



Constitutional Pluralism and Dissensus over Liberal Democracy

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1 INTRODUCTION

Modernity is characterised by competition and struggle between widely different visions of modern society (Eisenstadt, 1999). In recent decades, we have grown accustomed to understanding modern societies along the lines of liberal-democratic and constitutional systems. So much so that one could say that in particular since the collapse of Soviet communism, liberal-constitutional democracies became understood as the “normality”.¹ The apparently undisputed and untouchable position of mainstream liberal-democratic constitutional democracy has however been subject to erosion since at least the 1970s. What is today dramatically apparent in the events under Donald Trump’s second presidency of the United States—that is, a near collapse of liberal-democratic institutions due to aggressive forms of anti-liberal populist and radicalised conservative political action—is the zenith of a much longer process

¹ The most often-cited text that is relevant here is Fukuyama’s *The End of History and the Last Man* (1992). This work is however perhaps only the most visible and referred to exemplar of this type of thinking, which remains deeply engrained in modern societies, was widely developed both in academic (political-scientific and legal discourses) as well as in policy-oriented positions, and can be still clearly detected in what could be called anti-populist defences of the liberal status quo (see Oklopcic 2019).

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of backlash in terms of resistance and attacks on liberalism by heterodox movements and increasingly institutionalised political actors.

In this chapter, I suggest understanding the illiberal, or better anti-liberal, reaction to liberal constitutionalism as the result of a long-term mobilisation of counterforces around a dissensus on liberal democracy and its main constitutional approach and mindset.² It can be argued that in recent years an initially rather marginal or peripheral set of protests and protest movements has been able to move to the political centre, attacking the liberal-constitutional hegemony head on. This understanding of the emergence of a “counter-constitutional” narrative (Scheppelle, 2017) is in part inspired by the historical-sociological work of Shmuel Eisenstadt, who identified forms of sectarianism and fundamentalism in the context of modernity (Eisenstadt, 1999). It will be argued that Eisenstadt’s insights may help to shed light on the form and substance of the current conservative, anti-liberal reaction to liberal constitutionalism as the hegemonic understanding of modern democracy. While it may be too early to classify conservative, anti-liberal movements under the headers of “fundamentalism” or “utopian sectarianism”, a range of characteristics identified by Eisenstadt in relation to these concepts appear as insightful tools of analysis for the conservative, anti-liberal and often populist forms of dissensus.

Characteristics of anti-liberal forces—with significant implications for how constitutionalism is imagined and practiced—include the construction of sharp boundaries between a “pure inside” and a “polluted outside” (Eisenstadt, 1999, p. 90; see also Alexander, 2020), the understanding of populist, anti-liberal leaders as the “elect”, rather low levels of “tolerance for ambiguity”, and the understanding of “enemies” as promoters of “bad” or “polluted” universalism (Eisenstadt, 1999, p. 90). In addition, anti-liberal, conservative forces strongly emphasise tradition, referring to some form of “pristine” past, while strongly denouncing significant dimensions of the Enlightenment tradition, in terms of reason, and related understandings of progress. The counter-constitutional mission is about reconstructing the social and political order on the basis of a conservative, anti-liberal programme. In some ways, following Eisenstadt’s analysis, it is possible to identify what could be called Jacobin elements, as in an “almost total conflation of centre and periphery, negating the existence of intermediary institutions and association, thus conflating what can sometimes be called civil society with the overall community” (Eisenstadt, 1999, p. 92). Further elements are a strong attack on liberal-informed education, which is contrasted by a religiously informed moral vision of society, and, in related fashion, a redefinition of the role of women in society, with an emphasis on anti-feminist, patriarchal positions (Eisenstadt, 1999: 96). These

² I use anti-liberalism to, first, stress the “pungent” character of the critique against liberalism (Holmes 2022: 3), and, second, to underline the long pedigree of anti-liberal ideas that go back to the French Revolution (Rosenblatt, 2021).

various heterodox positions and practices come together in an alternative, counter-constitutional project.

Below, I will first briefly discuss the role of dissensus in relation to constitutionalism and constitutional pluralism, identifying “counter-constitutionalism” as a form of heterodox critique of the hegemony of liberal constitutionalism. Second, I will discuss the predominance of liberal constitutionalism and, third, briefly analyse the anti-liberal dissensus and the emergence of a counter-constitutional project.

2 DISSENSUS AND CONSTITUTIONAL PLURALISM

In this chapter, constitutionalism is not understood as a singular normative endeavour, or as taking only the singular form of liberal constitutionalism, but is rather understood in a comparative-historical fashion and, hence, in a pluralist sense. Pluralism means here not so much a normative endorsement of constitutional complexity or a multi-layered understanding (as for instance in the now largely subsided debate on constitutional pluralism related to European integration), but is rather taken in a more descriptive, analytical sense, as existing “varieties of constitutionalism”. As Riegner has argued, in comparative and historical terms, varieties of constitutionalism may be related to different manifestations of constitutionalism, as in liberal, social, transformative, directive, illiberal and authoritarian types (Riegner, 2025, p. 161). Elsewhere, in an admittedly more normative fashion, I have distinguished between liberal, political, democratic, and civic constitutionalism (Blokker, 2013). Varieties of constitutionalism understand the role of constitutions in different ways (alternatively, e.g., as external markers of democratic politics, norms, and institutions, as fundamental depositories of rights and principles, or as vehicles for public democratic debate on the values of the political community), and tend to stress different priorities in the functionality of constitutions (such as protecting the rule of law and checks and balances, preserving national identity, promoting social justice, or providing democratic instruments to citizens in the name of popular sovereignty).

The comparative, historical approach is useful as it draws attention to comparative differences but also to contestations and forms of dissensus and alternative claims over time. As Dowdle and Wilkinson have stated, “[t]he modern, liberal vision of constitutionalism—what we are calling structural liberalism—has contributed greatly to the human experience of constitutionalism and has come to dominate the “comparative” constitutional imagination—that is, “comparative constitutional law” (Dowdle & Wilkinson, 2017, p. 17). It can in fact be argued that the liberal-constitutional “normality” of recent decades has been largely a historical moment, which is now increasingly being challenged by alternative or heterodox constitutional, including authoritarian, projects. As Coman has argued in relation to (more specifically) the rule of law, “being acclaimed by many charters, conventions, treaties, and constitutions it has created the illusion of a global consensus”. “Yet recent years have

seen increased contestation, going beyond specific concerns, with some voices pleading for its pure rejection, as a form of dissensus” (Coman, 2022, p. 59). And as Frankenberg has stated in relation to an authoritarian dimension of such a dissensus, “authoritarianism seems to be well on its way to becoming—or making a comeback to prove itself as—the nightmare of the twenty-first [century]”, while [q]uantitative analysts now count more authoritarian than democratic constitutions in existence” (Frankenberg, 2019, p. 1).

Dissensus is in fact about a profound critique of the existing order and hegemonic ways of perceiving constitutionalism. Dissensus means making visible what has been rendered invisible in the past (see Rancière, 2015, p. 38–9). Dissensus stems from heterodox voices that seek to make a crack in the existing, prevailing consensus, in our case, of what constitutionalism is supposed to be. As put by Jørgensen and Agustín, “consensus” identifies “what is proper and what is not, and dissensus, on the other hand, unveils the impropriety of this division” (Jørgensen & Agustín, 2015, p. 14). Dissensus often means that the dissenters argue that their views have been suppressed by the hegemonic consensus, that they are victims of the prevailing view (of liberal constitutionalism), and that the liberty promulgated by liberal constitutionalism is in reality a form of suppression. As Jørgensen and Agustín argue, dissensus (or “dissent”) “refers to social and political questioning [...], to undoing consensus and rendering excluded actors and struggles visible”. Dissent is a “collective process seeking alternative conceptions or ways of living” (Jørgensen & Agustín, 2015, p. 12). Unlike many works on dissent and dissensus, the supposition here is not that dissensus is necessarily emancipatory or inclusionary in a comprehensive fashion. Illiberal forms of dissensus tend to make claims on behalf of specific in-groups, while having strong positions against out-groups.

In the case of illiberal or anti-liberal dissent, this can be related to a form of reactionary trope of what Hirschman called the “perversity thesis”, that is, the claim that “the attempt to push society in a certain direction will result in its moving all right, but in the opposite direction” (Hirschman, 1991). In other words, the claim that liberal constitutionalism leads to freedom and democracy is put upside down by claiming that it in reality is hampering freedom and denying democracy. In anti-liberal and populist claims on constitutionalism, the argument is that liberal constitutionalism threatens “authentic” cultural identities and practices, and imposes artificial standards, such as human rights. The illiberal or even anti-liberal-constitutional argument directly attacks liberal constitutionalism for suppressing “natural identities” and “common sense”. What is often referred to as populism in debates on constitutionalism displays a number of characteristics that indicate such a reactionary dissensus which directly challenges the liberal-constitutional paradigm and tends to turn into authoritarianism (Arato & Cohen, 2022). Admittedly, populism needs to be understood in a pluralistic sense, that is, different manifestations, on both the

left and the right end of the political spectrum, exist, and have existed. Important variations exist geographically and historically. Here the emphasis will be on right-wing, conservative forms of populism.

A highly relevant starting point for deconstructing the reactionary dissensus is the “populist emphasis on foundations and re-foundations, in other words on the constituent power” (Arato & Cohen, 2022, p. 183). This characteristic identifies the constitutional relevance of populism, that is, its intrinsic drive towards changing the constitutional framework of democratic societies. This means that the dissensus of populists about liberal constitutionalism is deep, in that core dimensions and postulates of liberal constitutionalism are not accepted in the name of an alternative view.³ For now, it suffices to indicate that dissensus comes through in dimensions such as constitutional identity, critical approaches towards distinct human rights, and a strong endorsement of national traditions, history and legacies (often raising the political majority’s status much above that of minorities). It also means that the constitutional project of populists frequently challenges classical distinctions of the separation of powers and of judicial independence in the name of an (electoral) majority and its unitary political will. But before we turn to a more in-depth analysis of the counter-constitutional project, I will first suggest how to understand liberal constitutionalism.

3 LIBERAL CONSTITUTIONALISM

According to Dowdle and Wilkinson, liberal constitutionalism “brings together two components: a liberal component, which defines the purpose of constitutionalism to be one of limiting state power; and a structural component, which identifies a particular set of institutional devices—for example, judicial review, rule of law, protection of rights, separation of powers, democratic elections—as being necessary to achieve that purpose” (Dowdle & Wilkinson, 2017, p. 17). Modern constitutionalism has manifested in a specific manner in the post-Second World War period, what some have referred to as “new constitutionalism” (Gyorfi, 2016). The latter puts strong emphasis on the first principle of the rule of law and tends to importantly restrict the second principle of popular sovereignty (Müller, 2011). Frankenberg defines the hegemonic moment of liberal constitutionalism or liberal orthodoxy (see also Dowdle & Wilkinson, 2017) as “constitutionalism in ‘the Proper Sense’” (Frankenberg, 2019, p. 7). This constitutionalism in “the proper sense” “is characterized as a complex of liberal ideas, ideals and ideology, practices, and patterns of governance within the palisade of legality (or constitutionality), where the authority of government is believed to be derived from and limited by fundamental (and therefore higher) law” (Frankenberg, 2019, p. 7). Frankenberg speaks rightly of an “orthodoxy”; in fact, here we understand the

³ At the end of the chapter, a number of short examples and elaborations will be provided.

counter-constitutional project as a heterodox protest against this liberal constitutionalist orthodoxy. In Frankenberg's view, the "orthodoxy gives "obsessive attention to issues of rights", notably civil and political rights, at the expense of redistributive policies or social entitlements, and argues down [authoritarian constitutionalism] as a deviant or deficient form of [liberal constitutionalism] or a "not fully democratic state" ([democratic constitutionalism])—mostly as a transient phenomenon of crisis and always as liberalism's other, bereft of rights (and separation of powers, as well as checks and balances)" (Frankenberg, 2019, p. 7–8). The claim is hence that constitutionalism can mean only one thing, liberal constitutionalism.

According to Fichera, liberalism can be both understood as a political philosophy and as a constitutional doctrine or form of constitutionalism (Fichera, 2019). Fichera neatly summarises the essential features of liberalism as a constitutional theory and practice, including the following (political) features. First, the protection of individual rights, not least in a negative sense as protection against the abuse of power. Second, the separation of powers as the idea that different functions (legislative, judicial executive) need to be separated so as to limit governmental powers and to avoid that "one function prevails on the other" (Fichera, 2019). Third, a belief in representative institutions and free and fair elections. Fourth, the idea of the neutrality of the state, in which the state is "supposed to allow different and sometimes competing articulations of the good so long as the basic tenets of tolerance and mutual respect are complied with" (Fichera, 2019). And fifth, the rule of law and an independent and impartial judiciary. A sixth dimension, not explicitly elaborated by Fichera, regards the specific internationalist dimension that has developed in the postwar period, meaning that national liberal-constitutional orders are deeply integrated in a series of international and supranational legal regimes, in Europe in particular that of the Council of Europe and the European Union. One can hence speak of "embedded liberal constitutionalism" (Blokke, 2019a).

These essential features have become part of a system which is difficult to change by democratic/political means, also because these (often judicialised) features are deemed part of a model endorsed by international institutions and human rights regimes. In institutional terms, liberal constitutionalism has come to prioritise a higher law status to the constitution and of fundamental rights, as well as normative coherence and legal certainty, and has taken a distinct understanding of the rule of law, with a specific emphasis on independent judicial institutions and a heightened role of judicial institutions in for instance judicial review. Domestic forms of constitutionalism can in this not be seen as separate from developments on the international level, in particular in terms of an emerging set of international legal structures. The emergence of international human rights regimes after 1945 as well as the development of regional, supranational integration schemes with strong legal dimensions (Madsen, 2014) were intrinsically tied up with the development of modern constitutionalism, the rule of law, and human rights protection within

national arenas (Thornhill, 2016). Thornhill, for instance, identifies two levels of transnational constitutionalism in the postwar period, one related to the increased significance of international norms within domestic arenas, the other indicating the development of relatively autonomous post-national structures, such as the European Convention on Human Rights or the legal structures of the European integration project.

One of the key assumptions of liberal constitutionalism is that it is in principle possible to reach a reasonable consensus on what such preconditions of democracy ought to be, and how to translate them into a language of rights and fundamental law (Bellamy, 2007, p. 3). In other words, it is possible to arrive at a set of “essential preconditions for democracy”, the “right” abstract principles (Dworkin, 1995) or “best answers” (Bellamy, 2007). One of the most well-known formulations of such an idea is that of an “overlapping consensus” (Rawls, 1993). The idea is further that once a higher law with the right basic norms is formulated, it should be regarded as a “constitutional structure that a majority cannot change” (Dworkin, 1995, p. 2). Since a consensus on the right norms has been found, there is no need to change such norms in the future, only to ensure the correct implementation of such norms. The view of the constitution emerging is a static, permanent framework, which is only to a very limited extent open to amendment. Liberal constitutionalism understands constitutional democracy as an already known end-point. As John Gray has argued, “[c]urrent [liberal] orthodoxies treat the law as an accomplished fact. By passing over the political conditions that make the rule of law possible, the legalist liberalism that has prevailed over the past generation has been able to represent law as a free-standing institution. It has contrived to disregard that the institution of the law always depends on the power of the state” (Gray, 1995, p. 131–2). This also means that liberal constitutionalism, including the legal regimes that have emerged on the transnational level, prioritise and empower judicial actors and courts (see Vauchez, 2015). As Chang has argued with regard to what he labels as “global constitutionalism”, “courts have become the most authoritative guardian of constitutions, and constitutionalism inevitably becomes court-centric or judicial in nature” (Chang, 2019, p. 456).

It is this comprehensive form of internationally embedded liberal constitutionalism, with a characteristic drive towards the elaboration and expansion of human rights, that has become the focus of dissenting forces who take issue with a range of liberal dimensions of the predominant form of constitutionalism.

4 DISSENSUS: THE EMERGENCE OF ANTI-LIBERAL CONSTITUTIONALISM

Important challenges affecting a broader dissensus—not reducible to populist, right-wing and anti-liberal forces—regarding “embedded” liberal constitutionalism in recent decades have concerned not least the dynamics around

supranational forms of constitutional regimes, as in the form of the process of European integration or the formation of the ever more prominent position of human rights regimes (such as the European Convention on Human Rights) (Madsen, 2020). Nevertheless, in recent years, the most outspoken and visible new challenge that has surfaced is the challenge of (authoritarian) right-wing populism (Blokker, 2019b; Walker, 2019).

Admittedly, populism is not the only relevant challenge, and forms of erosion of the conditions of modern constitutionalism extend beyond populism (Helfer, 2020). Nevertheless, significant setbacks, such as those related to Brexit, the EU's rule of law crisis, or since 2025 the democratic implosion of the United States, importantly involve clear manifestations of populism. It is however crucial to recognise that populism has not come out of the blue. Rather, dissensus about liberal democracy has been building up over a longer period of time and has recently moved towards the political centre (Wigura & Kuisz, 2020). In Europe, many of the current manifestations of populism can be traced to the emergence of populist protest and anti-establishment movements from as early as the 1980s and 1990s onwards (see for the cases of Poland and Romania, Blokker, 2023). Most notably in recent years, European populist parties' electoral and governmental relevance has significantly increased. In some cases—most conspicuously so those of the EU member states Hungary and Poland—the direct engagement of populist parties with constitutionalism is of great concern. Originally, the liberal-constitutional model was endorsed by domestic liberal forces as well as by international institutions (the European Union, the Council of Europe) since the early 1990s, but a “liberal consensus” was never fully shared across the entire political spectrum. It is perhaps not a coincidence that in a Western European country such as Italy, the consensus around the Italian Constitution started waning in the 1990s. The liberal, constitutional-democratic model was always already faced with contestation by a variety of political forces, including nationalist and extremist actors. The novelty of recent years is that the liberal hegemony is openly challenged by alternative, populist counter-constitutional projects that have moved to the centre of political power (see Zielonka, 2018); Hungary is clearly the most developed case in the European context. The “backlash” to liberal constitutionalism hence means that the illusion of a liberal consensus has waned (see Wigura & Kuisz, 2020), and that liberal constitutionalism is now being openly contested. For the democratic states in East-Central Europe, this also entails that what around 1989 seemed natural and convincing in terms of constitutional choices (Chang, 2019) has become much more problematic in recent times. It may even be argued that in some cases the liberal-constitutional model was deemed “unnatural” or “abnormal” and more contested even at the start of the democratic transformation, as, for instance, in the Polish case (see Kowalewska, 2020).

The paradox is that while the liberal constitutionalism seemed to triumph in Europe in the early 1990s, it was simultaneously the object of increasing contestation and backlash. The *Zeitgeist* entailed—not least due

to active promotion by international actors—a strong emphasis on a liberal-constitutional approach to the building of democracy in post-authoritarian societies (one can further think of the EU’s enlargement conditionality). This originally postwar, anti-totalitarian ideal was applied in the context of transformation away from communism towards democracy. Indeed, many observers at the time claimed that post-communist constitution-making was about implementing well-tested designs, and any creative local input was mostly greeted with suspicion (Habermas, 1990). The internationally endorsed role of liberal constitutionalism—in East-Central Europe fortified through the institutions of the EU and the Council of Europe—was that of securing the transition to robust constitutional-democratic orders (Bugarcic, 2015).

The hegemony of liberal constitutionalism is increasingly openly questioned by populist forces. Populist engagement with constitutions may be said to be grounded in an alternative, distinctively populist, understanding of the law in general and of constitutional law in particular. The populist understanding of constitutionalism hinges on the revolutionary-democratic tradition, in contrast to an evolutionary, order-based one (Blokker, 2019b; Corrias, 2016), which is, however, interpreted in a specifically populist manner. Populism captures and amplifies the popular will and claims it as its own, against other social forces, in or outside society. The people is equated with a (morally pure) majority, understood in contrast to (polluted) minorities and elites. The rule of law and constitutionalism cannot, according to populists, override the popular will. Rather, it is the popular will that supposedly takes precedence, even if the latter is always understood in conformity with long-term traditional, historical understandings of common sense and national identity (in line with “making nation X great again”). Constitutionalism—or counter-constitutionalism—becomes a device in the populist project of rebuilding the state.

Returning to Fichera’s essential features of liberalism as a constitutional theory and practice, we can see that all the political features of liberal constitutionalism indicated by Fichera are contested by right-wing populist forces. First, regarding the protection of individual rights, populists attack a range of rights, in particular in relation to sexual and reproductive rights, as well as the right to free speech (see Blokker, 2024). Hungary is a frontrunner in the attack on such rights. The most recent instance is a constitutional amendment that bans public LGBTQI+ events, reduces gender to two sexes, and protects children’s “physical, mental and moral development” against “gender madness” (*New York Times*, 14 April 2025). Second, the separation of powers is frequently undermined in counter-constitutionalism, not least by attacks on the independence of the judiciary. Effectively, as also put forward repeatedly by populist forces in the United States since 2025, law is considered secondary to the majority’s political will. Third, populists claim a belief in representative institutions and free and fair elections, but in many instances, when in power, turn such institutions into mechanisms that uphold and prolong the populist majority. Fourth, the idea of the neutrality of the state is politicised

by claims that the liberal state in reality favours left-wing ideas and policies and undermines national identity. Hence, many populists-in-government reform constitutional norms as well as policies in favour of a clear ethno-national identity, to the detriment of various minorities (including women and migrants). This also means that pluralism of ideas and tolerance of diversity is often drastically curtailed (in the name of a victimised reading of the state of the ethnic, white, and Christian nation). Fifth, as already stated, the counter-constitutional project reinterprets the rule of law in a populist key, meaning it becomes an instrument to suppress non-loyal groups and institutions (such as universities) and intermediary organisations (such as the media). Moreover, as frequently argued, the “populist playbook” directly takes on the independent and impartial judiciary in order to ensure subjugation to the political populist project. And sixth, populists, in the name of national sovereignty, move decisively against international legal and human rights institutions and regimes, including the International Criminal Court, the European Union, and the European Court of Human Rights.

Populism, at least in part, criticises liberal constitutionalist orthodoxy for being not democratic and for imposing distinctive universalist human rights norms while erasing particular national identities. Paradoxically, however, despite the claims in the name of democracy and the popular will, the alternative constitutional solution, “counter-constitutionalism”, or “constitutional counter-revolution”, is in itself frequently in clear contrast with democratic principles. This becomes clear in at least some of the “really existing” examples of populist constitutionalism, such as in Poland (until 2023) and Hungary. Populist constitutionalism rejects the existing order, not least because of its inequalities and injustices, but it does so with the professed aim to restore (an ideal of) a preceding, (imagined) historical order, with questionable democratic credentials. In this, one can identify a Messianic, redemptive dimension, which is future-oriented in that it aims at realising a pure, non-corrupted populist polity in the future (in the Polish case, e.g., this was referred to as the “Fourth Republic”, see Grzymala-Busse, 2019).

Populism—at least in its right-wing, but in some ways also in its left-wing manifestations—understands liberal democracy and the rule of law as a historical interruption and aberration. It rejects the consensus on a liberal-constitutional order because, according to populists, this order produces or favours inequalities (e.g., between the haves and have-nots, between cosmopolitans and locals, or between foreigners and nationals), as well as, more importantly, because it leads to the erosion of the historical nation. The hierarchy of the liberal-constitutional order is to be replaced by a return to, or realisation of, the past, that is, of a traditional order, based on “natural” hierarchies related to ethnicity, family, and tradition (I will come briefly back to this below). As stated, in its anti-establishment critique, populism equally takes on international and transnational legal regimes and related institutions (such as the European Court of Human Rights or the Court of Justice of

the European Union) (see Hirschl, 2018; Thornhill, 2020). Populists emphasise the non-accountability of such institutions, the discrepancy between local (constitutional) traditions and identity and universal, liberal norms, the alleged ideological (“progressivist”) bias of international institutions. They further endorse the need for a strengthening of political sovereignty and constitutional identity on the national level (for instance, in a “Europe of the peoples” or “Europe of the nations”) as well as international tolerance of domestic traditions.

The anti-liberal dissensus, mobilising around an alternative, counter-constitutionalist project, is not reducible to singular, national experiments such as in Hungary and Poland, but is part of a larger, global, interconnected project on both the theoretical/intellectual and political/practical levels. On the theoretical level, different, but in important ways converging, theoretical propositions for an alternative constitutional project have been put forward. One North American example is Adrian Vermeule’s *Common Good Constitutionalism*, which takes issue both with “progressive constitutionalism” and “originalism” (the North-American theory that understands the U.S. Constitution as based on its original meaning, that is, on the prevalent perceptions at the time it was written). *Common Good Constitutionalism* is of relevance for our counter-constitutional story, as it articulates some of the core positions that can be found in the broader anti-liberal-constitutional position. It can be seen as embodying the anti-liberal dissensus, also in the reactions from the progressive, liberal side it has provoked.⁴ Vermeule argues against “progressive constitutionalism” (which we can take here as equivalent of what we have called here liberal constitutionalism). He criticises a “particular mythology of endless liberation through the continual overcoming of the reactionary past” (Vermeule, 2022, p. 165), a claim frequently raised against liberal constitutionalism, for instance, by pointing to the continuous extension of human rights to evermore minority groups and by criticising hyper-individualism. In fact, Vermeule speaks of the “will of individuals who seek liberation from any and all unchosen constraints” (Vermeule, 2022, p. 165). Vermeule’s “counter-constitutionalism”, in contrast, seeks “continuity with the enduring principles of the past” (Vermeule, 2022, p. 166).

A, in some ways, European equivalent, even if not focussing on constitutionalism as such, is the French philosopher Pierre Manent’s *Natural Law and Human Rights*. In his attempt to rehabilitate natural law (which figures

⁴ See, for instance, the various—both positive and critical—contributions on the *Balkinization* blog of Jack Balkin: https://balkin.blogspot.com/2022/07/balkinization-symposium-on-adrian_15.html. For a strong denunciation of the authoritarian dimension of the project of Common Good Constitutionalism, see Wilkinson 2024.

equally prominently in Vermeule), Manent⁵ argues against liberalism's deconstruction of nature and critique of tradition. Manent denounces the "ceaseless battle against the 'common sense' in which a thousand centuries of human experience have deposited the reference points of human life" (Manent, 2020, p. 13). In his view, the progressive, liberal view of human rights and law "aims to overturn or abolish this very order [of a human world organized according to natural law]" (Manent, 2020, p. 17). In Manent's view, in the liberal approach, we have "lost the intelligence of law" and "we have intended to regulate common life not according to God's or nature's law but according to human rights" (Manent, 2020, p. 120). There are affinities with other European conservative, right-wing thinkers. For instance, in the Italian philosopher Becchi plea for "sovereignism", he detects a forward-driving logic of rights: the "'rights' of individuals have multiplied, as a result of universal and principled 'declarations', but often without any mechanism for protection whatsoever" (Becchi, 2019, p. 18). For Becchi, in an argument similar to Manent's, "euro-globalism needs exactly this: to cancel the peoples and substitute them with singular individuals, abstracted from any concrete characteristic, considering them all the same: 'abstract' and inter-changeable individuals, isolated, uprooted, without a language, without a culture and a history" (Becchi, 2019, p. 19–20). The problem, so conservatives argue, is that individuals do not exist "by themselves", but "live in families, communities, peoples, each of them with their own traditions, customs, conventions" (Becchi, 2019, p. 18). Rather than individual rights, Becchi proposes the "rights of peoples" (which he outlines in his Charter of the Rights of European Peoples) (Becchi, 2019).

In a more political, operative form, we find some of these ideas (sometimes implicitly) in political manifestoes of conservative, right-wing populist organisations and think-tanks (attempts to further investigate European and global networks of conservative actors can be found in, inter alia, Cliquennois et al., 2024), such as a decade ago in the manifesto *Restoring the Natural Order* and more recently in the manifesto *The Great Reset: Restoring Member State Sovereignty in the European Union*, put forward by the Polish *Ordo Iuris* organisation and the Hungarian *Mathias Corvinus Collegium*, both close to political populist actors. In *The Great Reset*, the main argument is against the European integration project as it is, and in favour of re-founding the project on the basis of national sovereignty. This also means the repositioning

⁵ Manent, with other conservative intellectuals, was one of the signatories to the *Paris Statement. A Europe We Can Believe In* (2019), which amongst others argued against the liberal consensus around European integration: "It is increasingly clear that the "democratic deficit" in the European Union is not a mere technical problem to be remedied by technical means. Rather, this deficit is a fundamental commitment, and it is zealously defended. Whether legitimated by supposed economic necessities or autonomously developing international human rights law, the supra-national mandarins of the EU institutions confiscate the political life of Europe, answering all challenges with a technocratic answer: There is no alternative. This is the soft but increasingly real tyranny we face", see <https://thetrueurope.eu/a-europe-we-can-believe-in/>.

of national constitutional law. The European project should be based on “[n]ational sovereignty” as a “natural right of any people wishing to preserve their unique culture, language, historical memory and customs” (Ballester et al., 2025, p. 23). This includes the return to a “primacy of national constitutions” (against the idea of the primacy of EU law) and the idea that “national constitutions take precedence over European law” (Ballester et al., 2025, p. 30). The aim is here against the consensus around liberal constitutions ‘embedded’ in a larger supranational constitutional framework of cooperation.

5 CONCLUSION

The chapter has argued that the hegemony of embedded liberal constitutionalism in Europe, based on a more or less broad liberal consensus, has been under great strain over a longer period of time, starting in the 1970s. In recent years, the (conservative) critique of liberal democracy has become an ever more publicly visible and articulated anti-liberal dissensus. It is important to recall that the consensus regarding liberal constitutionalism has always been complex, multi-faceted, and incomplete (not least due to a predominance of Christian Democratic political forces in Western Europe in the post-1945 period) (Accetti, 2019). The decline of these Christian Democratic forces in Western Europe since the 1980s and 1990s is, in this, one highly significant factor in the emergence of more radical conservative forces. The consolidation of an anti-liberal dissensus is currently playing out in a complex mobilisation of forces around conservative, religious positions (for instance regarding natural law and human rights), radical-right actors, and new populist political actors. This complexity of forces is increasingly part of a global network of anti-liberal actors, in the form of a Global Right, which endorses strongly anti-liberal views of law and constitutionalism. With the installation of the Second Trump government, this alliance has clearly gained in political strength, with important implications for embedded liberal constitutionalism in Europe.

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