
Constitutionalism: Defined by Rules, Shaped by Interests

Tanja Porcnik*[†]

¹Institute of Law and Economics, Universität Hamburg (UHH) – Johnsallee 35, 20148 Hamburg, Allemagne

Résumé

Constitutionalism institutionally constrains the power of the state and state officials' discretion. While there is no shortage of writings about constitutionalism, no classification of its components exists. In devising a typology of rules that define the principle of constitutionalism, this paper makes four assumptions: constitutionalism combines structural, substantive, procedural, and popular constraints; the principle of constitutionalism is a meta-principle outlined with other principles that are formed by rules constraining the power of the state; the institutional framework determining constitutionalism combines both legal and extra-legal rules; and the presence of constitutionalism is defined by a degree these rules constrain the power of the state. Then, the paper studies the incentive structures of all relevant political actors for maintaining or renegeing on the existing rules defining constitutionalism. These established rules tend to be relatively stable and self-enforcing, largely because the political actors assume that the costs of renegeing upon them are significant and, in the long run, are higher than the benefits. Yet, some political actors do not adhere to constitutional constraints as they develop an interest in short-term benefits or are confident the benefits will outweigh the costs in their case. The paper applies the game theory model to study how the decisions of political actors lead to the 'thickening' of the principle of constitutionalism or its 'thinning'.

Mots-Clés: constitutionalism, principles, rules, Political Economy, Game Theory Model.

*Intervenant

[†]Auteur correspondant: tanja.porcnik@uni-hamburg.de