

Constitutional Law and International Law at the Turn of the Century

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Summary

Constitutional law and international law operate in simultaneous conjunction and reciprocal tension. Both fields seem to have overcome the great challenges of destruction and neglect in the course of the 20th century.

Both after World War I and World War II the world experienced new waves of constitution making. In both cases the current German constitutions (the Weimar Constitution of 1919 and the Grundgesetz of 1949) were influential.

Characteristic of constitution-making in this century, is the final victory of liberal constitutions based on the rule of law, the Rechtsstaat, fundamental rights, meaningful control of public powers and the establishment of constitutional courts.

Following the destruction of World War II, the notion of the Sozialstaat emerged strongly in Germany. In contrast to the Constitution of the United States of America, the principle of the responsibility of the state for social justice has emerged in almost all new constitutions, including Russia, Poland, South Africa, Spain, Italy and Portugal.

Where courts are given the mandate to interpret bills of rights, fundamental rights have been developed into foundation stones of the legal system. The presence in a Bill of Rights of restrictive clauses, is important for its analysis. Generally restrictive clauses in new constitutions try to limit the possibilities of restriction.

The importance of constitutional rules establishing and legitimizing the political organs, must not be overlooked. Of particular importance is the degree of control over the head of state, a positive attitude among political actors towards the constitution and the protection of the interests of minorities in a democratic system.

In the field of Public International Law much of Kant's ideal of an international confederation of peace has been realized. Since 1990 the United Nation's Security Council has shown the potential of becoming a directorate for the community of

nations.

International law has also been instrumental in the worldwide recognition of human rights. Especially in Europe, Convention Law has had a strong impact. Furthermore, global and regional systems of regulation have tended to alter the legal attitude towards state sovereignty. It may be that the South African constitutional approach in terms of which international law is subject to constitutional and other national law, is not in line with international tendencies.