

ABSTRACT

Western democracies have been going for decades through a crisis that involves both representation and entire sectors of fundamental rights, and the possibility of the constitutional state to stand up to the international comparison with states, far from democratic, but (at least apparently) more “efficient”, if measured by the yardstick of economic growth.

The involution of democracies passes through that of parties and representation, which in turn reflects the transformation of society, starting with the relations of production. The founding pact is fully invested in it, considering that its main actors, parties, and trade unions, have long since lost both the ability to compose internally the framework of interests, and to propose and pursue a project to transform the existing.

Today we see that the project to build a new society, animated by the shared aspiration to pursue, together with freedom, also equality among citizens, has been substantially abandoned, to be replaced by another, which sometimes imposed itself as *praeter*, sometimes *contra constitutionem*, founded on the belief that *there is no alternative*.

The landscape of the crisis, however, is much broader, since it comes to question the very *raison*

d'être of the state, in a context in which power and responsibility systematically transcend territorial limits, while strategic decisions cannot be confined to the local dimension, however relevant it is.

The same global dimension is covered and controlled by subjects unrelated to the traditional international dialectic: where there were agreements – or conflicts – between states, today they are forced to deal with international organizations, of which they are a part but over which they exercise a reduced power of control; with private subjects who, in pursuing (at least initially) business purposes, have reached such dimensions as to be able to act as real global powers.

The volume examines some of the steps in the process of elaboration, consolidation, and erosion of a model of constitution linked to a season of great innovations which is now drawing to a close, starting from the watershed of the Second World War.

The idea of a constitution was definitively established as an expression of innovative will and a break with the pre-existing order; at the same time, the enunciation of popular sovereignty was surrounded by cautions both of a substantial nature (fundamental rights, irrevocable principles) and procedural (constitutional revision paths centered on qualified majorities and timelines intended to discourage *coups d'état*).

The post-World War II constitutions make extensive use of proclamations of values, albeit in the awareness of the danger they bring with them, as well as construct procedural mechanisms; albeit in the awareness that no procedure alone can protect fundamental values.

It is assumed that the constituent power exercis-

es its performative capacity on the totality of constitutional matter (we could say on all the juridically relevant), attracting it to itself, (re)defining it and delivering it entirely to the sphere of the constituted, on which the prescriptive force of the modern constitution, as an act of volition destined to shape the whole state structure, can be exercised.

The first problem we face is therefore the definition of the constituent power, its extension and its limits, considering the evolution that the concept has undergone over the course of a century.

The second chapter deals with the loss of prescriptive capacity of constitutions. The twentieth century constitution, born as an expression of the desire to permeate the entire legal system, had to deal with customary and cultural law, which reduced its scope.

The third chapter deals with the relationship between the constitution and jurisprudential law, through the analysis of the US dispute between originalists and supporters of the living constitution. We will then go on to reconstruct the basic structure doctrine and the effects of its diffusion in the relationship between interpreting and amending the constitution.

In the fourth chapter we will address the effects on state constitutions of the expansion of the international and supranational dimension of relations. We will examine the dislocation of decision-making powers, from within the states to the international *fora*, and from the legislator to the government. We will see how the courts have rewritten the constitutional catalogs of rights. Finally, we will look at the innovations introduced by the participation of private entities (companies, investment funds, associations) in the dynamics of international relations.