In his ten parables of postcommunism, “Parables of Hope and Disappointment,” Martin Krygier listed ten profound, moral problems faced by postcommunist societies which are challenged by the difficult task of building a new constitutional order. At the end of the book at hand, it seems appropriate to quote parable number three, labeled by its author “The wisdom of Chou En-lai.” It goes as follows:

“They who imagined that, after the collapse of communism, it could be easy and quick to establish democracy, rule of law, prosperity, and equality were doomed to disappointment. But 12 [now 20] years is a short time in the development of the institutions of any social order, unless they collapse quickly. Recall Chou En-lai’s response, when asked to assess the results of the French Revolution: it is too soon to tell” (Krygier 2002: 63).

It is too soon to tell maybe whether postcommunist constitutionalism already presents a theory of postcommunist society about itself. As a matter of fact, new developments – especially the membership of these countries in established Western institutions – significantly challenge the existing constitutional arrangements and contribute to the ongoing experimentation. Yet some conclusions can be drawn. In ECE, constitutionalism constitutes an effort by postcommunist societies to consolidate around some values, principles, and rules that could help them to integrate, consolidate, and form a new political architecture. This requires a new institutional design as well as conceptual framework that would enable them to form a new social contract after the collapse of the former regime.

As an effort to form a theory of society within society, this process is the result of reflections on the past, current ambitions and expectations, and the hopes and fears of societies undergoing transformation. Hence, postcommunist constitutionalism aims at providing the guiding rules that solve the most demanding issues of postcommunist consolidation and a language that facilitates communication about issues of public concern. Such a theory assists in the further development of the new constitutionalism, combating contingencies and choosing among the options made available by the increasingly complex and globalizing world.
After the collapse of the earlier regimes around 1989, ever newer options and newer questions arise – many of them caused by international integration and European unification, others by the inherited “inventory” of Stalinist constitutionalism with which it is difficult to contend. Postcommunist constitutionalism continues to display features of a long process – in other words, what one discerns today is rather the process of constitutionalization than a final product.

The fundamental question is whether the formation of postcommunist constitutionalism is based on clear conceptual foundations compatible with the specific requirements of a postcommunist society. Obviously, the imported solutions – representing the two orthodoxies of the modern world, i.e., “rule of law” and “neoliberal capitalism” interpreted literally and narrowly – were hardly compatible with the complexities and ambivalences of these societies or with the legacies with which they had to cope. Above all, these include the heritage of mass scale human rights abuse and of the vast gray zone of unclear complicity – the many shades of participation in, contribution to, or collaboration with the former regime. Moreover, neo-liberal orthodoxy does not work well with the thorough transformation of a nationalized economy, broad-range privatization of national property, and the building of capitalism in societies deprived entirely of private property and private capital. Therefore, according to the first thesis on postcommunist constitutionalism, its development, its binding force, and its consolidating potential depend on original concepts and ideas and on innovative interpretations of classic concepts and principles which are compatible with the precarious circumstances of postcommunist change.

The following theses generally summarize the fact that, in this respect – that of the development of inventive and simultaneously clear-cut concepts and guidelines for postcommunist consolidation – the process of constitutionalism development proves especially difficult and demanding. It encompasses great efforts to overcome the burden of the past and to adapt to standards of liberal democracy. Often however, it is still a “valley of tears” and not the “golden hours”\(^1\) which characterizes the situation of this region. The past continues in

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\(^1\) I am referring here to the famous verse by Wordsworth – “France standing on the top of golden hours/ And human nature seeming born again” – cited by Ralph Dahrendorf in his no less famous essay composed one year after the transformations began (Dahrendorf 1990: 9).