

TRANSCRIPT

Constitutional Café

Episode 1

Post-Soviet Eurasian Constitutionalism

Host: William Partlett

Adrienne: Hello, I'm Adrienne Stone and I'm delighted to bring to you Constitutional Café, a new podcast for informal, but scholarly conversations about constitutional law and politics worldwide. Constitutional Café is brought to you by a team. We are based at the Centre of Comparative Constitutional Studies at Melbourne Law School. But we are global in our origin, in our training, and most of all in our outlook. Each episode, one of us takes a question of interest to constitutional scholars, and discusses it with friends and colleagues from around the world. We have a special focus on overlooked ideas and countries and regions underrepresented in global constitutional scholarship. So settle in and enjoy. Here is our very first episode hosted by my colleague, William Partlett.

William: Hello, and welcome to the Constitutional Café, organised by the Centre for Comparative Constitutional Studies and the Laureate Program at Melbourne Law School. My name is Will Partlett, and I'm an associate professor here at the law school. And one of my key areas of interest is constitutionalism, and the project of constitutionalism in the former Soviet republics. These are the 15 successor states that emerged from the Soviet Union when the Soviet Union collapsed at the end of 1991.

Now, I'm pleased to be able to convene a podcast to discuss constitutionalism in the region with three leading experts from the region. The post-Soviet region is extremely diverse, as we're going to see in this podcast today. It spans from in the northwest, Estonia and the Baltic states, all the way in the south to Central Asia and the Caucasus.

So it is a region that is home to in many cases, some of the most stable constitutional regimes in Europe, as well as some of the most unstable, and in many cases, authoritarian regimes that exist in the Eurasian landmass. And in many cases, this is a region in which constitutionalism remains a project of significant aspiration. Now, this is a region that is often left out or not studied in comparative constitutional law literature.

It's a region that seems in many cases that is forgotten. It's in between Europe on one side and the Asian landmass on the other. But it is a region that, as we're going to see, provides significant insights into many of the key questions that are at the very centre of constitutionalism at the moment and in comparative constitutional law.

As we're going to see, we're going to be discussing today the role of courts, what role the constitutional courts play in building a constitutional system, what role does history play and representations of history play in building constitutionalism? To what extent are post-colonial legacies important? Now this is particularly important in this region as the 15 post-Soviet states themselves emerged from the Soviet Union almost 30 years ago, and since then, have been engaged in a post-colonial project of state-building.

And in many cases, this, as we're going to hear, this post-colonial project has strongly involved overcoming the legacy of executive centralism that they inherited from the Soviet period as well as the challenges of establishing an effective state and nation within that post-colonial context. So, without further ado, let me please now introduce our three panelists who are going to talk us through these particular questions of constitutionalism in post-Soviet Eurasia.

First is Paloma Tupay who's currently a lecturer of constitutional law at the University of Tartu. She's held a number of other positions prior to joining the university within the

Estonian state, including advising the President and working for the Ministry for Justice. So welcome. Paloma.

Armen Mazmanyanyan is a director currently at the Apella Institute for Policy Analysis in Yerevan, Armenia, he's also a visiting professor at the American University of Armenia. And finally, Saniya Toktogazieva, who's an associate professor and coordinator of the human rights program at the American University of Central Asia in Bishkek.

And for our purposes, she's also taught a course on democracy and dark times. So we'll be asking her today to relate some of what is happening currently in the Kyrgyz situation. She's currently joining us from just outside the constitutional chamber in Bishkek.

All right, so the first question I want to ask our panellists today is the extent to which life as a teacher or a scholar of constitutional law, is your own experience, and I'll ask you to kind of briefly relate the way in which you see constitutional law in both either the way that you have, what attracted you to constitutional law, why you chose to study constitutional law, and how you engage with constitutional law now, both as a teacher of constitutional law as a scholar of constitutional law, and as an advocate. So let me start with Paloma, can you talk us through your experiences with constitutional law on your own kind of journey to studying constitutional law in Estonia?

Paloma: Thank you very much, William, and hello, thank you for the invite to participate in this talk. So what about constitutional law and me, I have to say, I did not study exclusively constitutional or a comparative constitutional law. But how to speak constitutional law and therewith the connected topic of politics was so to speak encoded into me, actually.

I was born in Estonia, what was then an occupied part of the Soviet Union, my mother's Estonian. My father, Colombian and my parents fled the Soviet Union. That meant that I then

afterwards grew up in Germany, what we used to know as Western Germany. So from a very early age on, I just grew up where the politics was the question of democracy, what is democracy? I knew from my childhood on that this was very important for me to be able to communicate with my family, that meant that we need a democratic state, that states have to be free.

And this is how actually I came to study law and constitutional law, because it was, for me, a very personal issue, it has always been a personal issue. Also, if we think for example, of Colombia, transitional or restorative justice, all these aspects were very important to me. And then afterwards, as you already correctly said, I was a state official, I found this very interesting.

I have been working with a lot of politicians. And I think it's very important also to know how this works together, the law and the state, the real practical state, how it is actually organized, and how it works everyday. And now I'm very, very happy to have the opportunity to work at the university and to work with students. And I hope that I also can use this practical experience that I have gained to communicate it to the students. And so for me, it's a personal, very important issue to show students that democracy and constitutional law and constitutions for themselves are very important and affect actually every one of us. Thank you.

William: Well, thanks Paloma. And can I now turn to Saniya to share some of her experiences of being a constitutional law scholar and what drew you to it and what you hope to do with your career in constitutional law?

Saniya: Hello, Will and hello to your colleagues. So essentially, my interest in constitutional law started when I was doing my LLM in human rights at Central European University. Because frankly, speaking before that, in my undergraduate programs, I didn't like this subject at all. Probably it's because it was taught not correctly, I guess. But I was really

enchanted by this field, particularly after taking classes with Professor Renata Uitz, András Sajó Aharon Barak.

And this is where I was able to see that actually the true meaning of the Constitution is actually to limit the government with later on ensuring the protection of fundamental rights and freedoms. Because I myself come from a former post-Soviet Union state, where we usually study constitutional law as something that actually empowers the government which was, which is completely an opposite understanding of the Constitution.

So this is where I decided actually to continue my doctoral degree and I applied again to Central European University, particularly in comparative constitutional law program. So, basically currently now what I'm doing is I'm back in Kyrgyzstan, teaching constitutional law-related courses.

And especially now, surprisingly I became the advocate of the constitutional law and constitutionalism in Kyrgyzstan. Because right now, Kyrgyzstan is yet experiencing another round of constitutional reform. But this time, it seems like we are going kind of backwards, again, bringing back all the super-presidential forms, etc. which is, and now what I'm experiencing with advocating constitutionalism and constitution, I was able to kind of mobilize a young generation of lawyers around me, and we are now advocating why it is important to have the stability of the Constitution, that actually Kyrgyzstan became the victim of these never-ending changes and amendments to the Constitution, which later on ended up having all these coup d'états, etc.

So now we are trying to persuade our fellow citizens that the Constitution is a very important document, that it is an agreement between us and the state that we cannot change it the way we want or for the sake of the interest of a certain group or certain individual. And with that, it seems like now, like, I became not only the scholar in comparative constitutional law, but also the advocate and I will see to what extent, I would have enough energy for doing that.

Unfortunately, now. I, myself and others, we have become the victims of unprecedented cyberbullying. A lot of nasty things are being written about us somehow, but at the same time, the silver lining here is that for the first time in Kyrgyzstan, people are mobilizing around a certain idea. In this case, it's the idea of rule of law and constitutionalism, because previously, it was always people used to mobilize around personalities. So, this is just briefly about why I got attracted with this area. And what am I doing about it now. Thank you.

William: Thank you, Saniya. And we can see already from both Paloma and Saniya's kind of stories, the importance of transnational or supranational education, supranational study of constitutionalism and its influence and its kind of influence in the post-Soviet world. And the extent to which that influence is not a one-way driver. In many cases, we see, you know, potential instances of backsliding. We're going to talk more about, you know, the experience of what's happening in Kyrgyzstan at the moment as an example of that. On that, I want to now turn to Armen to talk a little bit about his own journey to constitutional law, what attracted him to constitutional law, what made him into the constitutional law scholar and advocate and teacher that he is today? So Armen.

Armen: Well, thank you very much for putting this panel together. It's an excellent idea, excellent opportunity to share with you and with colleagues. What drove me to constitutional law, and especially comparative constitutional law was actually my big curiosity at the beginning of the 90s, when I started studying the law, about where is my society and thus our society. I actually studied law in Armenia, then an independent country, but I consider the larger, the bigger Soviet space, post-Soviet space, as my home and my curiosity about where the society is leading to what are our identities drove me to study constitutional law, rather than any other specific branches of law.

And I was trying to ask the question, are we going towards democracy? Are we going towards human rights? Or where are we going? And trying to answer these questions within

the realm of law, it brought me to constitutional law and especially comparative constitutional law, because the answers to those questions were more seen in the experience of other societies in which the constitutional law contained already the answers to these questions.

Hence my curiosity, hence my interest in constitutional law, comparative constitutional law and later on, going into those societies in which I saw the answers to the questions and studying their patterns, their experiences, of course, developed my interest in comparative constitutionalism. That's the short way of answering your question.

William: Thank you, Armen. I think a key question that we're going to be thinking about, as we go into some of the substance of the post-Soviet world is directionality and the importance, I think, it's, often, you know, I think it's no, it's no question that that constitutions play a very important role across the region. And that one of the problematic stereotypes of the region is that constitutions are shams, constitutions don't matter.

I think, in many cases, as we've heard from all three of our scholars, constitutions are important bellwethers of the democratic, and, you know, and of political development in particular countries in the region. And for that reason, deserve to be studied, I think, in detail and the field,. We hope this podcast and others, and the work that we're all doing will help to develop the field somewhat as well, because it's a field that has generated less interest than I think other areas of the comparative constitutional law world.

On that I want to now turn to questions of constitutional development in the region. And I'm going to go now in reverse order. And I want to ask Armen first to talk a little bit about the process of reform that's currently underway in Armenia. And to get your thoughts on the current state of constitutional reform. What are its goals? And what is its general direction? What do you think? You know, Armenia is not a country that is often thought of, or studied

as a part of the comparative constitutional law canon. What can we learn from Armenia's process, do you think? Over to you.

Armen: All right. Let me first tell you that we adopted our first Constitution at a referendum in 1995. So 25 years ago, and since then, our Constitution has been changed two times. And these have been very important and sweeping changes, not just a few isolated changes, but these were changes that would deserve to be called sweeping fundamental changes, as at least they fundamentally change the government form... In other countries, in other contexts, we would say that we adopted a new constitution.

So in 2005, 10 years after adopting the Constitution, the Constitution was changed. And then in another 10 years, in 2015, the Constitution was changed again. This said, just two years ago, in 2018, the country underwent a very, very important change as a very big mass protest swept the former government and a new government came to be inaugurated after probably the most democratic election in the country, in 2018.

And since then, there has been a very big talk about introducing the new Constitution, that would become a product of a consensus among the society, and would also outline the vision and aspiration for the future of the country. And there has been a constitutional reforms commission, founded under the Prime Minister of Armenia, and I have had the privilege of being part of that commission. And we have been drafting an agenda for constitutional changes, so far. But this said, I should tell you that in the last few months, the country is again very turbulent, you may know that we had a very devastating war.

It's unthinkable in the 21st century I know, but that's the reality and the war has changed a lot the political landscape in the country. That polity is not anymore interested in constitutional change, I should confess. It may still be and the government is not as strong as it used to be before the war. So now we're rethinking a lot about our identities, including constitutional

trajectory. I wouldn't be so certain about the constitutional change as much as I would be, say three months ago, and yet this constitutional reform is very much on hold now.

It remains to be seen whether we go on with the constitutional change, because this was very much the constitutional agenda, reform agenda prompted by the current government, which as I told you now is quite weak at the moment. And it remains to be seen if it stands at all. If it doesn't, then the constitutional reform agenda will be put on hold until a new government is formed.

That's, in brief, the current state of constitutional changes in Armenia. But otherwise, you said that Armenia is probably not a very interesting country for comparative constitutional law, or the study of comparative constitutional law. I should tell you that Armenia is in fact a very interesting pattern or offers a lot of interesting patterns for comparative constitutionalism because it really reveals a lot of patterns which are common for any other country, in terms of constitutional change, in terms of the way politics and constitutionalism are affecting each other.

And very much also about the patterns of constitutional adjudication. Because so far, we had a very interesting case of a very dynamic, vibrant Constitutional Court embedded into the politics of mixed or hybrid regimes. And I have tried to reveal this pattern in some of my publications. But I think, again, if there is any interest about the patterns of constitutionalism in aspiring democracies, Armenia might be a very interesting case. And I invite everyone to have a look at its patterns.

William: Thanks, Armen, I want to return to your work on the politicization of constitutional courts in particular, a little bit later in the podcast, because I think that's something that is interesting and important to talk about, and maybe is another something that the post-Soviet area and Armenia in particular can help to teach us about constitutionalism. But I tend to agree with you that the comparative constitutional law world should become more interested

in this region. It does show deep, as you suggest, patterns and important themes about how we develop constitutionalism. How is constitutionalism built, what kind of institutions are required? How do those institutions relate to one another, and so forth.

On that note, I think I might turn now to Saniya, who, as I think I mentioned at the beginning of the pod is actually sitting outside the constitutional chamber in Kyrgyzstan, Kyrgyzstan, as Saniya had mentioned, is undergoing a major constitutional reform process at the moment as well. And ask Saniya to reflect a little bit on what happened. There was a state breakdown a couple of months ago. What happened after that, and what the current constitutional landscape is looking like, at the moment in Kyrgyzstan? So, over to you, Saniya.

Saniya: So, essentially, probably, if you're following the news, in early October, as a result of the parliamentary elections, we had massive civil riots, protesting against the results of the elections, because there was the fact of massive vote-buying and use of administrative resources. And as a result, the elections have been annulled. But then later on, everything that happened was really like unpredictable.

Sadyr Zhaparov is the former convict, he was released from prison. And over the night, he has been acquitted by the Supreme Court. And then he became the acting Prime Minister. And then he became the acting President, and he's now running for the presidency. And the entire October was full of fundamental violations of both the procedural and substantive norms of our Constitution.

So currently, we have the current convocation of Parliament, whose term officially has expired already on October 28th. But what they did was on October 22nd, they have adopted the law, which did three things first, they have substantially prolonged their power, the term, at minimum until June 2021.

Second, they have suspended the elections that were supposed to take place on December 20. And then the third, they have initiated the constitutional reform. So today, the constitutional chamber is having a hearing now on reviewing the constitutionality of this law, what's interesting is like a couple of weeks ago, the Venice Commission in its urgent amicus brief, has also made their statement about this situation, clearly underlining that these extra-constitutional terms of the parliaments cannot use their terms for extraordinary circumstances as a constitutional reform.

They have also said that the suspension of the parliamentary elections can also be reviewed as the violation of this democratic process. So we will see. What's interesting is that the constitutional chamber judges themselves have applied to the Venice commission, and are they going to listen to their recommendations or ignore it? But my prognosis is that they're going to uphold the constitutionality of this law, which means they will give the green lights and in January, we will have together with the presidential elections, the constitutional reform.

So the draft text of the Constitution has been already published. And unfortunately, it completely lacks the effective system of checks and balances. It is introducing interesting, like quasi-constitutional bodies as the People's Assembly, we call it the Narodnoye

Kurultay). Such kinds of attempts have already been taken by our former President, Turkmenistan has it, Nazarbayev did it.

So usually, these bodies are the very, like, favourite bodies of this authoritarian president in Central Asia, that usually they use as a political tool for the purposes of obtaining parliament. So and most likely, this is what they're going to do next. And another worrisome sign of the draft constitution is that starting from the preamble, they are replacing objective legal norms, such as the aspiration for the rule of law etc, with subjective moral norms as the supremacy of the moral principles and values.

But it is still not clear what does it mean moral values and principles and traditions. And there are many more problematic aspects in the Constitution itself, especially in the parts with respect to the fundamental rights and freedoms, the proportionality principle has been excluded. And possible censorship is being introduced. Access to information was also excluded, and many more things.

And most importantly, of course, what we see now in this draft constitution is a lot of concentration of power in the hands of the President. So the President is becoming the head of the state with almost unlimited powers and in the interim provisions, it has even been written that the President for this interim period can issue presidential decrees with the power of constitutional law. This is also very worrisome.

So this is generally what is happening now in Kyrgyzstan. And we will see I think, in a couple of hours, the chamber will announce its decision. But generally, I think the Central Asia in the comparative constitutional law scholarship has always been kept under the shadow of the former Soviet Union and studied by comparative constitutional law scholars as an integral part of the post-communist project. And unfortunately, there was no separate research that has been done on this area, particularly.

So in my doctoral dissertation, in other words, I tried to demonstrate that Central Asia, even though it is highly influenced by the legacy of the Soviet Union, actually this region is more than just the post-communist project, and actually looking and researching Central Asian constitutional courts or generally constitutions only through the prism or the blinders of the post-communist approach might actually lead to misleading research outcomes because of the internal dynamics within Central Asia. We have these existing clan politics, regionalism, nationalism, rise of political Islam, pervasive clientelism, corruption combined with like geopolitical factors, authoritarian regionalism, political economy and etc. actually make this region very unique.

And I think the constitutional structures and developments in Central Asia require a broader contextual analysis and if research in this broader contextual study, the scholarship on Central Asia, actually has a high potential of contributing to the existing global discourse on constitutionalism and judicial review and other issues.

William: Thank you, Saniya. I mean, that's a couple things I think we're going to pick up a little bit later in the in the pod is the discussion of how these institutions such as the Narodnoye Kurultay these assemblies, these kind of pseudo-parliamentary assemblies, which are often appointed, I think, in many cases by presidents, how they essentially further facilitate presidential or super-presidentialism, as you've been mentioning, these kind of excessively presidential systems, and also to talk about history.

Whether there are sub-regions within the post-Soviet region that need to be studied, and that should be thought of as important, is Central Asia's history of Islam, and is Central Asia's particular history important, we'll pick that up as well. Now I want to turn to Paloma and ask, particularly about some ongoing events currently, in Estonia.

You know, Estonia is often regarded as, along with other Baltic nations, as a stable form of constitutionalism. I mentioned that in the beginning. But to what extent do you think there are currently threats to the constitutional system in Estonia at the moment as well, and in particular, I mentioned here the upcoming referendum next year, on the definition of marriage. So can you comment a little bit on the situation in Estonia and what your view is on the kind of role of the Constitution and the ongoing struggle for constitutionalism which of course is an ongoing kind of discourse, and itself, a struggle. Over to you, Paloma.

Paloma: Thank you very much, William. It's very interesting to hear from Saniya and Armen, also. Unfortunately, as you said, we have not many news from Estonian side, not so many. But very briefly, I would like to come back to something very important that Saniya said, I think, that when we talk about this constitutionalism today, we have an idea, we have

an idea, similarly to the founders of the American Republic, that for us, constitutional law means for itself something there, it has a substantive meaning, meaning also the limitation of public power, the rule of law, the therewith connected necessity to protect human rights.

And I think this is a great difference. And this is what we see, because the Soviet Union also had a constitution and the Soviet Union, so to speak, states and there was Estonian Soviet constitution, where there were many great rights you could read, but none of them was effective, actually. So this is just one thing that came to my mind listening to the others, that it's very important also to keep in mind, what a change in understanding constitutionalism has been going on also for these post-communist countries where law is really something that you can apply, that's worth something.

And the understanding why constitutionalism in this sense is important. And coming back now more precisely, to your question, and to Estonia. I would briefly like to depict how we came to the situation today because Estonia regained its independence in '91. And then, very quickly, it was decided that we need a new constitution, that we will not stick to the old one, from the last amendments from '37, the new version of the constitution that did not fit into the understanding of democracy 50 years later, more or less.

Then the new Constitution was written very quickly, it was in just about one year. It's a clearly revolutionary constitution, a post-communist constitution, especially also focused on the division of powers, the rule of law, the protection of fundamental rights. And as we have seen, this constitution has actually served Estonia very well for more or less 30 years, and there have been just five minor changes to the constitution since then.

There has been and there is ongoing,, every now and then analysis, just last year, there was a new analysis presented by legal scholars. And actually, this project was even led by the Ministry of Justice about what could be changed in the Constitution, how it could be, for

example, amended also in the light of how democracy and the organization of the state has changed in the last 30 years.

But there is also some kind of political understanding, at least until now, until recently, there has been a kind of political understanding that this constitution that has served us well should be amended only if this is really necessary.... Yet it's seen as some kind of warrant for Estonia's independence, independent Estonia always has had its own constitution.

And actually, Estonia is a very new state that gained independence for the first time only in 1918. So around about 100 years ago, and we know that from these last 100 years, more or less 50 years, it had to spend, again, under Soviet rule. So this Estonian constitution goes together with Estonian independence, and it's very important for the smaller state, Estonia has today 1.3 million inhabitants that was for centuries foreign ruled.

So this is maybe to gain a better understanding. It's a very small country. And so this having a constitution, protecting this independent state is very important for Estonia, and therefore, it has a very difficult amendment procedure. And until now, every time change has been proposed, there has been very harsh criticism, and as it is said, look, we have come that far, and our Constitution has served us well.

So it's very important to keep the stability, let's not change it, what you said correctly, then, after last year's parliamentary elections, the far-right EKRE party also became the part of the government in Estonia, a coalition government. And they have been clearly more open to change the existing system, they also have their ideas to change the constitution to have more direct democracy included, which for itself, I would say does not necessarily have to be a negative thing. But the question is, for what do you use it? And how do you intend to use it?

And, yes, it's also true, speaking about direct democracy, the coalition agreement foresees next year's referendum on marriage. Actually, on this, there was also fierce discussion because there was the initial idea, sure. And the far-right party, what they would like to do is to amend the constitution saying that marriage is only an institution between man and a woman, as I think we have now seen in different CEE [Central and Eastern European] countries.

That is the one amendment that different countries try to implement. But it wasn't possible to present this question as a constitutional amendment because there's not the necessary majority in Parliament to amend the Constitution. And there are different ways to do it. But this, they knew already and the government also knew they couldn't do this.

So there's a possibility also to submit to the people for referendum an issue of national importance. That at a referendum, just to ask people, what do you want. So this does not mean necessarily that the Constitution has changed. That is what is now happening and actually, the law, the parliamentary form of law also foresees in Estonia that marriage is only an institution between a man and woman.

Actually, there's also another possibility by law to register also same-sex partnerships. But this is a clearly political initiative. It's not directly connected with changing the Constitution. But what we see is it brings about, very heated discussions about constitutional questions that we haven't been debating for a long time.

As I said, for the last 30 years almost, there was a common understanding that, what's in the Constitution, it serves us well, how democracy works in Estonia is a good system. It's a stable system. But I think, yes, similarly to many other countries also in how to speak, old Europe, we see that with the more power of these newly more radical political parties, this democracy as it is, as it's functioning, has been put under question. So yes.

William: Sorry, can I just interrupt quickly and ask, so what would be the effect if this referendum goes through? You say it's non-binding, but it's very likely that it would, if the referendum were held on a question that was clearly unconstitutional. So let's leave aside marriage. Say a referendum was held on something that is actually clearly unconstitutional, what would be the effect of that referendum on the constitutional system?

I mean, would it be possible for the referendum to just be ignored? I mean, I'm asking here, is there kind of a somewhat of a collision between constitutional principles and popular sovereignty?

Paloma: Absolutely. Thank you for this question. Actually, I said that it's an issue, like a question of national importance, that the people can be asked in a referendum. But however, and although it's not a constitutional amendment, the outcome of this question is binding. Actually, and this has really put under discussion how this should work?

Wouldn't this be like a substantive amendment to the Constitution, just one that is not in writing. So this is actually a discussion that's ongoing between constitutional lawyers. And this is also what has been said in articles by constitutional experts. That actually we do not know, we have never used this force, rarely used this possibility. So we're just now, only now finding out about some challenges that are written in the Constitution, for example, to put just an issue...

William: Paloma let me just stop you there. Because we are running out of time, I wanted to start putting some kind of rapid-fire questions, and I'm gonna be interrupting a lot here, just to try to really get us to get a real discussion going. I want to turn now to Saniya to talk a little bit about, we've talked about Kyrgyzstan already, but can you tell us a little bit more about the office of the presidency and its kind of trajectory and Kyrgyz history, and to what extent the way in which maybe the presidency uses history, Central Asian history, and this idea of the Kurultay, as you mentioned, is used in Turkmenistan as well as is in Kazakhstan, to what

extent is there a kind of similar or an overlap between the Central Asian history and presidentialism?

Saniya: Okay, so as I have already mentioned earlier, that there is kind of a trend throughout Central Asia, saying like, we need to go back to our roots, you know, that we had some historical past, something unique etc. Which I think in the Constitution, comparative constitutional scholarship, particularly the historical background is being kind of undermined and this is really bad, because if we look at the way how, generally the constitutions originated, particularly the constitutional courts in Central Asia, historical factors played a major role.

For instance, the Soviet past, the rule, pan-Turkism, or pan-Islamism or the fact how the early process of transition in Central Asia have taken place. For instance, unlike in Estonia or somewhere else, the transitional process was more like top-down approach driven by former Soviet elites. And that's why I think the real kind of revolution or the process have never taken place in Central Asia. This was the biggest problem up until now. And if we discuss the role of presidency, that's the early constitutions of Central Asia, they have adopted the presidential rule, Kyrgyzstan, and Kazakhstan was more like semi-presidential.

But gradually, all presidents using their powers to call for a referendum or through the constitutional courts have enlarged their powers and turned the constitutions into complete, like super-presidential forms. And this was the turning point in 2010 for Kyrgyzstan, where we decided after the Bakiyev that probably now it's time for us to go towards parliamentarism.

And we have adopted completely the new text of the Constitution, which wasn't purely a parliamentary state, more like premier presidential, but of course, with very, like empowered Parliament with substantially decreased powers of the President. Unfortunately, now, Sadyr Japarov and his supporters are using this as a argument claiming that starting from 2010,

we've seen that the parliamentarism in Kyrgyzstan failed, that political parties became like corporations, that we need to bring back presidential forum.

However the people get misled by this fact that Kyrgyzstan was not really a real parliamentary state. But however, this kind of populism, together with the kind of misinformation, all this fake news and etc, people tend to support the bringing back the presidential form. So they believe that in our mentality, it is better if we have a strong ruler, who later on will be responsible. But the problem is that in the draft constitution, it says nothing about the personal responsibility of the President.

And I think it is also important to highlight that the experience of Central Asia actually confirms the existing theories in the literature, particularly in illiberalism and authoritarian regimes in general, there is a trend that reveals that the fragility of democratic institutions, particularly the constitutions, however, I think Central Asia puts a little bit more flavour in that, because the idea that such ideas like (check???:0:48:00), plus on top of it, like un-amendable constitutional core eternity clauses being introduced, for instance, like in Kazakhstan, in Tajikistan.

And what's interesting is that these tools are being used by incumbent presidents to legitimate their regimes, and kind of to moreover use it as an extended tool for the purposes of creating kind of lifelong constitutional guarantees after their resignation. Such titles as leader of nation, founder of peace or Elbasy, are being directly integrated into the text of the Constitution, which I think also kind of adds some more flavour to the existing scholarship in authoritarian regimes and illiberalism.

Generally, that are also worthwhile looking at Central Asia because I think this region confirms the fact that existing democratic constitutions simply can no longer defend itself. So something more should be done. And I guess it is also has something to do with research methodology and comparative constitutional law as well.

William: And I think we can also see, many of the trends towards seeing you know, the importance of kind of a strong executive, strong president, a strong man type, these ideas and the link between strong men or strong kind of presidential executive centralism and a strong state and these kinds of themes are not just Central Asian, we see them in other parts. But it is interesting to hear you say that they are linked to Central Asian history and to what you describe as the mentality of Central Asia.

On this, I want Armen to jump in here because some of what Saniya was talking about actually is very relevant to what Armen has written about which is the role of constitutional courts. When we generally think constitutional courts are good things, Armen, you want to talk a little bit about how they might be abused and are used to become tools particularly of powerful presidents in the region and some of the ways in which we can understand this kind of strategic use of constitutional courts?

Armen: Well, Will, I still think that constitutional courts are a good thing for constitutionalism, I would even say they are indispensable for constitutionalism. There are countries which have constitutionalism without the Constitutional Court, but yet they have a court, they have human rights and they have a mechanism to enforce those. Anyway, constitutional courts are almost everywhere now, they're an indispensable part of constitutional landscapes and constitutionalism and they are very important even in countries which do not have constitutionalism in the classical sense.

Like in many countries in our region, they have constitutions without the proper feeling and institutions of constitutionalism. And by the way, it would be very appropriate of speaking about constitutionalism with objectives as far as leak about post-Soviet constitutionalism. See, now we're three experts in this podcast coming from three different countries, three different, very different constitutional regimes, and they can apply very different objectives to define what's constitutionalism.

But this is a different conversation. I invite you to have another gathering to discuss this, this is a very interesting topic. But as far as constitutional courts are concerned, yes, I still think they are very important. They are indispensable. And yet, and this is something I have tried to emphasize in my writings, in my publications, constitutional courts, as general, the judiciary itself, as the American scholars would put it, are still the least dangerous branch in the power structures.

And as everywhere, even in the United States, even in the most developed constitutional democracies, constitutional courts are subject to different influences. And they are necessarily part of the power structures and are subject to pressure, or influences or they have their own political views and interests. And this is unavoidable, you can't really do anything without this. And anytime speaking about this, I refer to the classical work by Robert Dahl, actually a political scientist who had a very huge contribution into the field of also judicial politics or politics by exact constitutional courts.

That's my initial feedback. But speaking about constitutional courts, in our countries and the countries in the post-Soviet space, we could also really observe these patterns, very illustratively. And the first indicator that I'm always using to understand the degree to which constitutional courts are independent or can be independent, or consequently, they can have contribution into the development of constitutionalism into stronger human rights, protection, etc.

And that first indicator I'm always using is the degree of competitiveness of the political systems. And here again, in the post-Soviet world, we have completely different political systems, completely different levels of competitiveness. Paloma may speak about Baltic states or Estonia in which we have the most competitive political regimes, most competitive democracies in the post-Soviet world, then we have countries which are more or less, I'd say those which are classified as hybrid regimes, or semi democracies.

A few ways we can speak about Ukraine, Moldova, Armenia, until recently, and even Kyrgyzstan until recently, these are hybrid regimes in which there is a certain degree of competitive politics. And this affects constitutional courts very much and the degree to which they are independent. And at the end of the day, we have authoritarian regimes which are classified as such, and where the level of competitive politics is very minimal, if it exists at all. And then I should say that the objectives that we you should use about constitutionalism and the degree to which constitutional courts there are independent, are completely different.

And here again, maybe it would be an exaggeration to classify this system, constitutional systems as a sham, constitutional systems or constitutional courts as sham constitutional courts, but yet there is a lot of truth in about using adjectives like that or synonyms, for example, many might use this adjective such as facade constitutional systems, or facade constitutional courts, or pseudo-constitutional courts or pseudo-constitutional systems.

These are the main lines of my thinking about constitutional courts. Again, the constitutional courts and the degree to which they have contributions to constitutions in specific countries are very much dependent on the degree to which political regimes are consolidated or democratic regimes are consolidated and to the degree to which there is meaningful competition between political parties or political agendas in these countries.

William: That's interesting to think through because we can... And I guess the way I should have posed the question is how do we make constitutional courts more likely to be independent? And of course, part of the question, part of the answer that I think as you're suggesting is to be thinking of, the answer to that question is linked to the extent to which there is pluralism in the country and there is political competition between different groups and the more political competition there is, the more likely you are to have independent courts.

I think we really, as Armen suggested, and I think Saniya and Paloma have also said, there are a number of really important issues and interesting issues we could discuss, you know, questions I would love to ask the panellists as well, a little bit more about the post-colonial aspects of each of their countries. Unfortunately, we're out of time. So what I want to do is finish the podcast as we always do on this podcast by asking each of our panelists to recommend one article or one book that they suggest that they think... It can be a book you've written yourself or an article, you've written yourself that you think that our listeners could look to, to learn more about the region.

And part of this podcast has been about I think, introducing the region. And I think we've had a very interesting discussion about some of the real interesting insights and so forth. But if you could each give us one. So start with Paloma, one article or book you think that best would be good for our listeners to read if they want to learn more about Estonian constitutionalism?

Paloma: Thank you very much. Well, actually, I chose a book that's not only about Estonia, but also, but as we know, globalization also has reached constitutionalism. And there's a report. So a two-volume book, actually from Springer that was from 2019, and it's called National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law, and the editors are Anneli Albi, actually an Estonian at the University of Kent, and Samo Bardutzky.

And this book gives an overview about 29 European countries, that means formally 28 EU countries plus Switzerland, about the role of their national constitutions, and the shifts that the Europe, that being part of the European Union, and also that transnational development has brought about for these constitutions, also challenges as their scholars have been speaking about the end of constitutionalism, the twilight of constitutionalism.

So this book gives authors and experts from the different countries the possibility to reflect on this perspective to their countries and I think it's very good insight. And there's also summary and an extra book, commenting on this, from Anneli Albi, on this report, on these findings.

William: Thanks, Paloma. And I think I can personally attest that this book is excellent if you're interested in learning more about Estonia as well as the other Baltic States, it has three very interesting chapters on Estonia, Latvia and Lithuania, which I think are three countries that are fascinating, you know, parts of the EU, but very important, but to some extent neglected parts of the European constitutional story. So I think highly, so thank you for that recommendation. I hope our listeners will take a look at that. Saniya, Kyrgyzstan.

Ah, so on Kyrgyzstan, we unfortunately have very limited publications, like generally on Central Asia. If you're interested just to look at the overview I would probably recommend one that was written in part series by Scott Newton, *The Constitutional Systems of the Independent Central Asian States*. And I also want to highlight that if you really want to know more about the polarities of Central Asia, I think, very good literature you can find in political science rather than in comparative constitutional law.

Saniya: And with that respect, I would definitely recommend the piece written by John Heathershaw on *Dictators Without Borders: Power and Money in Central Asia*. So, there you can definitely see this, the huge internal power dynamics that we have in Kyrgyzstan, like pervasive clientelism, paternalistic states and corruption and etc. Because this, I think, also plays an indispensable role when we assess the constitutional development of constitutionalism generally in Central Asia. Thank you.

William: Thanks, Saniya. Yeah, I think an important thing that will also be interesting to discuss is the interdisciplinary relationship between political science and comparative constitutional law. But there's, there are I agree, I think in many cases, there is a lot of very

good, interesting comparative political theory and comparative political work, comparative political science work done on the region. And of course, part of the question is, if there is hopefully and is listening to this podcast, a group of young scholars who were inspired to study this region, that there's a lot of work to be done on the comparative constitutional side where we take constitutions a little bit more seriously.

But in many cases, we can be you know, this type of work can and should be informed by the work that that political scientists are doing. Okay. Armen, something, a book or article that helps capture the Armenian or post-Soviet experience?

Armen: Will, paradoxically to offer insights for constitutionalism in post-Soviet countries, I'm going to suggest an article that never mentions the post-Soviet space or actually is not even a new work. And I suggest that anyone interested in constitutionalism in this part of the world should first of all start with Giovanni Sartori's very important article called Constitutionalism: A Preliminary Discussion. It is written back in 1962, a very old and very important contribution, but which says a lot about what is constitutionalism, how it should be, and how it can be in countries in which there is no one intrinsic sense of a constitution.

But then, if you give me a chance to also concentrate specifically on our region, I will offer another article, which is about Russia specifically, but offers a lot of important information about any other country in the post-Soviet region. It's by Richard Sakwa actually, a political scientist based in the UK, in the University of Kent. It's called Constitutionalism and Accountability in Contemporary Russia.

I still believe that development and patterns in Russia, they're still determining a lot about constitutional patterns in other parts of the post-Soviet space, probably with the little exception of Baltic states, but even there, you can see some Soviet heritage, still pretty permanent developments. But as far as Russia itself, Ukraine, Moldova, Belarus, of course,

Caucasus and Central Asia are concerned, developments in Russian constitutionalism are very much impacting and affecting those areas in those countries.

Central Asia itself and Caucasus and Armenia, unfortunately, they have been and they stay at the terra incognita for comparative constitutionalists, so I don't have any clue about any fundamental works devoted to this part of the world or to these specific countries, specifically on that. We are so immodest to offer our own work, but they do not offer our own work. So again, these two pieces that I suggested, I think they will reveal a lot about constitutionalism in our parts of the world.

William: Thanks, Armen. And I mean, on that note, I mean, I will finish this podcast by saying that, you know, I think hopefully at some point in the future, we can do another podcast, which explores what we haven't talked a lot about, the colonial influence of the former, the, you know, the former kind of center of the Soviet Union, Russia and its influence. And its ongoing kind of post-colonial influence on the region, I think is another really important discussion to have in the region.

But I do hope that this discussion has shown people, that you know, and our listeners that there is a great deal of work to be done on the region. The region is, you know, it's an important experience to add to the comparative constitutional law puzzle. And for us, as we, as comparative constitutional law expands into understanding East Asia and South Asia and I think, you know, new emerging grounds include Africa and post-Soviet Eurasia as adding new and interesting experiences that can help us understand constitutionalism.

So on that I really want to thank all three of my guests today, and I hope you'll be able to take a look at some of the suggestions that they've suggested and we look forward to any comments you have on this podcast going forward. Thanks to you all.

This discussion has raised two really key points that I'm going to put in summary, very briefly, that help us understand more about the post-Soviet world and help us to really begin to learn about some of the areas in which the post-Soviet world should be of interest to the comparative law world.

First is we see from the experts on our panel, that the post-Soviet world is itself full of constitutional law advocates who themselves are actively involved in the struggle for constitutionalism. And this is a struggle that, in many cases is more advanced in some parts, as we heard from Paloma, much more advanced in the Baltic states, and particularly in Estonia, much less so in Central Asia, as we heard from Saniya, and to a lesser extent, in Armenia, as we heard from Armen.

But in many cases, what we hear, that there are scholars who have and who are engaged in the process of the struggle for constitutionalism and the support and the insights of comparative constitutional law are hugely significant for their work, and their ongoing work as constitutional advocates in their own countries.

And second is that there are important contributions that the region provides to the broader debates and to many of the broader debates that we have in comparative constitutional law. First, we can see very strongly from some of the comments that Saniya discussed about the ongoing developments in Central Asia and Kyrgyzstan is the important way in which history is being used, and in some cases being abused, to centralize power and to lead and to build a kind of one man, strong man type of super presidential systems.

Secondly, we've also heard how the region can help us understand better the relationship between judicial power and judicial in courts, and strategic politics and the role of politics in general. We've learned a lot particularly in the way in which courts have themselves been involved in political games and so forth, and how courts can develop in that.

And finally, we see from the Estonian context, the importance of popular sovereignty, and particularly the rise of referendums and the challenges that referendums pose to constitutional systems that are built around the idea of limiting majorities in the favor of protecting individual rights and limiting the power of the state to advance certain particular principles of constitutionalism.

So in sum, really, this podcast has really just been the beginning. It scratched the surface of a region that I think itself has many scholars who are involved in the process of constant struggle for constitutionalism, but it also is a region that helps to deepen in many cases and better understand key debates that we see within constitutional law and in the comparative constitutional law world. Thank you.

Adrienne: I hope you enjoyed that conversation. If the recommendations from our guests interest you, you'll find all the information you need at our partner blog run by the International Association of Constitutional Law, just go to blog-iacl-aidc.org. That's blog-iacl-aidc.org and follow the links to Constitutional Café. This podcast comes to you from the Centre for Comparative Constitutional Studies at Melbourne Law School, and we're supported by the Australian Research Council through the Laureate Program in Comparative Constitutional Law. See you next time.