
Claudia Atzeni is a postdoctoral researcher in the Philosophy of Law at the Dipartimento di Giurisprudenza, Economia e Sociologia of the Università Magna Graecia di Catanzaro, where she teaches General Theory of Law. She obtained her doctorate in Theory of Law in 2020. She has published the book *Liberalismo autoritario. La crisi dell'Unione europea a partire dalle riflessioni di Hermann Heller* (Mucchi, 2023), and several essays, including “L'etica ambientale tra diritto, crisi ecologica e libertà fondamentali: profili giuridico-filosofici” in *Federalismi.it* (4/2024), “Il populismo penale come specie del populismo politico: alcune questioni teoriche” in *Tigor* (2/2023), and “El Liberalismo Autoritario y la crisis de la Unión Europea” in *Derechos y Libertades. Revista de Filosofía del Derecho y derechos humanos* (48/2022). Her main research interests concern the theoretical dimension of liberalism and its relationship to democracy, the legal-philosophical issues involved in the relationship between law and morality, and penal populism.

Contact: claudia.atzeni@unicz.it

CRITICAL REMARKS ON THE CONTEMPORARY EUROPEAN LIBERAL PARADIGM*

Claudia Atzeni

Università Magna Graecia di Catanzaro

COMENTARIOS CRÍTICOS SOBRE EL PARADIGMA LIBERAL EUROPEO CONTEMPORÁNEO

Abstract

The concept of authoritarian liberalism formulated by Hermann Heller in the twilight of the Weimar Republic illuminates an epochal change: it is not what he sarcastically called the “miracles wrought by a dictatorship,” but what would precede it, namely the undermining of democratic achievements by the liberals. The state intervenes in the economy to solve the crises caused by “democratic disorder” and elevates the democratic frontier to an ineradicable precondition of the liberal economy. On the one hand, this article aims to demonstrate the relevance of the concept, in particular by addressing the possible existence of an authoritarian European liberalism. On the other hand, it aims to show that repression aimed at restricting individual freedoms is not a necessary component of this concept: for liberalism to be labelled authoritarian, it is sufficient that it removes the sphere of economic freedoms from the availability of democratic deliberation.

Keywords

authoritarian liberalism; Hermann Heller; ordoliberalism; neoliberalism; democratic deficit

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Resumen

El concepto de liberalismo autoritario formulado por Hermann Heller en el crepúsculo de la República de Weimar ilustra un cambio de época: no se trata de lo que él llamó con sarcasmo los “milagros que obró una dictadura”, sino de lo que le precedería, a saber, el menoscabo de los logros democráticos por parte de los liberales. El Estado interviene en la economía para resolver las crisis que ocasionó el “desorden democrático” y eleva la frontera democrática a condición previa inerradicable de la economía liberal. Por un lado, este artículo tiene por objeto demostrar la pertinencia del concepto al abordar, en particular, la posible existencia de un liberalismo europeo autoritario. Por el otro, pretende mostrar que la represión destinada a restringir las libertades individuales no es un componente necesario de este concepto: para que el liberalismo se pueda calificar como autoritario, basta con que sustraiga la esfera de las libertades económicas de la disponibilidad de la deliberación democrática.

Palabras clave

liberalismo autoritario; Hermann Heller; ordoliberalismo; neoliberalismo; déficit democrático

Brief notes on the genealogy of authoritarian liberalism

In order to understand the implications of the concept of authoritarian liberalism today, it is essential to briefly mention the context of its maturation.

In his short essay—which could be described as a pamphlet, so fierce is his political and theoretical critique of the final years of the Weimar Republic—Heller (2015) questions whether what the policy achieved, undoubtedly supported by the approval of the intellectuals of the time, can be defined as authoritarian liberalism.

Although he is not the only one, the main recipient of Heller's criticism in *Authoritarian Liberalism* is Carl Schmitt. Under the pretence of reflecting on the economic and administrative problems of the Prussian state, Schmitt introduces the idea of a strong state and a sound economy. Carl Schmitt made both clear on 23 November 1932 at the conference *Sound Economy in a Strong State*, which took place in Düsseldorf in front of the Langnamverein, the most representative association of the Rhineland bourgeoisie at the time (Cristi, 2018). The double track on which Schmitt's idea of depoliticising the economy is moving is clear: "The process of depoliticization and the creation of state-free spheres is a political process" (Schmitt, 1998, p. 213) and as such cannot be achieved by the economy itself, a neutral territory that does not represent a political subject in itself due to its lack of decision-making capacity. The subject appointed for this purpose must be the state, whose authority is embodied in its political ability to establish a free-market economy and defend it against "non-liberal, market-subverting objectives" (Streeck, 2015, p. 362). Only if it is strong can the state guarantee a healthy economy. Faced with an epochal crisis gripping society and reverberating across the German economy in the wake of the 1929 collapse—most clearly visible in a sharp rise in inflation and rampant unemployment—the Prussian political will hypothesise a new economic and, at the same time, political model.

Indeed, Heller emphasised how the myth of the neutral state and "night watchman" state was defused (Neumann, 1986, p. 173): for the first time in the liberal tradition, the state was no longer called upon to intervene in the economy only when the market exhibited distortions but had to actively participate in the process of defending economic freedoms by taking positive measures that guaranteed their exercise.

Well, it is precisely in the specification of this last aspect that Heller's acumen is revealed. The lucid and polemical concept of authoritarian liberalism finds its justification in a reappropriation of authority by power, which presents itself as undermined by democratic pluralism and acts through an institutional de-democratisation of the parliamentary sphere of influence of economic freedoms (Wilkinson, 2021, p. 22). Relying on the supposed inevitability of crisis management, the Brüning-Papen government's

policy was to move impetuously towards the private sector and the almost total promotion of its flexibility.

In authoritarian liberalism, however, there is no undifferentiated depoliticisation of the economy: it is the sphere of power of a certain type of state, the welfare state, that must be depoliticised. An expansion of state intervention to protect the private economic sphere and the market must be matched by a consolidation of institutional protection in economic-social matters: “The ‘authoritarian’ state is characterised by its retreat from economic production and distribution [and the] authoritarian dismantling of social policy” (Heller, 2015, pp. 185–186). This complex of actions must be implemented through a policy of cuts in public spending in the areas of labour and education and is simultaneously supported by a by no means invisible hand that removes the power of political and economic decision-making from parliament and thus from the masses.

The following section will show that the developments of today’s liberalism—in the form of *ordo*/neoliberalism—owe much to the authoritarian liberalism outlined by Hermann Heller¹ and that the practical-political applications at the supranational level, from the process of European integration to recent times, also seem to have much to do with his assumptions.

The “problem” of liberalism. The European liberal paradigm

The profound transformation that Europe has undergone since the Second World War has taken place from two perspectives: from an internal perspective, in the constitutionalisation of nation-states and the moralisation of individual legal systems, and from an external perspective, in the reorganisation of international relations and the rethinking of state sovereignty.²

The theoretical elaboration around the European integration process tends to follow two directions. The first aims to explore the realisation of possible political projects (Weiler, 2011): it was the functionalist proposal that prevailed, aiming at the construction of an economic, even before political, European unity through small and gradual cessions of sovereignty by individual states in favour of a supranational structure.³ The second direction draws on the theoretical complex of liberalism, particularly—but not exclusively—in the forms of *ordoliberalism* and *neoliberalism*.

¹ On Carl Schmitt’s influence on German *ordoliberalism*, see Young (2017, pp. 129–142).

² See Ansuátegui Roig (2013).

³ A particular feature of functionalism was thus the construction of a Europeanist idea based on the pooling of economic resources, which overturned the traditional criterion that economic unity should be preceded by political unity. Therein lies the pragmatism of the functionalists, undoubtedly including Jean Monnet, who was involved in drafting the Schuman Declaration in 1950 and in formalising the first form of European sovereignty in 1951: the European Coal and Steel Community. See Isiksel (2016).

From the perspective of legal philosophy, the attempt to implement democratisation and constitutionalisation practices at the European level comes up against the limits of post-conflict geopolitical relations and the practice of inter- and supranational relations. This applies in particular to the construction of the most important attempt at integration of the 20th century through the law, namely the European integration process—a term that generally refers to how supranational law has, in practice, become part of the legal systems of the individual nation-states (Bickerton, 2012; de Witte, 2012). This new paradigm should have led to a conception of the process of organising inter-state relations aimed at creating multi-level constitutionalism (Pernice, 2015) and a constitutional pluralism (Poiares Maduro, 2012) that, starting from the dictates of individual contemporary constitutions, would advance the path of integration between states. However, both models have only been partially realised and have even been radically questioned in the last decade. It was assumed that liberal democracy was the only political system that could be soundly justified from the standpoint of a rationally orientated moral philosophy and that only the institutional arrangements of political liberalism would fulfil the conditions of social justice typically associated with a constitutional democratic regime (Magalhães, 2021, p. 2). The integration process should, therefore, have led not only to a system of legal harmonisation between states but also to an ethical harmonisation of states, in particular, one that would have guaranteed conditions of democratisation and social justice to make the dictatorial experiences that had pervaded the European continent unrepeatable.

However, it is undeniable that ordoliberalism and neoliberalism have taken an absolutely prominent position in the developments that liberalism has undergone in modern times. And both have contributed significantly to the progressive de-democratisation of the European political and economic sphere (Dardot & Laval, 2017, p. 167; Turner, 2008, p. 63).

Interestingly, it is possible to find certain features of ordoliberalism rooted in the Schmittian assumptions analysed by Heller; for example, the view of the state entity as the fundamental institution of the free economy understood as the main instrument for a market policy based on economic freedoms and total competition (Bonefeld, 2017b). It is precisely in redefining the state's role in the economy that contemporary liberalism adopts Schmitt's view that the democratic state is "weak" in that it is incapable of limiting the erosion of individual freedoms and, in particular, economic freedoms. When it comes to determining the question of who should be legitimised to decide on the free management of the economy and what the content of the decision should be, there are two theoretical nodes that form the linchpin of ordoliberal and neoliberal thinking: the concept of "order" and the concept of "economic constitution."

The concept of order defines a framework of rules and norms that ensure the smooth running of the economic process by excluding all externally determined interventions. In other words, it is an order that informs the politics of law through strategic rationality. For ordoliberals, theory and legal policy must go hand in hand and accompany each other in pursuing the goal they see as inherent in the economic order: the construction of a competitive order endowed with normative character. The theoretical centre of the order lies in the idea of an economic constitution, which represents the general political decision on national economic life (Rüstow, 1932). Just as the legal order can presuppose a basic law from which it derives its foundation, the economic constitution forms and establishes the economic order. The legal order and the economic order do not overlap, yet they are mutually dependent: one, the legal order, characterises the economic facts, and the other, the economic order, influences the substantive legal order. The economic constitution also has its own principles and rules: within the framework of a market economy, elements such as private property, free competition and freedom of contract form the principles of an economic order based on an economic constitution.

The (apparent) neutrality of the ordoliberals' arguments regarding the necessity of an economic order and constitution reveals a political strategy that runs counter to the Marxist critique of the capitalist production system. The ordoliberals react by disqualifying historical-economic analyses, branding them as ideological and declaring them invalid since, in their opinion, they cannot arrive at correct overall solutions but remain one-sided and omit the *essentials*. The "essentials" that the ordoliberals intend to grasp lie precisely in the de-democratisation of politics and the economy, in the neutralisation of burgeoning conflicts.

We call neoliberalism⁴ the complex of ideas characterising liberalism that developed after the Second World War (Brown, 2003; Jackson, 2010). There are undoubtedly objective differences between the various schools, starting with the geographical location where they developed—the Freiburg School, the Vienna School, the Chicago School—and the different periods in which their thinking flourished. However, there is a convergence in their theoretical programmes in their approach to the relationship between the political and economic spheres and in the general idea that individual freedoms can only be fully realised in a free and openly competitive market economy.

There is a common worldview between ordoliberalism and neoliberalism, underpinned by the idea that in the presence of a certain order created by institutional action, the ideal dimension for a market economy that allows individuals to maximise the exercise of their

⁴ On the semantic difficulties associated with the term neoliberalism, see Biebricher (2019).

freedom can be constituted. Neoliberalism is thus imbued with the thinking of the ordoliberals, particularly their reflections on the inseparable nexus between the state, science and politics in the functioning of the economy (Rüstow, 1961). Like Carl Schmitt's authoritarian liberalism and the ordoliberals, the neoliberals saw protectionism and the welfare policies typical of the democratic state as a threat to the individual's freedom.

Interestingly, limits have been placed on constitutional democracy since the Second World War. These limits are a central institution of modern democracies in order to avoid the so-called “democratic suicide” (Wilkinson, 2019), i.e., the idea that the guarantee for the proper functioning of democracy is provided by the necessary imposition of limits on the exercise of freedom.⁵ In this context, there has been talk of “militant democracy,” an idea developed by Karl Loewenstein (1935) and taken up again by Jan-Werner Müller (2012) to describe how certain institutional practices aim to construct a European constitutional architecture to depoliticise governance. According to Müller, the social market economy played an important role in this operation. Democracy, therefore, had to become militant not to repeat the mistake of the Weimar Constitution: the basic provisions strived to exact material justice, which is why stronger constitutionalism with stricter checks and balances was needed. As Wilkinson (2021) notes, such conclusions seem “curiously Schmittian” (p. 74).

These considerations lead to the assumption that a legal system that relies on a strong state—and thus, for example, engages in government practices that restrict pluralism—need not necessarily be totalitarian. One can speak of authoritarian practice in a sense that focuses specifically on its potentially repressive implications (Bruff, 2014; García & Frankenberg, 2019; Meyer, 1995) in the sense of an exercise of coercion ultimately aimed at restricting individual freedoms. However, the authoritarianism of liberalism analysed here is not expressed exclusively in these terms; rather, it makes “authoritarian rule [...] a useful, if not necessary, management strategy for the economy” (Wilkinson, 2017). Liberalism becomes authoritarian the moment it removes the area of economic freedoms from democratic decision-making. Even if it should not be completely ruled out that liberal regimes can take on authoritarian traits (Chamayou, 2018, pp. 215–247), authoritarian liberalism can be summarised as follows: “Repression is not one of its necessary components. If people have enough trust, authoritarian rule can have a much friendlier face” (Somek, 2015, p. 357).

The trace of authoritarian liberalism in the integration process would then be seen in the ability of fundamental economic freedoms to define the rules of the market and re-

⁵ The *counter-majoritarian difficulty* must also fit into this framework (Bickel, 1962).

move them from democratic political discussion. And since the main instrument through which integration between states has taken place—and is taking place—is the law, it is precisely the law that is responsible for defining the necessary conditions for the construction of the European economic order. The fundamental law of the Union, which is based on both the Treaties and the decisions of the European Court of Justice, would thus explain its tendency to institutionalise the economic constitution and suggest that the ordoliberal soul of the European Union is not to be found in individual provisions, individual treaties or individual reforms, but in the way in which integration has been conceived (Malatesta, 2023). On the other hand, ordoliberalism has been scrutinised from several angles in recent years, a tendency that manifests itself in the multiple definitions of Europe as ordoliberal or neoliberal (Joerges & Kreuder-Sonnen, 2018).

European authoritarian liberalism

The negative integration “that has composed the societies of the Member States through market freedoms” does not really seem to have translated into a “positive, politically generated standardisation of citizens’ political decision-making processes” (Habermas, 2014, p. 528). The crises that have plagued the European Union over the last fifteen years have called into question many structural elements of the European project (Atzeni, 2023) and have made it clear that certain decisions made by the institutions in recent years have failed to achieve the objective of creating a normative political fabric.⁶ Thus, the prolonged crises have called into question the sustainability of the economic integration process and the benefits of economic and monetary union, on whose altar the project of political integration that should have been taking shape since 1957 would have been sacrificed.

Competition policy, in which the Commission and the Court of Justice played a key role, was the main lever of the first integration phase. Competition rules became the instrument that gave the Treaties a quasi-constitutional status and gave rise to the economic constitution. The Treaties of Rome of 1957 already clarified what the newly founded European Economic Community’s aim was: the Community’s foundations include the free movement of goods, persons (labour), services and capital. These are the four fundamental economic freedoms traditionally regarded as the most important

⁶ These are the financial assistance mechanisms set up by the European Union in response to the crisis. The aim of these mechanisms is to maintain the financial stability of the European Union and the euro area in particular, as the economic and financial vulnerabilities of one Member State can concretely undermine the macro-financial foundations of the entire Union. The financial assistance provided by these funds is not in the form of a transfer of public funds, but in the form of a loan or credit line. The granting of any financial support is subject to strict conditionality. See Kirst (2021).

instrument for European integration and the realisation of the *ever-closer union* called for in the preamble to the EEC Treaty (Atzeni, 2022). At this stage, supranational cooperation still seemed to emphasise democratic and social constitutionalism, as already mentioned: the options for the effective functioning of economic freedoms remained firmly anchored in the socio-economic preferences of the Member States and the democratic and self-governing principles emphasised in most national constitutions after the Second World War (Menéndez, 2018). From the second half of the 1970s, freedoms were redefined with regard to the project of a monetary union that could better concretise the common market and thus support the self-stabilising forces of the financial markets (Dani & Menéndez, 2023). The free movement of goods was given a special and enhanced status, exposing the national economies to other European economic players; the free movement of capital, which was essentially limited to the free movement of payments, was given a much broader role than was originally granted.⁷

Following the realisation of the customs union and the establishment of the common market—both measures aimed at consolidating the foundations on which monetary union could be built—it was indeed necessary to extend the European project to a plan that was not exclusively economic and commercial in nature. Positive integration should have been achieved primarily through measures aimed at reducing the existing regulatory heterogeneity, both at the fiscal level and with regard to the different economic and social policies of the Member States. However, the fiscal heterogeneity of the EU member states, combined with the high consensus requirements within the supranational decision-making processes, appeared from the outset to limit effective measures aimed at the political and economic integration of the states into the European project.

The crises of the last fifteen years have not only intensified the critical issues surrounding the integration process, such as the nature of the interaction between monetary and fiscal policy, the distribution of competences between the European Union and the Member States, the horizontal relations between the Member States in terms of fiscal responsibility and mutual solidarity. They have also increased European citizens' dissatisfaction with the lack of an institutional space to challenge supranational political authority. The rise of an increasingly intergovernmental supranational decision-making model,⁸ the growing

⁷ See *Rewe-Zentral v Bundesmonopolverwaltung für Branntwein* (1979) Case C-120/78, popularly known as *Cassis de Dijon*; see also Directive 1988/361 - Council Directive 88/361/EEC for the implementation of Article 67 of the Treaty.

⁸ The intergovernmental method falls within the remit of the European Council and the Council of the European Union. It leads to a significant redefinition of relations between the supranational institutions and those of the Member States, particularly those in the eurozone. While on the one hand, the “governance of the economy” has been emphasised, on the other hand, there has been a mirror image strengthening of the supranational executive and a drastic reduction in the size of the European Parliament, which is increasingly involved in the decision-making dynamics—a *fait accompli* (Sciocluna, 2012).

legal-institutional fragmentation of the Union, the uncertain fate of political and social rights and the questionable democratic legitimacy of the Union's policies—as well as those of its Member States—are just a summary of what we can reconcile with the claim that a genuine political union would have required—and would require—much more (Dawson & de Witte, 2015).

The preference for austerity,⁹ labour flexibility,¹⁰ and liberalisation processes would represent a political-economic line directly related to the so-called macroeconomic constitution introduced in the Treaties in 1992 (Tuori & Tuori, 2014, pp. 13–18). In other words, the choices underlying the structure of the monetary economic union—from the focus on price stability¹¹ to the ban on monetary financing—would lead to convergence towards the dead end of a liberal-authoritarian economic model (Offe, 2013; Somek, 2014).

It has been argued that the European Union would be a “contemporary manifestation of a tradition of authoritarian liberalism that goes back to the political theology of Carl Schmitt and expresses the political project of the founding ordoliberal thinkers” (Bonfeld, 2017a, p. 13). With the euro crisis, an explosion of liberalism would manifest itself in all its supremacy: a policy dictated by the state of emergency would replace the democratic practices of the legislative production process (Joerges & Weimer, 2012, p. 32).

The lack of active participation of citizens in supranational deliberative processes, the constitutionalisation of economic freedoms, and the construction of a purely formal democratic structure based on formally functioning procedures but, in fact, limited in its substantive exercise are aspects that allow us to use the term “authoritarian liberalism” to describe the European framework since its origins and that are exacerbated by the new governance policies introduced in Europe after the crisis.

An indispensable prerequisite for any political community is that any legitimate and stable institutional structure recognises an “irreducible plurality of conceptions of the

⁹ For an overview of the critical issues relating to the relationship between austerity and *moral hazard*, see Blyth (2013). See also Biebricher & Vogelmann (2017, pp. 1–22).

¹⁰ The claim to the protection of economic freedoms is absolutised by the Court when they conflict with socio-economic rights. This tendency is evident in the Viking and Laval judgments. See C-438/05 The International Transport Workers' Federation and The Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti [11/12/2007] and C-341/05 Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avd. 1, Byggettan, Svenska Elektrikerförbundet [18/12/2007].

¹¹ Price stability is not only one of the convergence criteria but also a genuine principle of European Union law, expressly enshrined in Article 3.3 of the Treaty on the European Union. Non-compliance with the balance of payments equilibrium by individual states, especially those with significant delays in economic and financial recalibration could entail a potential declaration of unconstitutionality of budgetary laws that do not reflect economic policies fully compatible with price stability control.

‘good’” (Dawson & de Witte, 2016, p. 209) and takes into account the inevitable differences between the diverse normative claims. For this reason, constitutional balance is only fully realised when it institutionalises the discussion processes around these different conceptions. Only through this process can both the work of the institutions and the citizens’ capacity for self-determination be channelled towards constructing the normative project of their own political community. In this respect, one understands the importance of transferring distributive choices to democratic availability. For this reason, in the construction of the European institutional balances established by the distribution of competencies at the supranational level as laid down in the Treaties, the Union’s primary law has anchored the citizens’ ability to decide on important political issues—including redistributive policies—at the national level, which is responsible for economic policy. However, the Union’s response to the crises has altered this balance and blurred the boundaries on fiscal and budgetary issues. This can be seen both in the general inclination towards austerity that the regulations granting support measures for crisis countries would have instilled in the European constitutional structure and in the specific measures that result from this, particularly with regard to the conditionality criteria that debtor states must accept in return for financial support.

The exercise of decision-making seems to be completely separated from that of citizenship, based on a logic of the system that is reduced to a conflict of interests between states and seems to completely exclude the perspective of the ultimate recipients of European political action. As Dawson and de Witte (2013) state

Such redistributive and allocative decisions invariably have very clearly identifiable winners and losers and challenge the paradigm of the EU as a polity based on consensual decision-making. Redistributive discussions, in the current EU, cannot be made in the context of a conflict of interests between (say) banks and pensioners. (pp. 818–819)

This condition is evident in today’s European politics, where the interests of the weakest groups of individuals are often neglected, if not sacrificed, in favour of other and foreign demands, which often coincide with those of the market and the exchange of capital. The instrumentalisation of agreements concluded with recourse to international law—to circumvent the qualified majority rule applicable to treaty changes when adopting the European Stability Mechanism—and the innovations in the exercise of voting rights introduced by the Fiscal Compact—proportional to the amount of Member States’ financial contributions and not based on the legal parity of their respective

political status—would be two of the most glaring examples of this. The crises have been a test of the system's resilience, which has indeed held up by showing how the supranational and intergovernmental structure regenerates itself despite its inability to combine the European dimension of common objectives with the political and social dimension.

This shows that the crises that have arisen are not just a formal conflict between emergency policy and the state of political normality. Rather, they manifest a much greater problem that should push the European institutions to regain their legitimacy, especially in a context that emphasises and fuels conflicts and contributes to the divisions that may arise regarding economic policy decisions.

Resolving conflicts and recognising the resulting identities require effective participation in decision-making and a problematisation of the political changes that society is seeking. Crises exacerbate citizens' unease with public affairs, and this feeling can only be directed against institutions entrenched and distant from the social body, a state of affairs that feeds the fear of a real democratic challenge at various levels, in which the liberal and authoritarian European order will gain the upper hand.

Concluding remarks

The liberal political model that has developed in much of the West since the end of the 18th century has slavishly adhered to the cardinal dictates of its theory and equally faithfully applied its principles within the political and social relations of the reality it expresses. Until then, the instrumental recourse to liberal principles had led the bourgeoisie to contain aristocratic power: it is the limitation of power that makes liberalism "political" and, therefore, worthy of esteem. But the same principles, the same philosophy, were also applied downwards by the same middle class: to preserve their property rights and thus contain the masses. Property rights and labour are, in themselves, fundamental components of economic rights.

Since the end of the 19th century, what has significantly affected the democratic capacity of communities based on liberal systems has been the relationship between the state and the economy: the process of industrialisation has led to an obvious development of property rights, trade relations and, consequently, labour relations. However, the development of instruments never changed the balance of power, as Karl Polanyi (2001) explains well at the end of the first part of *The Great Transformation*. In the 20th century, however, the relationship between politics and the capitalist economy changed. In the face of the revolutionary impulses that came from the East in the first two decades of the last century and threatened to severely disrupt the process of capitalist development on the old continent, the relationship between state and economy became

inseparable. In this connection between politics and economics lies the actual paradigm shift that took place in the 20th century. Neither the process of constitutionalisation of ethical and moral principles that entered the systems of individual states after the Second World War nor the “end of history” (Fukuyama, 2000) that took place from 1989 onwards: in both moments, which were undoubtedly epochal, the anomalies produced by the system were immediately reabsorbed.¹²

The decision to constitutionalise economic freedoms after the Second World War, without providing for an approximation of the corresponding regulations that would process these impositions through internal democratic systems, prevented a discussion of the constraints imposed first by economic unions and later by monetary unions. The democratic deficit begins here.

Aware that different historical contexts complicate any attempt at comparison, it would be possible to identify similarities between the Weimar context and the current European context, both at the economic level (political-economic crisis, high unemployment, wage issue) and at the political level (adoption of emergency practices, cuts in public spending, austerity policies, centralisation of decision-making functions, problems of democratic legitimacy in both input and output). Indeed, the economic crisis allows for parallelism between the two different contexts from the perspective of authoritarian liberalism: in both cases, the crisis—the *exceptional* moment—generates a new idea of political authority, reflected in a new rhetoric of the constitutionalisation process. To counter the effects of the crises that have hit the European Union since 2008, and the eurozone countries in particular, the supranational institutions have equipped themselves with stringent economic policy measures and made particularly invasive interventions in the democratic sphere of the Union: think of the strengthening of governance, the application of the intergovernmental method and soft law (Láncos, 2018), the conditionality regime underpinning the system of macroeconomic aid funds, and the constitutionalisation of the balanced budget rule. In this sense, the concept of authoritarian liberalism can highlight the critical issues underlying the relationship between democracy and liberal economics: the de-democratisation of the European Union continues to manifest itself—at the Community level, but also internally—in the fact that a large part of political-economic affairs is removed from the democratically elected institutional bodies.

¹² The “typical economic means” to which Guérin (2000, p. 231) refers in *Fascism and Big Business* can help to prove that the economic policy of the fascist state fits perfectly into the system to which we refer, both in its attitude towards the masses and in its protection of private property—for example, in the restitution of certain monopolies to private capitalism—and of medium and large-scale agrarian property.

The European Union is fertile ground for the authoritarian application of a liberal political-economic model. A political-economic model that must be dominated by authoritarian liberalism. The relationship between politics and economics, even at the supranational level, is based on a friend-foe relationship. As Streeck (2015, p. 365) emphasises, the system that enables the exercise of market freedoms cannot give way to the state of nature but must be politically constructed, publicly established and enforced by those in power.

The problematic link between liberalism and democracy refers here and now to excluding groups that are the bearers of differentiated interests. The contestation of how the European liberal regime applies in practice the economic freedoms on which it is based inevitably means that the legal-economic sphere is affected by individuals who are increasingly excluded from decision-making processes. At the same time, the restriction of democratic participation certainly takes place today through the denial or restriction of the exercise of the right to vote for certain categories of people—through the denial of citizenship, documents, or residence permits—but it becomes even stronger and at the same time less obvious when the role of the bodies exercising functions representing the interests of the people is restricted. Finally, without going into the merits of the exercise of the right to vote—also with regard to the representativeness of the political classes and the various configurations of today’s electoral systems—it must be emphasised that the depoliticisation of decision-making functions proves to be a necessary instrument, especially in times of crisis, so that the measures taken do not appear illegitimate or unpopular. In the case of the 2008 crisis, the practice of the state of emergency contributed to the credibility of the idea that de-democratisation was necessary, resulting in the conviction that democratic institutions should step aside in an emergency and make way for technicians, a circumstance that also creates further automatism in the citizenry: mechanisation is not only necessary but also just.

Domenico Losurdo (2011) wrote that liberalism is an appeal to free people who are “genuinely free, or people who had the privilege of being free” (p. 245). All in all, in Western societies based on labour, roles, and hierarchical relationships played out in models of production and consumption, the liberal ideal is out of reach for a very large part of the population, who are inevitably excluded from its dictates.¹³

¹³ Chamayou’s (2020) question is revealing in its sense: “Heller nous adresse un autre conseil de méthode: face à un pouvoir autoritaire, ne pas se laisser abuser par l’image totalisante qu’il projette de lui-même [...] La bonne question à poser est celle-ci: cet État “autoritaire”, envers qui au juste l’est-il, et avec qui ne l’est-il pas?” (p. 25).

References

- Ansuátegui Roig, F. J. (2013). *Razon y voluntad en el estado de derecho. Un enfoque filosófico-jurídico*. Dykinson.
- Atzeni, C. (2022). El Liberalismo Autoritario y la crisis de la Unión Europea. *Derechos y Libertades: Revista de Filosofía del Derecho y derechos humanos*, (48), 111–138. <https://doi.org/10.20318/dyl.2023.7341>
- Atzeni, C. (2023). *Liberalismo autoritario. La crisi dell'Unione europea a partire dalle riflessioni di Hermann Heller*. Mucchi Editore.
- Bickel, A. M. (1962). *The Least Dangerous Branch. The Supreme Court at the Bar of Politics*. The Bobbs-Merrill Company.
- Bickerton, C. J. (2012). *European Integration: From Nation-States to Member States*. Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199606252.001.0001>
- Biebricher, T. (2019). *The Political Theory of Neoliberalism*. Stanford University Press. <https://doi.org/10.1515/9781503607835>
- Biebricher, T., & Vogelmann, F. (2017). Introduction. In T. Biebricher & F. Vogelmann (Eds.), *The Birth of Austerity. German Ordoliberalism and Contemporary Neoliberalism* (pp. 1–22). Rowman & Littlefield.
- Blyth, M. (2013). *Austerity. The History of a Dangerous Idea*. Oxford University Press.
- Bonefeld, W. (2017a). Ordoliberalism and Political Theology: On the Government of Stateless Money. In J. Hien & C. Joerges (Eds.), *Ordoliberalism, Law and the Rule of Economics* (pp. 273–288). Hart Publishing.
- Bonefeld, W. (2017b). *The Strong State and the Free Economy*. Rowman & Littlefield International.
- Brown, W. (2003). Neo-Liberalism and the End of Liberal Democracy. *Theory & Event*, 7(1), 37–59. <https://doi.org/10.1353/tae.2003.0020>
- Bruff, I. (2014). The Rise of Authoritarian Neoliberalism. *Rethinking Marxism*, 26(1), 113–129. <https://doi.org/10.1080/08935696.2013.843250>
- Chamayou, G. (2018). *La société ingouvernable. Une généalogie du libéralisme autoritaire*. La fabrique.
- Chamayou, G. (2020). 1932. Naissance du libéralisme autoritaire. In C. Schmitt & H. Heller, *Du libéralisme autoritaire* (pp. 7–82). Zones.
- Cristi, R. (2018). *Carl Schmitt and Authoritarian Liberalism*. University of Wales Press.
- Dani, M., & Menéndez, A. J. (2023). European Constitutional Imagination. A Whig Interpretation of the Process of European Integration? In J. Komárek (Ed.), *European Constitutional Imaginaries. Between Ideology and Utopia* (pp. 44–74). Oxford University Press. <https://doi.org/10.1093/oso/9780192855480.003.0003>

- Dardot, P., & Laval, C. (2017). *The New Way of the World: On Neoliberal Society*. Verso.
- Dawson, M., & de Witte, F. (2013). Constitutional Balance in the EU After the Euro-Crisis. *Modern Law Review*, 5, 818–819. <https://ael.eu.eu/wp-content/uploads/sites/18/2014/05/Smulders-05-Dawson-De-Wittee.pdf>
- Dawson, M., & de Witte, F. (2015). Self-Determination in the Constitutional Future of the EU. *European Law Journal*, 21(3), 371–383. <https://doi.org/10.1111/eulj.12131>
- Dawson, M., & de Witte, F. (2016). From Balance to Conflict: a New Constitution for the EU. *European Law Journal*, 22(2), 204–224. <https://doi.org/10.1111/eulj.12158>
- de Witte, B. (2012). The European Union as an International Legal Experiment. In G. De Búrca & J. H. H. Weiler (Eds.), *The Worlds of European Constitutionalism* (pp. 19–56). Cambridge University Press. <https://doi.org/10.1017/CBO9781139026734.003>
- Fukuyama, F. (2000). *The End of History and the Last Man*. Penguin.
- García, H. A., & Frankenberg, G. (2019). *Authoritarian Constitutionalism*. Edward Elgar Publishing. <https://doi.org/10.4337/9781788117852>
- Guérin, D. (2000). *Fascism and Big Business*. Pathfinder Press.
- Habermas, J. (2014). Warum der Ausbau der Europäischen Union zu einer supranationalen Demokratie nötig und wie er möglich ist. *Leviathan*, 42, 524–538. <https://doi.org/10.5771/0340-0425-2014-4-524>
- Heller, H. (2015). Authoritarian Liberalism? *European Law Journal*, 21(3), 295–301. <https://doi.org/10.1111/eulj.12125>
- Isiksel, T. (2016). *Europe's Functional Constitution: A Theory of Constitutionalism Beyond the State*. Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780198759072.001.0001>
- Jackson, B. (2010). At the Origins of Neo-liberalism: the Free Economy and the Strong State, 1930-1947. *The Historical Journal*, 53(1), 129–151. <https://doi.org/10.1017/S0018246X09990392>
- Joerges, C., & Kreuder-Sonnen, C. (2018). Europe and European Studies in Crisis. Inter-Disciplinary and Intra-Disciplinary Schisms. In D. Innerarity, J. White, C. Astier, & A. Errasti (Eds.), *A New Narrative for a New Europe* (pp. 89–118). Rowman & Littlefield.
- Joerges, C., & Weimer, M. (2012). *A Crisis of Executive Managerialism in the EU: No Alternative?* Maastricht Faculty of Law Working Paper. <https://doi.org/10.2139/ssrn.2190362>
- Kirst, N. (2021). Rule of Law Conditionality: The Long-awaited Step Towards a Solution of the Rule of Law Crisis in the European Union? *European Papers*, 6(1), 101–110. <https://doi.org/10.15166/2499-8249/454>

- Láncos, P. L. (2018). A Hard Core Under the Soft Shell: How Binding is Union Soft Law for Member States? *European Public Law*, 24(4), 755–784. <https://doi.org/10.54648/EURO2018042>
- Loewenstein, K. (1935). Autocracy Versus Democracy in Contemporary Europe. *American Political Science Review*, 29(4), 571–593. <https://doi.org/10.2307/1947789>
- Losurdo, D. (2011). *Liberalism. A Counter-History*. Verso.
- Magalhães, P. T. (2021). *The Legitimacy of Modern Democracy. A Study on the Political Thought of Max Weber, Carl Schmitt and Hans Kelsen*. Routledge. <https://doi.org/10.4324/9781315157566>
- Malatesta, O. (2023). Einige Reflexionen über den Begriff ‚autoritärer Neoliberalismus‘. Die politische Entpolitisierung von der Innenpolitik zur europäischen Ordnung. In O. Agard, B. Beßlich, & C. Fossaluzza (Eds.), *Liberalismus (Be-)denken: Ideen von Europa (1900–1950)* (pp. 197–215). Böhlau-Vandenhoeck & Ruprecht. <https://doi.org/10.7767/9783205217107.197>
- Menéndez, A. J. (2018). The Past of an Illusion? Pluralistic Theories of European Law in Times of “Crises”. *European Papers*, 3(2), 623–658. <https://doi.org/10.15166/2499-8249/249>
- Meyer, L. (1995). *Liberalismo autoritario: las contradicciones del sistema político mexicano*. Océano.
- Müller, J. W. (2012). Militant Democracy. In M. Rosenfeld & A. Sajò (Eds.), *The Oxford Handbook of Comparative Constitutional Law* (pp. 1253–1269). Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199578610.013.0062>
- Neumann, F. (1986). *The Rule of Law. Political Theory and the Legal System in Modern Society*. Berg Pub Ltd.
- Offe, C. (2013). Europe Entrapped. Does the EU Have the Political Capacity to Overcome Its Current Crisis? *European Law Journal*, 19(5), 561–595. <https://doi.org/10.1111/eulj.12071>
- Pernice, I. (2015). Multilevel Constitutionalism and the Crisis of Democracy in Europe. *European Constitutional Law Review*, 11(3), 541–562. <https://doi.org/10.1017/S1574019615000279>
- Poiães Maduro, M. (2012). Three Claims of Constitutional Pluralism. In M. Avbelj & J. Komarek (Eds.), *Constitutional Pluralism in the European Union and Beyond* (pp. 67–85). Hart Publishing.
- Polanyi, K. (2001). *The Great Transformation. The Political and Economic Origins of Our Time*. Beacon Press.
- Rüstow, A. (1932). Interessenpolitik oder Staatspolitik. *Der deutsche Volkswirt*, 7, 169–172.

- Rüstow, A. (1961). *Organic policy (vitalpolitik) versus mass regimentation*. In A. Hunold (Ed.), *Freedom and Serfdom: An Anthology of Western Thought* (pp. 171–190). D. Reidel Publishing Company. https://doi.org/10.1007/978-94-010-3665-8_10
- Schmitt, C. (1998). Strong State and Sound Economy: An Address to Business Leaders. In R. Cristi (Ed.), *Carl Schmitt and Authoritarian Liberalism* (pp. 212–232). University of Wales Press.
- Scicluna, N. (2012). EU Constitutionalism in Flux: is the Eurozone Crisis Precipitating Centralisation or Diffusion? *European Law Journal*, 18(4), 489–503. <https://doi.org/10.1111/j.1468-0386.2012.00613.x>
- Somek, A. (2014). Europe: Political, Not Cosmopolitan. *European Law Journal*, 20(2), 142–163. <https://doi.org/10.1111/eulj.12056>
- Somek, A. (2015). Delegation and Authority: Authoritarian Liberalism Today. *European Law Journal*, 21(3), 340–360. <https://doi.org/10.1111/eulj.12132>
- Streeck, W. (2015). Heller, Schmitt and the Euro. *European Law Journal*, 21(3), 361–370. <https://doi.org/10.1111/eulj.12134>
- Tuori, K., & Tuori, K. (2014). *The Eurozone Crisis. A Constitutional Analysis*. Cambridge University Press. <https://doi.org/10.1017/CBO9781107297289>
- Turner, R. S. (2008). *Neo-liberal Ideology: History, Concepts and Policies*. Edinburgh University Press. <https://doi.org/10.1515/9780748632350>
- Weiler, J. H. (2011). The Political and Legal Culture of European Integration: An Exploratory Essay. *International Journal of Constitutional Law*, 9(3-4), 678–694. <https://doi.org/10.1093/icon/mor054>
- Wilkinson, M. A. (2017). *Constitutionalism Beyond Liberalism*. Cambridge University Press.
- Wilkinson, M. A. (2019). Authoritarian Liberalism in Europe: A Common Critique of Neoliberalism and Ordoliberalism. *Critical Sociology*, 45(7-8), 1021–1029. <https://doi.org/10.1177/0896920519837325>
- Wilkinson, M. A. (2021). *Authoritarian Liberalism and the Transformation of Modern Europe*. Oxford University Press. <https://doi.org/10.1093/oso/9780198854753.001.0001>
- Young, B. (2017). What is Neoliberal in Germany's and Europe's Crisis Politics? In J. Hien & C. Joerges (Eds.), *Ordoliberalism, Law and the Rule of Economics* (pp. 129–142). Hart Publishing.

