

Somek describes the “tug of war” between governments and finance thus:

It is important to realize that the tug-of-war between governments and haute finance is merely a *symptom*. Generally, symptoms are unsuccessful attempts at problem solving. An inflammation, for example, is a defense mechanism, and in this respect it is beneficial; but it is also painful and can give rise to additional ailments. The underlying problem, of which the domination of states by financial markets is the symptom, is the conflict between the interests of capital, on the one hand, and the interest of the great mass of people who until a few decades ago had been able to use democracy in order to assert their interests politically. The pre-eminence of finance *vis-à-vis* politics is merely a displaced manner in which the latter experience their subordination to the former (p. 240).

This leaves nation-states answerable to two different sorts of “people.” The first are their own citizens and the second are a group Streeck calls “market people.” Market people are a private polity but they have all the power. They vote with their feet and their money. “They vote through the buying or selling of securities, through investment in a local business project or through accepting well-paid employment” (p. 241). It is the fate of the polity—“ordinary folks”—to cling to their withering “social rights, guaranteed on the basis of national constitutional arrangements” (p. 241). The only way to ameliorate this situation is for “constitutionalism . . . to return to a way of thinking from which it had once emerged” (p. 241).

There are two questions to ask about this diagnosis of the present situation in constitutional law (Constitutionalism 3.0). The first regards the plausibility of Streeck’s analysis, on which Somek so heavily relies. Second, even if Streeck is correct in his diagnosis of the post-war realignment of relations between labor and capital, does this account for the present state of constitutionalism?

Streeck’s thesis begins with the claim that the 2008 financial crisis was not a “one off” event. Rather, he maintains, “the present crisis can only be fully understood in terms of the ongoing, inherently conflictual transformation of the social formation we call ‘democratic capitalism’.”³⁸ This is not the place to debate the macroeconomic aspects of Streeck’s thesis. I will, however,

38. Streeck, *supra* note 36, at 5.

CONCLUSION

My criticisms notwithstanding, this is an engaging and important book. Somek's diagnosis of the current state of constitutional theorizing is at once compelling and provocative. What is truly remarkable about this book is the way Somek links debates about constitutionalism to global forces in a way no one else does. This is an extraordinary achievement. Even if one disagrees with the thesis, the arguments must be taken seriously. No one else in constitutional or legal theory is writing anything like this. Quite simply, this is a book no one can ignore.