THE FAILURES OF OTHERS

Arguments from failure – arguments that an institution must expand its powers because another institution is failing in some way 'to do its job' – are commonplace. From structural reform litigation, where courts sometimes assume administrative or legislative functions, to the Uniting for Peace Resolution of the UN General Assembly, to the recent bill quashing British subpostmasters' convictions, such arguments are offered in justification for unorthodox exercises of public power. But in spite of their popularity, we lack a good understanding of these arguments in legal terms. This is partly because failure itself is a highly malleable concept and partly because arguments from failure blur into other more familiar legal doctrines about implied powers or emergencies. We can do better. We should recognize arguments from failure as a distinct concept of public law and understand that contemporary constitutional theory offers us tools to evaluate such arguments in different settings. This title is also available as open access on Cambridge Core.

MICHAELA HAILBRONNER holds the chair for German and International Public Law and Comparative Law at the University of Münster, Germany. She is Co-President of the International Society of Public Law (ICON-S) and has done research in Germany, South Africa, the US and the UK. Her 2014 article on German constitutionalism won the inaugural Best Paper Award of the International Journal of Constitutional Law.

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What should we do when those who wield power fail? In a subtle and nuanced analysis, Michaela Hailbronner tackles this question with insight and originality. Drawing on case studies from comparative constitutional law, the European Union, and international law, Hailbronner makes a powerful case that we need to take institutional failure seriously – not just as a cause for lament or an automatic licence to deviate from established legal norms, but as a stimulus for a more measured, proportionate, and context-specific approach. In a time of widespread democratic dysfunction and political failure, all public lawyers will benefit from engaging with Hailbronner's illuminating and compelling arguments.

– Aileen Kavanagh, Professor of Constitutional Governance, Law, Trinity College Dublin

The theory and practice of constitutionalism are filled with arguments, but not all have been adequately captured. This brilliant and imaginative work underscores how legal efforts are often a response to our broken institutional reality. *The Failures of Others* not only clarifies our doctrinal landscape – it offers us a new way to inform and shape our constitutional future.

– Madhav Khosla, B. R. Ambedkar Professor of Indian Constitutional Law and Professor of Political Science, Columbia University

Institutions fail in ways that spell bad news for a project of democratic constitutionalism – but can also provide invaluable lessons for scholars and practitioners looking to promote future institutional success. In the here and now, the failure of one institution is also a powerful reason for other institutions to step up and in to uphold constitutional norms -and Hailbronner constructs a sophisticated account of what this kind of failure-sensitive approach to judicial review might look like at a domestic and transnational level. The book should be compulsory reading for all those interested in the future of constitutionalism nationally and transnationally.

– Rosalind Dixon, Professor of Law and Director of the Gilbert + Tobin Centre of Public Law, University of New South Wales, Sydney

Michaela Hailbronner has written an exceptional and well-argued book, in which she studies the problem of institutional failure. She does so in a very attractive way, particularly for those of us interested in comparative political process theory, concerned about the (tragic) phenomenon of 'authoritarian erosion', and still hopeful about structural reform litigation.

– Roberto Gargarella, Professor of Law at the Torcuato di Tella University and the University of Buenos Aires

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