



Authoritarian encounters with liberal constitutionalism in interwar Europe

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In the years between the two World Wars, Europe was a scene of experimentation with numerous authoritarian regimes. These regimes, however, never fully detached themselves from the formal framework and logic of their respective predecessors, in contrast to the French or Russian Revolutions. Nor were they entirely unmoored from more traditional forms of rule inherited from the 19th century. While interwar authoritarianism often portrayed itself as a novel and total rejection of liberalism, it combined liberalism's authoritarian as well as democratic practices. Authoritarian regimes of the interwar era were thus not simply degenerate forms of previous democracies. This symposium, *Authoritarian Encounters with Liberal Constitutionalism in Interwar Europe*, presents the relationship between authoritarianism and liberal constitutionalism as complex, intertwined, and in significant respects, continuous.

In exploring the encounters between authoritarianism and liberalism in legal history across interwar Europe, the symposium questions any clear-cut dichotomy between the two. Instead of focusing solely on the morphology of the respective regimes and their legal dogmatics, we zoom in on their co-dependency. In so doing, the symposium contributes to the emerging literature on authoritarian constitutionalism by demonstrating its concrete relationship with traditional liberal constitutionalism.

The contributors to the symposium, representing diverse disciplinary backgrounds (historians, lawyers, and political scientists) discuss the theme of *Authoritarian Encounters* through a broad selection of national case studies. Alongside countries typically analysed in the context of illiberal and undemocratic regime models in the interwar period (Poland, Romania, Portugal, Italy, Germany) it includes innovative studies of interwar France and Czechoslovakia. While the period between 1918 and 1939 is the focal point of the present studies, the contributions show that certain developments cannot be put in the 'interwar' box only. The authors thus incorporate aspects of the 'long 19th century' in their analyses, and also consider the legacy of later periods.

While previous literature has successfully shown authoritarianism and liberalism to exist on a continuum, this symposium explores how interwar authoritarian regimes were birthed by liberal ones and learned from the practices of their liberal predecessors, notably in their turn away from democracy. Aside from the obvious historical interest in such investigations, the resurgence of contemporary challenges to liberal democracy in Europe shows the importance of understanding the historical antecedents.

In standard political science accounts, authoritarian regimes are characterised by several interconnected features: minimal political pluralism, legitimacy based on charismatic leadership,

limited political and social mobilisation, the repression of political freedoms and dissent, and broad, ill-defined, and extensive powers of the executive branch of government. On these typological accounts, authoritarianism is sharply distinguished from totalitarian regimes and traditional dictatorships, as well as from liberal and constitutional democracy.¹ Constitutional law literature also presents authoritarian regimes as suffering from a shortfall in democratically accountable institutions, in fundamental rights protections and constitutional checks and balances, and from the suppression, side-lining, or political capture of public institutions, notably courts and parliaments. Other more general features of governing regimes in authoritarian states are said to be reliance on personal charismatic authority, autocracy, and bureaucratic-military power.² The literature on ‘actually-existing forms of contemporary authoritarianism’ often diagnoses authoritarian rule as part of a general ‘democratic recession’ or the result of populist ‘backsliding’ from previous norms of liberal and constitutional democracy.³

Some recent scholarship attempts to complicate and problematise this picture, showing how non-liberal actors often experimented with the framework of the liberal constitutional state. In historical as well as contemporary settings, informal authoritarian elements were and are supplemented by attempts to shape constitutional law in conformity with illiberal political and social objectives.⁴ Some general features of enhanced bureaucratic and executive power may themselves become constitutionalised and legalised in an authoritarian regime.⁵ Authoritarians are also very quick to learn how to use seemingly innocuous legal means to advance their goals.⁶ There are, in other words, forms of ‘authoritarian constitutionalism’ as well as hybrid versions of rule which mix authoritarian and liberal elements.⁷ This new scholarship in comparative constitutional law supports Günther Frankenberg’s claim that authoritarianism is not simply liberalism’s ‘significant other’ but lies on a spectrum with liberal constitutionalism.⁸ As well as sharing certain policies and regulative goals, liberal and authoritarian constitutional regimes both depend upon what Frankenberg calls ‘executive technology’, the hard power utilised by states in order to maintain concrete order, notably in times of crisis and emergency. Since, as a matter of comparative constitutional history, ‘authoritarian tendencies’ can be found in formally liberal regimes, repressive phenomena cannot be neatly classified as belonging inherently to illiberalism or authoritarianism.⁹

Recent developments in Hungary and Poland captured by the label of ‘democratic backsliding’ and then ‘democratic renewal’ as well as the election of Donald Trump in the United States, the upheaval around the 2020 elections, and Trump’s re-election in 2025, have sparked renewed

¹JJ Linz, ‘An Authoritarian Regime: The Case of Spain’ in E Allardt and Y Littunen (eds), *Cleavages, Ideologies and Party Systems: Contributions to Comparative Political Sociology* (Academic Bookstore 1964).

²GA Tóth, ‘Authoritarianism’, *Max Planck Encyclopedia of Comparative Constitutional Law* (2017) <<https://oxcon.oupplaw.com/display/10.1093/law-mpeccol/law-mpeccol-e205?prd=MPECCOL>>.

³T Ginsburg and AZ Huq, *How to Save a Constitutional Democracy* (Paperback edition, The University of Chicago Press 2020).

⁴P Blokker, ‘Populism as a Constitutional Project’ 17 (2019) *International Journal of Constitutional Law* 536; M Tushnet and B Bugarcic, *Power to the People: Constitutionalism in the Age of Populism* (Oxford University Press 2022).

⁵M Kopeček, ‘Was There a Socialist Rechtsstaat in Late Communist East Central Europe? The Czechoslovak Case in a Regional Context’ 18 (2020) *Journal of Modern European History* 281; J Szumski, ‘The State Tribunal and the Paradoxes of Socialist Legality in 1980s Poland’ 18 (2020) *Journal of Modern European History* 297.

⁶A Sajó, *Ruling by Cheating: Governance in Illiberal Democracy* (Cambridge University Press 2021).

⁷A Somek, ‘Authoritarian Constitutionalism: Austrian Constitutional Doctrine 1933 to 1938 and Its Legacy’ in C Joerges and N Singh Ghaleigh (eds), *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and its Legal Traditions* (Hart Pub 2003); T Ginsburg and A Simpsen (eds), *Constitutions in Authoritarian Regimes* (Cambridge University Press 2014); G Frankenberg, ‘Authoritarian Constitutionalism: Coming to Terms with Modernity’s Nightmares’ in HA García and G Frankenberg (eds), *Authoritarian Constitutionalism: Comparative Analysis and Critique* (Edward Elgar Publishing Limited 2019).

⁸Frankenberg (n 7) 9.

⁹S Skinner, ‘Inciting Military Disaffection in Interwar Britain and Fascist Italy: Security, Crime and Authoritarian Law’ 42 (2022) *Oxford Journal of Legal Studies* 578.

interest in earlier authoritarian models, and in the resistance to them. Direct comparisons to the 1930s, to Weimar Germany or to outright Fascism have been common in public debate for some years.¹⁰ The limitations of such comparisons, at least in their most straightforward form, is that they seem to strengthen the liberalism/authoritarianism dichotomy prevalent in much of the legal literature rather than question it.¹¹

In this context, historians have returned to analyses of the authoritarian dynamics of the interwar period in order to enrich our understanding of the past and formulate more informed insights into the present.¹² New historical debates in Germany on the origins of the Weimar Republic and its democratic legacy are a case in point.¹³ Historians have also highlighted the chaotic conditions of interwar Europe and the violent transition from Empires to Nation States in its Eastern and Central regions. The effects of the Great War, as they show, lasted much longer than 1918 and profoundly impacted the process of state-building on the continent.¹⁴ State-making and the forging of new political regimes in this region, in search of a usable constitutional tradition and accommodation among domestic elites and great powers, initially followed a liberal-democratic script. This process in Eastern and Central Europe took place, however, either in a space vacated by fallen empires or still in an imperial setting, where different legal-political models and traditions co-existed.¹⁵ New political and legal models were, moreover, supposed to solve issues related to the multi-ethnic and economically diverse character of many states, and where they failed to do that, they opened the door to more authoritarian options.¹⁶

For many decades, scholars have traced the transnational spread of Fascist and authoritarian ideas around Europe and globally.¹⁷ Less discussed, however, is how liberal and traditional constitutional regimes inspired, served as a starting point or even abetted the rise of authoritarianism and its legal theory and practice. The contributions to *Authoritarian Encounters with Liberal Constitutionalism in Interwar Europe* adopt a context-sensitive reading of historical sources and debates to delve directly into this topic, and to consider various legal and extra-legal factors which enabled authoritarianism to emerge from liberal constitutionalism.

The contributions to the symposium build on the renewed interest in authoritarian political and legal models, the new critical legal history of the phenomena which questions the sharp contrast between authoritarianism and liberalism, as well as the new historiography of the interwar era. They show that the authoritarian quest for legitimate sovereign power outside of representative democracy, constitutional checks and balances, and universal values, was heavily indebted to liberal and traditional predecessors, be it at an intellectual level, in terms of the actors

¹⁰J Stanley, *How Fascism Works: The Politics of Us and Them* (Random House 2018).

¹¹Cf. S Moyn, 'The Trouble with Comparisons' (*The New York Review of Books*, 19 May 2020) <<https://www.nybooks.com/daily/2020/05/19/the-trouble-with-comparisons/>> accessed 3 June 2020; J Rayner et al (eds), *Back to the '30s? Recurring Crises of Capitalism, Liberalism, and Democracy* (Palgrave Macmillan 2022); D Steinmetz-Jenkins (ed), *Did It Happen Here? Perspectives on Fascism and America* (WW Norton and Company 2025).

¹²J von Puttkamer, 'Demokratieverachtung: Zur Einführung' 17 (2019) *Journal of Modern European History* 3.

¹³TB Müller, *Nach dem Ersten Weltkrieg: Lebensversuche moderner Demokratien* (1. Auflage, Hamburger Edition 2014); H Richter, *Demokratie: Eine Deutsche Affäre: Vom 18. Jahrhundert Bis Zur Gegenwart* (CH Beck 2020).

¹⁴R Gerwarth, *The Vanquished: Why the First World War Failed to End, 1917–1923* (Allen Lane 2016); J Böhler, *Civil War in Central Europe, 1918–1921: The Reconstruction of Poland* (First edition, Oxford University Press 2018).

¹⁵DK Reill, *The Fiume Crisis: Life in the Wake of the Habsburg Empire* (The Belknap Press of Harvard University Press 2020); Z Mazur, 'Mini-States and Micro-Sovereignty: Local Democracies in East Central Europe, 1918–1923' (2023) *Contemporary European History* 1; J Osterkamp, *Vielfalt ordnen: das föderale Europa der Habsburgermonarchie (Vormärz bis 1918)* (Vandenhoeck & Ruprecht 2020); N Wheatley, *The Life and Death of States: Central Europe and the Transformation of Modern Sovereignty* (Princeton University Press 2023).

¹⁶J Connelly, *From Peoples into Nations: A History of Eastern Europe* (Princeton University Press 2020).

¹⁷JW Borejsza, *Rzym a wspólnota faszystowska: o penetracji faszyzmu włoskiego w Europie Środkowej, Południowej i Wschodniej* (Książka i Wiedza 1981); A Bauerkämper and G Rossolinski (eds), *Fascism without Borders: Transnational Connections and Cooperation between Movements and Regimes in Europe from 1918 to 1945* (Berghahn Books 2017); A Costa Pinto (ed), *An Authoritarian Third Way in the Era of Fascism: Diffusion, Models and Interactions in Europe and Latin America* (Routledge 2022).

involved, and even at the level of concrete laws and regulations. From this perspective, the contributions examine not only the discontinuities but, significantly, the continuities of interwar authoritarian regimes with liberal constitutionalism.

The interpretation proposed here shows, in thematically and geographically diverse national case studies, how authoritarian regimes were indebted to liberal constitutionalism. Many of them never entered an advanced phase of formal constitutional change but relied on existing forms of constitutional legitimacy; they adapted elements of the prevailing system to their needs (multiparty elections, parliaments, courts, executive power). They also carried over many explicit or implicit tenets of 19th and early 20th century liberalism, such as the separation between the political and the economic spheres, scepticism towards popular sovereignty, and even, albeit in limited or novel ways, principles such as higher legality and the separation of powers. The interwar era was a scene of immense creativity, of hybrid regimes which are difficult to classify with the use of contemporary standards. Interwar regimes were indebted to 19th century institutions such as parliaments and political parties, but experimented with future-oriented corporatist economics and sectoral representation or hierarchical constitutional structures.¹⁸ This theme is explored through an overview of East-Central European ‘electoral authoritarianism’ in Jullian G. Waller’s opening contribution to this symposium.

A key feature of critical legal scholarship, at least since the early Frankfurt school, is to highlight that the liberal state and inter-state system depended (and continues to depend) on extra-legal coercion, violence, and police powers. ‘Instead of celebrating the – illusory – immaculacy of [liberal constitutionalism]’, Frankenberg notes, ‘one should therefore be wary of othering authoritarian constitutionalism and stay aloof from the Manichean world of good/bad constitutions’.¹⁹ These powers were exercised through projects of domestic repression of opposition as well as imperial and neo-imperial adventures abroad. Various kinds of state power in liberal regimes thus frequently evade functioning constitutional constraints of the type imagined by the liberal constitutionalist. Authoritarians learned from these practices, and drawing a clear line between regime types appears difficult. Drawing from the Portuguese case in this symposium, Paula Borges Santos argues that the adoption of the 1933 constitution was possible only because of the earlier normalisation of authoritarian elements and practices. This is even more evident in the calling of ‘states of exception’ and ‘states of emergency’ (or ‘states of siege’), which occurred domestically and in colonial settings. So, for example, the harnessing of emergency constitutional powers by authoritarian forces in France and Romania is highlighted in the contributions by Eugénie Mérieau and Cosmin Cercel.

Moreover, numerous powers ordinarily exercised in the liberal state are shielded from robust mechanisms of democratic accountability – from the army and the police force to the central bank, and even the courts themselves. As Franz Neumann already argued in an earlier era, the so-called ‘night-watchman state’ of the liberal constitutional imagination was always a myth.²⁰ But as these governing powers grew at the beginning of the 20th century, it became more difficult to legitimate them through a liberal constitutional imaginary. Limited government based on a charter of fundamental rights was exposed by critical scholars as a ‘bourgeoise ideology’,²¹ by the right as favouring minorities and “others” against national majorities,²² or as Zachary Mazur shows in this issue using the example of interwar Poland, as simply ineffective and corrupt. As the political turbulence and social and ethnic (national) conflicts of the interwar period grew in conjunction with mass democracy and universal suffrage, even parliamentary authority became difficult to

¹⁸M Teixeira, *A Third Path: Corporatism in Brazil and Portugal* (Princeton University Press 2024).

¹⁹Frankenberg (n 7) 11.

²⁰FL Neumann, *Behemoth: The Structure and Practice of National Socialism 1933–1944* (Oxford University Press 1944).

²¹M Loughlin, *Against Constitutionalism* (Harvard University Press 2022).

²²KG Weyland, *Assault on Democracy: Communism, Fascism, and Authoritarianism during the Interwar Years* (Cambridge University Press 2021).

sustain. This was especially the case in multiethnic countries such as Czechoslovakia, where the question of constitutional legitimacy was mixed with participation of various national groups in the polity. Jana Osterkamp shows in her contribution that even the seemingly most democratic and liberal regime in the region, Czechoslovakia, used administrative coercion and quasi-colonial practices to deal with populations considered unfit for self-rule.

Characteristic of authoritarian transitions in the interwar period was also the shift in authority from parliament towards the executive. In Italy, as Orlando Scarcello points to in his contribution, this shift was conceptualised by Constantino Mortati in terms of a change in ‘political direction’, pursued as a ‘fourth branch’ of government. Again, this move was envisioned as occurring within the existing constitutional order, not as an all-out embrace of an alternative order. The turn away from parliamentary authority did not mean that liberal constitutionalism was entirely jettisoned in the transition to authoritarian rule. The historical record also shows how ordinary liberal techniques, such as judicial review, were instrumentalised in an authoritarian manner to undercut parliamentary democracy and statutory authority.²³ Even as authoritarians presented liberal democracy as a morally bankrupt regime, elements of liberal parliamentarism and liberal legalism were used to cement their power. It is important to note that traces of legality thus persisted in authoritarian rule and were implemented by lawyers educated in a liberal tradition, even if only as a thin veneer and without a clear ultimate plan. The Italian and Polish cases, presented in this symposium by Scarcello and Mazur, are instructive in this regard. And, as is well known, Ernst Fraenkel argued that even the totalitarian state of National Socialism maintained a realm of normative predictability in the private economic sphere in conjunction with the arbitrary and violent power of prerogative in the ‘dual state’.²⁴

In constitutional theory, the argument has been made that authoritarianism stood not primarily in opposition to liberalism and its tradition of constitutionalism, but rather in opposition to democracy. Specifically, it emerged against a renewal of constituent power and popular sovereignty, understood as broad popular participation in constitutional politics and the possibility of revolutionary change. The de-politicising programmes of interwar authoritarian rule thus had much in common with both pre-1945 and post-1945 liberal constitutional imaginaries.²⁵ One of the legacies of authoritarian leadership which this symposium highlights was a variety of technocratic and moralistic forms of rule, without broad democratic support and mobilisation, which would in turn be adopted and adapted by post-World War Two forms of ‘cold war liberalism’.²⁶

A perspective which highlights the tensions between democracy and constitutionalism renders the interwar era relevant and contested rather than closed or settled. In countries where Fascist political movements did not emerge, the project of interwar authoritarian leaders was predominantly to acquire and consolidate personal sovereign power in order to defend the existing order rather than to gain legitimacy through political democracy and electoral mass-based support. In Poland, Zachary Mazur shows, far from galvanising the hyper-political situation of the moment to generate political authority, parliamentary politics was presented as an impediment to stable rule. Anti-political claims to power were thus pursued by ruling elites in search of new forms of legitimacy, replacing democratic sovereignty with forms of quasi-monarchical or autocratic rule, and occasionally appealing to metaphysical or divine accountability and a higher

²³MA Wilkinson, *Authoritarian Liberalism and the Transformation of Modern Europe* (Oxford University Press 2021); C Maier, ‘Legal Counterrevolution: Property and Judicial Power in the Weimar Republic’ 21 (2024) *Modern Intellectual History* 658.

²⁴E Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship* (Edward Albert Shils, Edith Lowenstein and Klaus Knorr eds, Oxford University Press 1941).

²⁵Wilkinson (n 23).

²⁶S Moyn, *Liberalism against Itself: Cold War Intellectuals and the Making of Our Times* (Yale University Press 2023).

moral authority. Claims to personal sovereign power were often legitimated through appeal to moral principle, natural law, or a higher truth, as much as through appeal to the charismatic authority of a leader standing against traditional monarchical power, as Cosmin Cercel demonstrates in the case of Romania.

The political and social context of the ‘intense politics’²⁷ of the interwar era was the emergence of mass democracy, large-scale socialist parties, industrial unrest and strikes, as well as the prospect of revolutionary socialism. As the need for the capitalist state to maintain and stabilise accumulation regimes came up against economic conflict and class struggle, liberals themselves often turned towards authoritarian solutions, sacrificing political liberalism to defend economic interests.²⁸ This put pressure on the governing regimes to respond to demands for economic intervention and to address the ‘social question’. It is significant that the increased use of emergency decrees often came specifically in response to the burgeoning waves of industrial strikes, as well as paramilitary strike-breaking forces. The general and critical instability of capitalist social order and crisis tendencies of liberal parliamentary regimes nudged onetime liberals towards authoritarianism. Liberal, authoritarian, as well as Fascist movements, then often presented themselves as defending and conserving the existing order against the threat of radical democratic and socialist forces.²⁹

But it is also notable that the fusion of liberalism and authoritarianism occasionally meant co-opting the language of collectivism, and especially of cultural nationalism, against bourgeois individualism (and not only against democratic or revolutionary socialism). Here, also, authoritarians took cues from liberalism and appropriated its heritage. One method of attaining this hybrid was to emphasise a natural harmony of interests as a way to ensure unity prevailed in a situation of social and class conflict. In this context, Weimar’s elaborate guarantees of social protections and even its goals of industrial democracy were widely influential, if also frequently blocked or rendered ineffective in practice. As Paula Borges Santos shows in the case of Portugal, Weimar’s discourse of social rights was integrated as part of a constitutional compromise, even if given merely rhetorical support, lacking normative force and serving only narrow instrumental political purposes.

The aim of this symposium is not only to achieve a greater clarity of the historical record. It is also to consider the legacy and inheritance of the interwar period for the post-World War Two period and the present day. It is notable in this respect that the hybridity of authoritarianism and liberalism has mutual effects, with interwar authoritarianism developing existing liberal elements and liberals inheriting aspects of authoritarian rule. Instead of focusing solely on revolutionary (or counter revolutionary) ideas and legal norms undergirding authoritarianism, this symposium invites a hard look at the authoritarian potential latent in systems deemed liberal democratic. While numerous existing scholarly collections highlight the grey area between liberalism and authoritarianism in contemporary conditions of ‘backsliding’, this symposium systematically engages with the intermixing of authoritarianism and liberalism in a multiplicity of settings across the legal space in interwar Europe.

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²⁷G Sartori, ‘Constitutionalism: A Preliminary Discussion’ 56 (1962) *The American Political Science Review* 853.

²⁸I Landa, *The Apprentice’s Sorcerer: Liberal Tradition and Fascism* (Haymarket Books 2012).

²⁹CE Mattei, *The Capital Order: How Economists Invented Austerity and Paved the Way to Fascism* (The University of Chicago Press 2022).

keynote can be accessed at *Darker Legacies of Law in Europe. Key-Note Speech at the Conference 'Revisiting the Dark Legacies of Illiberalism'* (Directed by Christian Joerges 2022) <https://www.db-thueringen.de/receive/dbt_mods_00055621> accessed 5 September 2025. During the December 2022 conference, the initial drafts of two of the contributions (Cosmin Cercel's and Zachary Mazur's) were presented. Additional papers were presented and discussed during an online and in person Authors' Workshop, also held in Jena on 10 December 2023. The editors would also like to thank Clara Maier, Rafał Mańko and Naum Trajanovski for their helpful comments on the articles.