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THE PERFUME OF CONSTITUTIONALISM

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ABSTRACT

How to boost once again the perfume of constitutionalism, seemingly under siege from the miasmas of authoritarianism? How to protect it from contamination by other odours which attempt to refute it? Answering to these questions is not easy; one can either precipitate into ethereal optimism or dead-end pessimism.

This work analyses the current situation and the prospects of development from two different angles: the indispensable heart of the State (*baccello statale*), as well as within a supranational and international context. This investigation will be conducted through a historical and conceptual re-enactment which identifies the genesis and development of constitutionalism in its dual forms. First as a limitation of power and second as a political formula to legitimise the dyad command-obedience based on pluralism (economic, social and political), and lastly to address its values of freedom and participation.

Constitutionalism was born and subsequently developed on concrete factors and conditions which have their roots in three different revolutions (English, American and French). The shift of the geopolitical axis has encouraged its formal expansion, but today we observe a weakening in the areas where it started. In fact, the transformation of the national State within globalisation has undermined the traditional participation of citizens and guarantee instruments for their rights and freedoms. For these reasons constitutionalism is at risk; it can be emptied and become just a formal container. Moreover, it could also be denied and replaced by low quality substitutes which affect its integrity.

This is not the first time that constitutionalism, has been confronted with significant difficulties, however a distinction can be made here with respect to previous crises. The current crisis is different from that which occurred a hundred years ago during the implosion of Europe through World War I. Later on, in the 1920s and 30s, the hopes for democratisation also

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collapsed in several European countries. In fact, the economic and technological changes following the “30 glorious years” post World War II almost permanently separated constitutionalism and the capitalist method of production. Notably, the latter was often relying on neo liberalism or the peril imposed by national barriers. In addition, the development of other geo-political areas, outside the Atlantic axis, together with the undermining of superpower status of the United States is likely leading Europe to a denial of the fundamentals of its model: welfare state and representative democracy. These abjurations will deprive constitutionalism and ultimately discredit it within the weaker areas of Europe.

We remain aware that the values which support constitutionalism are universal, nevertheless historically situated and therefore unfortunately exposed to the possibility of regression. Some specific data give way to pessimism with regards to the perspectives of constitutionalism. Nonetheless, we must resist. One needs to embrace the contradictions of history in order to be open to the fragrance of constitutionalism.

Relaunching the perfume of constitutionalism so it can gain legitimacy again, requires a strategic empowerment of the democratic government within a national context. This process needs opportune participation from the base of the population. Additionally, we should enhance the perspective of supranational areas by going from governance to government. Last but not least, we shall implement the limitations and the transparency of institutions within the governance of the so-called global polity.