioned above while also delineating: a typology for populism<sup>6</sup>; a list of liberalism’s authoritarian moments – from the dirty little secret of constitutional foundings, through the overtly appreciated logic of the exceptional prerogative in the name of self-preservation and emergency, its configuration in dual and deep states, its normalisation (or constitutionalisation), the recalcitrant excesses of democratic and executive militancy, up to the less obviously autocratic cases, such as the admissibility filter before supreme or constitutional courts, and ‘prerogative writ small’ in the form of standard discretionary concessions to decision-makers.

Chapters 4 to 7 serve to articulate and illustrate the four essential elements of authoritarian constitutionalism:

- 1 executive techniques of governing
- 2 political power as property
- 3 participation as complicity
- 4 cult of immediacy and projection of an imaginary communality.

While there is no room to go over each of them in detail here, suffice to say what follows. In the first case, Machiavellian opportunism, informalism, rule by decree, surveillance, and manipulation of the judiciary are the main symptoms of authoritarianism’s political technologies. Through the second basic feature, political power stops being a revolving door and becomes a throne, if not a ‘second body,’ usable and abusable, together with the polity at large, by the autocrat and/or his cronies, family, or even doctors, who strive to accrue all public goods for personal benefit, either as derivative dividends or blatantly and directly (i.e., kleptocracy); Frankenberg adds that several strategies and combinations thereof, from virtue signalling to elaborate evasion, may regulate autocrats’ management of their image as proprietors. Constitutions are to little avail in limiting this particular element of authoritarianism. To such an extent, the author suggests, that its excess would dispel any remnant of constitutionalism. Third: autocrats tap legitimacy by cultivating

accomplices in their vast audiences and fine-tuning political activism in various symbolic forms to the regime's goals and values. Ultimately, Frankenberg argues, complicity is predicated upon the mere undisturbed co-existence of autocrats and their audience in the constitutional ritualistic space, which can further degenerate by simple inertia into tacit acclamation and shared responsibility. Fourthly, authoritarian agents operate by projecting an imaginary community and cutting off or manipulating intermediaries institutions, from the parliamentary and political representatives to the media, as well as the epistemic boundaries of the public discourse and their public persona. They create a semblance of dialogue and establish a tightly-knitted cult of immediacy and an exhilaratingly identitarian community, which is generally as fantastic as phantasmatic. However, as kleptocracy did, immediacy tends towards cancelling out the constitution. That is, Frankenberg clarifies, unless: it was designed for it in the first place (but Algeria's 2016 Constitution is the odd and solitary example, here); a parallel constitution, with the support or acquiescence of its guardians and interpreters, may develop despite (if not overwriting) the official one; or, under similar conditions, the latter can be ignored and contradicted by inferior laws; or, finally, it can be bypassed by means of elusive and normalised state practices.

In Chapter 8, Frankenberg finally turns back to the constitutional question. He reworks the four basic elements into a full-fledged 'authoritarian dispositif' and connects them to the purposes (instrumental and symbolic) and audiences (internal and external) of the autocratic constitutional act. In reading constitutions as 'performative acts,' purposively enacted by autocrats, the author finds that, although the semantics and structure of authoritarian constitutional documents seem strikingly similar to their non-authoritarian counterparts, by looking for the signs of the four basic elements in the text and context, it is possible to recognise particular patterns and differentiate one constitution from another. Moreover, in "elusive moments and marginal remarks,"<sup>7</sup> authoritarian constitutions reveal themselves as a variation of one of the four classical constitutional archetypes: the political manifesto. Finally, the author concludes, "[t]o the extent that constitutionalism... in authoritarian regimes is not expected to yield a significant normative dividend in liberal terms, authoritarian constitutionalism can be taken analytically seriously and can indeed be criticized as such."<sup>8</sup> Based on the dispositif, he lays out a grid for the allocation of authoritarian constitutions on four quadrants of a grid with internal and external audiences on the vertical axes and symbolic and instrumental purposes on the horizontal one: constitution as:

- 1 governance manual (internal, instrumental)
- 2 as symbolic agenda (internal, symbolic)
- 3 as identity card (external, instrumental)
- 4 as showcase (external, symbolic).

Chapter 9 focuses on the COVID-19 global pandemic, still in its dawn as Frankenberg was writing, which went and kept going hand in hand with an outbreak of authoritarian measures and mentalities, whether by concerned liberal governments or opportunistic autocrats. In many guises, the state of exception has taken over an increasingly larger portion of private and public life and lawyers, as a category, were too slow to react or too quick to concede to a logic of 'risk' over proportionality considerations. In fact, Frankenberg argues, balancing is, at this point, so ossified to be compromised. Rather,

co-determination and voluntariness, experimentalism, mutual learning, responsabilisation, solidarity, (legal) education and consultation must be the cure to centralised deterrence, radical uncertainty, and the normalisation of authoritarianism.

Finally, the Epilogue raises one last, intriguing question about autocratic constitutions. That is: given their ultimately ambivalent character, can they become an instrument in the people's hands so that they turn the table on authoritarian rulers? 'Maybe', Frankenberg writes, "if the spectators become the people."<sup>9</sup>

#### 4 *Accomplishments and significance*

Frankenberg's book will undoubtedly be celebrated for numerous reasons, starting from the harmonic mashup of sophisticated doctrinal and typological elaborations and compelling, illustrative examples drawn from past, recent, and contemporary constitutional history. The analysis is comprehensive and cuts deep into critical aspects of both authoritarianism and what is usually cast as its significant other: liberalism. The former is uncontroversially given the 'discursive dignity' it deserves – a surprisingly seldom respected precondition of any thorough scholarly investigation. The latter is revealed as essentially ambivalent: its 'innocence' is demystified, to account for the authoritarian moments intruding it – and, sometimes, complementing it. Notwithstanding, Frankenberg never misses the opportunity to condemn authoritarian regimes and to detail the consequences of their opportunistic, if not idiotic, behaviour. The book contributes to the theoretical, historical, and comparative scholarship on constitutionalism, from a substantive point of view, while also putting diligently into practice the methodological commitments that ought to underlie constitutional research in the age of both the liberal democratic dream and the creeping, increasingly recurrent authoritarian nightmare. Frankenberg has managed to thoughtfully dissect authoritarianism and colour the conventional understanding of constitutionalism with perhaps less comforting and familiar but unquestionably more truthful and fascinating shades. The work is a much-needed testimony to the fact that both the naive faith in the virtues of constitutions and the cynical disregard for their failures are ill-fated scholarly attitudes, unfit for recognising, studying, and correcting the shortcomings and crises of constitutional modernity.

#### Notes

- 1 p.1.
- 2 p.70.
- 3 p.18.
- 4 p.62.
- 5 pp.8–14. Frankenberg includes among the representatives of his diverse and large sample: Putin's Russia, Xi's China, Modi's India, Syria under the al-Assad clan, Hun Sen's Cambodia, Lukashenko's Belarus, Orban's Hungary, Thailand, Pakistan, Turkey, Egypt, Poland, Morocco, Vietnam, the para-civilian military regime in Burma/Myanmar, Bolsonaro's Brazil, the post-revolutionary autocracy of Maduro in Venezuela, and many others.
- 6 pp.52–62.
- 7 p.244.
- 8 p.247.
- 9 p.286.