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.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 02:41:07, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009646659

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

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 02:41:07, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009646659

CAMBRIDGE STUDIES IN CONSTITUTIONAL LAW

The aim of this series is to produce leading monographs in constitutional law. All areas of constitutional law and public law fall within the ambit of the series, including human rights and civil liberties law, administrative law, as well as constitutional theory and the history of constitutional law. A wide variety of scholarly approaches is encouraged, with the governing criterion being simply that the work is of interest to an international audience. Thus, works concerned with only one jurisdiction will be included in the series as appropriate, while, at the same time, the series will include works which are explicitly comparative or theoretical – or both. The series editors likewise welcome proposals that work at the intersection of constitutional and international law, or that seek to bridge the gaps between civil law systems, the US, and the common law jurisdictions of the Commonwealth.

Series Editors

David Dyzenhaus

Professor of Law and Philosophy, University of Toronto, Canada

Thomas Poole

Professor of Law, London School of Economics and Political Science

Books in the Series

The Failures of Others: Justifying Institutional Expansion in Comparative Public and International Law Michaela Hailbronner

Constitutionalizing the Private Sphere: A Comparative Inquiry Christina R. Bambrick

Beyond Expropriation Without Compensation: Law, Land Reform and Redistributive Justice in South Africa Edited by Olaf Zenker, Cherryl Walker and Zsa-Zsa Boggenpoel

Trust, Courts and Social Rights: A Trust-Based Framework for Social Rights Enforcement David Vitale

The Collaborative Constitution Aileen Kavanagh

Non-Statutory Executive Powers and Judicial Review Jason Grant Allen

The Law as a Conversation among Equals Roberto Gargarella

Micronations and the Search for Sovereignty Harry Hobbs and George Williams

Fundamental Rights and the Legal Obligations of Business David Bilchitz

Courting Constitutionalism: The Politics of Public Law and Judicial Review in Pakistan Moeen Cheema

Ruling by Cheating: Governance in Illiberal Democracy András Sajó

Local Meanings of Proportionality Afroditi Marketou

Property Rights and Social Justice: Progressive Property in Action Rachael Walsh

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 02:41:07, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009646659

Carl Schmitt's Early Legal-Theoretical Writings: Statute and Judgment and the Value of the State and the Significance of the Individual Lars Vinx and Samuel Garrett Zeitlin

Remedies for Human Rights Violations: A Two-Track Approach to Supranational and National Law Kent Roach

Europe's Second Constitution: Crisis, Courts and Community Markus W. Gehring

A.V. Dicey and the Common Law Constitutional Tradition: A Legal Turn of Mind Mark D. Walters

Administrative Competence: Reimagining Administrative Law Elizabeth Fisher and Sidney A. Shapiro

Legal Sabotage: Ernst Fraenkel in Hitler's Germany Douglas Morris

Proportionality in Action: Comparative and Empirical Perspectives on the Judicial Practice Edited by Mordechai Kremnitzer, Tayla Steiner and Andrej Lang

Constitutional Dialogue: Democracy, Rights, Institutions Edited by Geoffrey Sigalet, Grégoire Webber and Rosalind Dixon

The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems Anne Twomey

Vigilance and Restraint in the Common Law of Judicial Review Dean Knight

The Alchemists: Questioning Our Faith in Courts as Democracy-Builders Tom Gerald Daly

Australia's Constitution after Whitlam Brendan Lim

Building the Constitution: The Practice of Constitutional Interpretation in Post-Apartheid South Africa James Fowkes

Dimensions of Dignity: The Theory and Practice of Modern Constitutional Law Jacob Weinrib

Reason of State: Law, Prerogative, Empire Thomas Poole

Bills of Rights in the Common Law Robert Leckey

The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law Translated by Lars Vinx, with an introduction and notes by Lars Vinx

Parliamentary Bills of Rights: The Experiences of New Zealand and the United Kingdom Janet L. Hiebert and James B. Kelly

Lawyering for the Rule of Law: Government Lawyers and the Rise of Judicial Power in Israel Yoav Dotan

Balancing Constitutional Rights: The Origins and Meanings of Postwar Legal Discourse Jacco Bomhoff

Judges on Trial: The Independence and Accountability of the English Judiciary Shimon Shetreet and Sophie Turenne

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 02:41:07, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009646659

Proportionality and Constitutional Culture Moshe Cohen-Eliya and Iddo Porat

The Politics of Principle: The First South African Constitutional Court, 1995–2005 Theunis Roux

The New Commonwealth Model of Constitutionalism: Theory and Practice Stephen Gardbaum

Searching for the State in British Legal Thought: Competing Conceptions of the Public Sphere Janet McLean

Judging Social Rights Jeff King

Proportionality: Constitutional Rights and their Limitations Aharon Barak

Parliamentary Sovereignty: Contemporary Debates Jeffrey Goldsworthy

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 02:41:07, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009646659

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 02:41:07, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009646659

THE FAILURES OF OTHERS

Justifying Institutional Expansion in Comparative Public and International Law

MICHAELA HAILBRONNER
University of Münster

CAMBRIDGE UNIVERSITY PRESS

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 02:41:07, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009646659

CAMBRIDGE
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of
education, learning and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781009646666

DOI: 10.1017/9781009646659

© Michaela Hailbronner 2026

This publication is in copyright. Subject to statutory exception and to the provisions
of relevant collective licensing agreements, no reproduction of any part may take
place without the written permission of Cambridge University Press & Assessment.

An online version of this work is published at doi.org/10.1017/9781009646659 under a
Creative Commons Open Access license CC-BY-NC 4.0 which permits re-use, distribution and
reproduction in any medium for non-commercial purposes providing appropriate credit to the
original work is given and any changes made are indicated. To view a copy of this license visit
https://creativecommons.org/licenses/by-nc/4.0

When citing this work, please include a reference to the DOI 10.1017/9781009646659

First published 2026

Cover image: Angelus Novus. Museum: Israel Museum, Jerusalem. Author: Paul Klee / Album / Alamy
Stock Photo

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication Data
Names: Hailbronner, Michaela author
Title: Arguments from failure : institutional expansion in comparative public and international law /
Michaela Hailbronner, University of Münster.
Description: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2025. | Series:
Cambridge studies in constitutional law | Includes bibliographical references and index.
Identifiers: LCCN 2025014310 (print) | LCCN 2025014311 (ebook) | ISBN 9781009646666 hardback |
ISBN 9781009646635 paperback | ISBN 9781009646659 epub
Subjects: LCSH: Public law | International law
Classification: LCC K3150 .H35 2025 (print) | LCC K3150 (ebook) | DDC 342–dc23/eng/20250331
LC record available at https://lccn.loc.gov/2025014310
LC ebook record available at https://lccn.loc.gov/2025014311

ISBN 978-1-009-64666-6 Hardback

Cambridge University Press & Assessment has no responsibility for the persistence
or accuracy of URLs for external or third-party internet websites referred to in this
publication and does not guarantee that any content on such websites is, or will
remain, accurate or appropriate.

For EU product safety concerns, contact us at Calle de José Abascal,
56, 1°, 28003 Madrid, Spain, or email eugpsr@cambridge.org

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 02:41:07, subject to the
Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009646659