

There are many conceptions of constitutionalism, and many aspects of it even within particular conceptions. But one important dimension of constitutionalism is the way in which constitutions impose second-order constraints on first-order policy, political, and moral preferences. Policies or decisions that might on the balance of reasons be wise may still be unconstitutional because they are procedurally imperfect or, more importantly, because they violate rights-based side constraints on otherwise advantageous policies. Even welfare- or happiness- or utility-maximizing policies may still be unconstitutional because they infringe on, for example, rights to equality, or rights of freedom of expression or freedom of religion, or the rights of those charged with crimes.

Sometimes constitutions impose such second-order constraints on first-order policies because of a concern with the long term rather than with what will be immediately beneficial. And sometimes constitutional constraints emerge from the recognition of fundamental individual human rights. But once we recognize that serious enforcement of constitutional constraints will lead to the invalidation of genuinely (at least in the short or intermediate term) wise or beneficial policies, we can understand that constitutionalism comes at some cost to the general welfare. Dealing with how such costs should be understood, recognized, and allocated is one of the most important yet least appreciated aspects of constitutionalism, and one of the problems that any robust constitutional culture must face.

In cooperation with IACPIL the Institute for Austrian and European Public Law is honored to welcome

FREDERICK SCHAUER

David and Mary Harrison Distinguished Professor of Law

University of Virginia

to share his thoughts on

CONSTITUTIONALISM AND ITS COSTS

THURSDAY, NOV 20TH 2014, 6 PM

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We would like to cordially invite you to attend this lecture