Exposé

Arbeitstitel der Dissertation

Illiberalism and the law

Verfasser

Mag. Christian Demmelbauer, BA

Betreuerin

Univ.-Prof.in Dr.in Elisabeth Holzleithner

Angestrebter akademischer Grad: Doktor der Rechtswissenschaften (Dr. iur.)

Studienrichtung laut Studienblatt: Rechtswissenschaften

Studienkennzahl: A 783 101

Wien, Jänner 2023

Table of Contents

Introduction: problem and relevance

Much modern and contemporary reflection on law and politics starts with the assumption that "[e]very adult should be able to make as many effective decisions without fear or favor about as many aspects of her or his life as is compatible with the like freedom of every other adult" (Shklar 1989, 3). Law is the institution that guarantees such a sphere of action to everyone (Luf 2004, 152-153).[1] These two claims constitute the core of liberal political and legal philosophy – a system of thought that has served as a background for many contemporary legal and political institutions, such as the rule of law, human rights, or a protected realm of public discourse.

This thesis is dedicated to understanding one set of oppositions to these assumptions and the respective institutions. On the background of a tradition, starting with critics of Enlightenment such as Edmund Burke and passing through infamous authors such as Carl Schmitt, "illiberal" political and legal theorists propose a fierce critique of liberal and progressive legal and political philosophies and institutions.[2] These critiques include, for instance, outraged reactions to the European liberal order and what it purportedly does to once culturally rich European societies (Legutko 2012), and reconstructions of alternative legal theories based on a religiously inspired notion of the "common good" rather than on the equal freedom of all (Vermeule 2022). Not only do these theorists argue for radical transformations of contemporary "Western" societies, but they have also found a sympathetic audience in powerful political leaders of countries whose political systems have transmuted into "illiberal democracies" (Orbán 2014).[3]

My prospect is to study illiberal theories and their potential consequences for the interpretation and design of law from a philosophical point of view. This means that, rather than empirically describe legal forms or political projects that depart significantly from liberal ideals,[4] the aim of this thesis is to contribute to understanding the theoretical foundations and the persuasive

---

[1] Cf. Kant's (1798, B 33) definition of law as "der Inbegriff der Bedingungen, unter denen die Willkür des einen mit der Willkür des andern nach einem allgemeinen Gesetze der Freiheit zusammen vereinigt werden kann".

[2] Prominent names include: Adrian Vermeule and Patrick Deneen in the US, Ryszard Legutko in Poland, Alexander Dugin in Russia, and Alain de Benoist in France. Yet, not only prominent names are relevant. For an overview of institutions and projects engaged in producing illiberal philosophy and political theory, cf. Craiutu/Kolev 2022. By "progressive" I mean theories which try to transcend classical liberal interpretations of freedom and equality to advocate a more substantive theory of what we ought to aim for.

[3] Cf. Gladden Pappin, Tweet, July 29th 2022, https://twitter.com/gjpappin/status/1553012083100368897, showing American illiberal political theorists Gladden Pappin and Patrick Deneen with Hungarian Prime Minister Viktor Orbán. For Hungary's transformation to an illiberal state, cf., for instance, Halmai 2019.

[4] As done, for instance, in highly informative studies such as Scheppele 2018, or Frankenberg 2020. For more on current research on these questions, see below, Ch. 2.

appeal of the ideas motivating and inspiring such legal and political projects.[5] In short, it is about illiberalism as a political and legal philosophy.[6]

The remainder of this exposé will explain how precisely I plan to contribute to this task. Before introducing my research questions and the methodology and material by which I intend to answer them in Ch. 3, I will start by offering some remarks in clarification of the concept of "illiberalism" (Ch. 1) and a structured overview of the current academic literature on it (Ch. 2). Finally, Chapter 4 will give a brief preview of the structure and the arguments of the thesis itself.

1. The concept of illiberalism

In current research in the political and legal sciences, many labels have been introduced for contemporary political projects and ideologies challenging a broadly liberal political order: "populism" (e.g., Rovira Kaltwasser/Taggart/Ochoa Espejo/Ostiguy 2017), "authoritarianism" (e.g., Frankenberg 2020), the "far right" (e.g., Ash/Busher/Macklin/Winter 2020), "conservatism" (e.g., Fawcett 2020), "autocratic legalism" (e.g., Scheppele 2018), "illiberalism" (e.g., Laruelle 2022) to name just a few. The field is accordingly riddled with different conceptual approaches.[7]

Out of these concepts, "illiberalism" stands out as salient for the project of this thesis for several reasons: It has a sound scholarly infrastructure having served as the guiding concept of important recent interdisciplinary publications and journals in the field, such as *The Routledge Handbook of Illiberalism,* and *The Journal for Illiberalism Studies*. Also, it is relatively young and does not bear the burden of widely different uses in different contexts, as may be the case with "populism", for instance (cf. Frankenberg 2022, 7). Finally, as will become clear in the following paragraphs, its core conceptual properties correspond to two properties of the object of research as it has been described in the introduction: This thesis is about a philosophy

---

[5] That is, what Petö (2021, 317) calls the "illiberal offer".

[6] Perhaps, this use of the word "philosophy" is controversial: Are illiberal ideas coherent and sensible enough to count as a philosophy (cf. Holzleithner 2022, 7)? The answer must be postponed for now though I do not share the view that thought must be especially brilliant to count as philosophy. Indeed, I consider it enough for illiberal ideas to count as philosophy that they are the outcome of serious and reasonably intense reflection. And, as will hopefully become evident later in this exposé, there is little reason to doubt that.

[7] For an attempt to distinguish some concepts which are part of this list, cf. Laruelle 2022, 315-318. For a juxtaposition and evaluation of the respective conceptual merits of "populism", "illiberalism", and "authoritarianism", cf. Frankenberg 2022.

potentially influential in interpreting and designing a legal and political order and fundamentally opposed to liberalism.

Recently, there have been several conceptual discussions of "illiberalism".[8] In this literature, two points seem to find uniform agreement. *First,* illiberalism is defined as a certain kind of opposition to liberalism (Laruelle 2022, 310f.; Frankenberg 2022, 9). *Second,* it may be used both to designate a collection of ideas, a "new ideological universe" (Laruelle 2022, 309), and a set of "illiberal practices" (Kauth/King 2020, 365).[9] Accordingly, two, more narrow concepts of illiberalism can be distinguished: "philosophical illiberalism" may be used to refer to a set of ideas, "illiberal order" may refer to a set of political practices or institutions.[10] In the following, I will discuss each in turn.

First, illiberal order: The concept of illiberalism, as it is used now in political science scholarship, was introduced in an article by Fareed Zakaria (1997) arguing that the worldwide spread of democracy will not necessarily lead to the spread of *liberal* democracy. Rather, there are "illiberal democracies", which organise elections that are somewhat fair, but which do not make efforts to implement other core normative requirements of liberal political orders, such as effective protection of citizens' civil liberties. Today, there is large agreement in studies of illiberalism that the notion of an "illiberal democracy" is a conceptual impossibility – a democracy without serious protection of civil liberties is not really a democracy (Kauth/King 2020, 373; Frankenberg 2022, 10).[11] The concept of illiberalism has been retained, however, to designate legal and political practices that undermine core requirements of a liberal order, most notably, the rule of law and the protection of fundamental rights, while keeping the semblance of a democratic government and thus falling short of being classified as an authoritarian, or even totalitarian regime (Schenkkan 2018, 1f.; Drinoczi/Bien-Kacala 2021, 21) – I take "illiberal order" to refer to this.

"Philosophical illiberalism" refers to the set of ideas and arguments justifying and legitimizing illiberal political practices by opposing the liberal organization of society and its philosophical justifications in liberal legal and political philosophy. However, in accordance with the

---

[8] Kauth/King 2020; Vries 2021; Main 2021; Frankenberg 2022; Laruelle 2022.

[9] It does not, however, designate a political "style" (Frankenberg 2022, 5), or a strategy, that could be used, in principle, by any political movement, such as the populist discursive trope of opposing the people to the elites (cf. Laruelle 2022, 317f.; for the view that populism ought to be analyzed as a discursive trope rather than as a (thin) ideology as argued, for instance, in Mudde 2004).

[10] This distinction mirrors Skorupski's (2015, 402) distinction between "philosophical liberalism" and "liberal order". I will only distinguish these two when it is helpful. Otherwise, I will simply speak of "illiberalism".

[11] These works are usually rather quick to make this point. For a more nuanced treatment, cf. Lacroix/Pranchère 2021, 14-21.

ideological thrust of the regimes and political movements commonly identified as illiberal (e.g., the Orbán regime in Hungary, Putin's Russia, or Trumpism in the US), it does not refer to just any intellectual opposition to liberalism whatsoever. Rather, it has been mostly used to describe those "right-wing" critiques that do not aim to overcome liberalism to properly realize its fundamental aims of guaranteeing equal autonomy and prosperity for everyone,[12] but rather claim that these fundamental aims are misguided in the first place.[13] It is therefore equivalent to what Stephen Holmes (1993, 2021) calls "antiliberalism": the rejection of "the idea of individual liberty itself, not its selective or incomplete realization" (Holmes 1993, 1). This is a *fundamental* critique of liberalism in the sense that it is liberalism's fundamental normative aspiration, securing equal freedom for all (see below 4.1), that is opposed.

"Illiberalism" thus refers both to a set of ideas predicated on the rejection of the idea of equal freedom ("philosophical illiberalism"), and to political orders characterized by a rejection of the legal institutions most closely associated with the liberal project of securing equal freedom for all: fundamental rights and the rule of law ("illiberal order"). As already mentioned in the introduction, the object of this thesis is philosophical illiberalism including its critique of liberal legal and political institutions and its implications for specifically illiberal legal and political institutions, i.e., illiberal order.

2. Current State of Research

Three strands of research may be distinguished in the study of illiberalism and related phenomena: (1) descriptions of types of action typically used by illiberal political agents; (2) explanations of the success of illiberal political projects; (3) inquiries into the theoretical background and the persuasive appeal of illiberalism. The first two strands are concerned with illiberal order, the last with philosophical illiberalism. In the following, I will only give a brief overview of the first two strands. The last strand will be treated in more detail as it concerns the research topic (philosophical illiberalism) of this thesis.

The first strand mainly consists of a considerable body of literature in political science and law on the legal and institutional strategies that illiberal political agents deploy to access, or to consolidate their power (e.g., Scheppele 2018; Levitsky/Ziblatt 2018; De Sa e Silva 2022). Such strategies include gerrymandering (cf. Levitsky/Ziblatt 2018, Ch. 4), "court packing"

---

[12] This is, what one may call, after its most influential proponent, the "Marxist" way of critiquing liberalism (Holmes 1993, 1).
[13] An exception is Fukuyama 2022.

(Scheppele 2018, 551f.), or using vague legal provisions to allow loyal judges and administrations to make the decision most favourable to the illiberal political project and/or its leader (De Sa e Silva 2022, 200f.). The second strand consists of numerous works in political science, economy, sociology, and socio-psychology concerned with identifying the circumstances that allowed illiberalism to become a serious political project.[14] Such circumstances include feelings of identity loss due to the imperative to imitate the achievements of Western European societies (Krastev/Holmes 2019, Ch. 1), alienation, disenfranchisement in modern societies, or economic inequalities produced by recent economic crises (Berman 2021, Walter 2021).

The last strand of research aims to discern the reasons that speak in favour of and justify illiberal political projects to illiberals. There are three levels on which this task has been tackled in contemporary research.[15] *First,* there are studies in political science and philosophy which analyze contemporary illiberal agents and projects, and attempt to identify and reconstruct ideas by which they are informed and motivated (e.g., Laruelle 2008; Bar-On 2013; McAdams 2021; Varga/Buzogány 2022; Hodrick 2022).[16] *Second,* there are philosophical studies which try to describe, systematize, and criticize philosophical illiberalism as a general political philosophy. Most works in this line of research take one, or a collection of thinkers, and analyze their thought (e.g., Holmes 1993, Part I; Faye 2005; Beiner 2018; Scheuerman 2020; Holzleithner 2021; Rose 2021). Fewer works aspire to analyze illiberal thought in general (Holmes 1993, Part II; Skorupski 2015; Holmes 2021; Fukuyama 2022).[17] *Third,* there are studies in law, philosophy and political science that concern specific aspects of illiberal thought, such as its stance on gender (e.g., Petö 2021; Holzleithner 2022), or constitutionalism (e.g., Blokker 2019; Smilova 2021).

This research is very rich in insights, but it is still incomplete. Three relevant shortcomings may be identified. *First*, general analyses of illiberalism as a philosophical doctrine are quite rare and often limited to the space of articles. A contemporary in-depth book-long treatment of philosophical illiberalism as such is therefore not yet available. Holmes 1993 may constitute such a treatment. It is already 30 years old, however, and cannot cover more recent developments in philosophical illiberalism. *Second*, there are no studies connecting these three levels of research

---

[14] For an overview cf. Berman 2021.

[15] Evidently, this classification is quite crude, and the three categories are not perfectly separable (Shurts 2021, for instance, could both be grouped with the studies on the first and on the second level). It should thus be understood to serve heuristic purposes only.

[16] A related strand of research identifies and analyzes the intellectual infrastructure, such as research institutes, journals, etc., related to illiberal political projects (cf. e.g., Craiutu/Kolev 2022).

[17] On conservatism as a political philosophy, cf. also Hamilton 2019; Fawcett 2020.

on philosophical illiberalism in an explicit and thorough manner. Most notably, specific aspects of illiberal thought are usually not studied based on a broad reconstruction of philosophical illiberalism, a fact sometimes recognized and deplored by scholars (Blokker 2019, 520f.; Laruelle 2022, 317). *Third*, there are no extensive studies on the illiberal theory and/or philosophy of law. Studies that combine philosophical illiberalism and law are either focussed on one theorist, such as Carl Schmitt (Kervégan 2011; Scheuerman 2020), or they connect philosophical illiberalism with empirical descriptions of concrete illiberal legal orders (e.g., Blokker 2019).

As there are few general treatments of philosophical illiberalism, it is quite difficult to summarize the most important insights research on it has offered so far. I will nevertheless mention four points that seem to be particularly important. *First,* discussions such as Holmes 1993, Skorupski 2015, Beiner 2018 and Rose 2021 have shown that there is at least one line of illiberal thinkers engaged in serious reflection and influencing one another, such that one may speak of an illiberal "intellectual tradition". The preliminary question of whether illiberalism even is "a distinct, self-standing ideology rather than just an *ad hoc* set of critiques of the manifold shortcomings of contemporary liberalism" (Smilova 2021, 189) has thus already been answered.

Second, philosophical illiberalism offers a critique of liberalism based on a rejection of liberal individualism (Skorupski 2015, 406-410; Holmes 2021), egalitarianism (Holzleithner 2022, 11), and rationalist universalism (Skorupski 2015, 410-415). These rejections, in turn, are often supported by the diagnosis that liberal societies are culturally empty (Holmes 1993, 6), that individuals in such societies lack clear "horizons" (Beiner 2018, 38) and thus orientation, and that this culminates in "bleak normlessness" (Skorupski 2015, 417) and "a fatal crisis of identity" (Rose 2021, 20).

Third, Varga/Buzogány (2022) have suggested that there are in fact two traditions in illiberal thought roughly mapping onto two different political movements.[18] One, "revolutionary conservatives", reject "Judeo-Christianity" together with liberalism and socialism as the "culprit […] accused of bringing about the 'secularization' and 'desacralization' of Europe" (Varga/Buzogány 2022, 1099).[19] The other, "national conservatives", value "Europe's Christian heritage over anything else" (Varga/Buzogány 2022, 1099). Revolutionary conservatives

---

[18] Cf. Skorupski's (2015, 416) distinction between "heroic" and "religious" outrage against liberalism and Rose's (2021, 147f.) two pictures of a "post-Christian right". Cf. also MacIntyre's (1981, Ch. 9) question "Nietzsche or Aristotle?".

[19] Citing Bar-On 2012.

are also closer to fascism and sympathetic of Russian Eurasian politics, both of which national conservatives oppose (Varga/Buzógany 2022, 1099f.).

Finally, I want to take up one suggestion occasionally made, namely, that illiberalism is "as much a mindset as a theory" (Holmes 1993, 5). This thought has been elaborated more specifically by Skorupski (2015, 415-418), who identifies "sources" of "anti-liberal rage" against liberalism, namely indignation over the alleged "irreverence" of liberals towards the outstandingly powerful, or spiritually elevated.[20] This is not so much a reconstruction of theories and arguments proposed by illiberal writers as an analysis of the emotional underpinnings of such theories and arguments. It suggests that, just as philosophical liberalism is often associated with the attitudes of concern and respect (Dworkin 1978, 190), philosophical illiberalism may also be connected to certain attitudes, for instance, reverence. A thorough analysis of philosophical illiberalism should aim at discerning such background attitudes, emotions, or experiences,[21] describe their structure, and show how they are related to illiberal legal and political theory. Apart from Skorupski 2015, I know of no study that has attempted to do this systematically.

3. Research questions and methods

Now that the concept of illiberalism has been introduced and the current state of research reconstructed, the path is cleared for making a concrete plan for the thesis itself. I intend its contribution to be centered around answers to the following four research questions:

(1) What are the most relevant arguments and ideas central to philosophical illiberalism today? The "today" is supposed to indicate that this project is not trying to provide an intellectual history of the illiberal tradition of thought. Nor is it the endeavour to write an intellectual biography of contemporary illiberal writers, or even an exegetical tour through their work. The goal is to systematically lay out the central arguments and ideas that appear in contemporary illiberal thought, not without, of course, looking to older texts to understand them properly. Ideas and arguments to be reconstructed include, for instance, the illiberal critique of the liberal idea of rights, of liberal universalism, and its defense of the value of the classical family, or a

---

[20] He claims that the former can be found in Nietzsche's philosophy and the latter in Dostoyevsky's fiction.
[21] The concept of attitudes, emotions, and experiences used here is phenomenological. In short, what I mean by this are ways objects, including ourselves and others, appear to us. An example would be the experience of shame, in which we appear to ourselves as in some sense exposed to others (for more on shame, cf., e.g., Zahavi 2014, Ch. 14).

(purportedly) homogeneous nation. In short, a full answer to this research question will provide a general in-depth analysis of philosophical illiberalism, not yet available in research in the field.

(2) What are the experiential foundations and inspirations of these arguments and ideas? This is a question associated with the project of discerning background attitudes, emotions, and experiences, similarly related to illiberalism as respect is to liberalism. Candidates for such moral emotions and experiences include reverence, as identified by Skorupski, but also the experiences of absurdity, and masculinity. I will offer some hypotheses on how precisely these experiences connect to illiberalism in the last chapter.

(3) What are the implications of philosophical illiberalism for (a) legal theory, (b) constitutionalism, and (c) equality law? Regarding legal theory, the aim is to reconstruct the illiberal answer to what law is and how it differs from (broadly) liberal legal theory. Regarding constitutionalism and equality law, I will reconstruct the objections illiberals raise against liberal conceptions of constitutionalism and equality law and the most important legal principles structuring these areas if they were to be regulated according to illiberal ideas. These projects will be conducted based on the answers given to the first two research questions. They therefore ought to fill both the gap left by the missing link between research on philosophical illiberalism as a general political philosophy and more concrete questions regarding illiberalism's view of law, and the gap surrounding research on illiberal legal theory.

(4) Where and how does illiberalism fail as an intellectual project? This critical question will be approached in two ways: First, I want to unveil and draw attention to internal inconsistencies, mistaken premises, and other theoretical flaws in illiberal thought. Second, I will try to point out what the consequences of philosophical illiberalism are if it is rid of its theoretical flaws and pursued radically. Both projects are pursued from a liberal perspective. The aim is not to help make philosophical illiberalism a better theory but to show why it is unacceptable, even, or rather, precisely when it is taken seriously.

In trying to answer these research questions, I will take three different *stances*, each defined by a method and a set of materials to be used. The first stance is *hermeneutic*. Its method consists in reconstructing ideas and arguments found in illiberal philosophies, legal theories, and legal texts. The material used for this are illiberal philosophical and legal books and articles, as well as court decisions and other legal texts influenced by illiberal ideas. Moreover, I will use other academic works aiming at reconstructing illiberal philosophies, and legal theories, especially the texts mentioned in the preceding chapter. The second stance is *phenomenological*. Its

method consists in describing the experiences underpinning illiberal ideas and arguments. It will be used exclusively to answer the second research question. The material it builds on are illiberal theoretical texts related to the experiences in question and general philosophical texts and debates on the experiences in question (e.g., reverence, absurdity, etc.). Finally, the third stance is *argumentative* and will be used to answer the fourth research question. It consists in judging illiberal ideas and arguments according to rational criteria, such as logical consistency, factual plausibility, or accordance with normative assumptions (almost) universally held. Special material to be used here is restricted to texts that critically engage illiberal ideas in a similar way.[22]

4. Arguments and structure

In the following, last chapter of this exposé, I will set out a first sketch of the structure and the content of the main chapters of the thesis. All claims put forward in this part have the status of hypotheses. None is proven in what follows and all may be corrected in the process of further research. In terms of structure, the thesis will be divided into two large and and two smaller parts. The first (smaller and introductory) part is meant to reconstruct liberalism as a necessary preliminary to the discussion of illiberalism that follows. The second (large) part is dedicated to exploring illiberalism as a collection of ideas and arguments underpinned by specific experiences. The third (large) part will focus on the illiberal picture of law exploring illiberal legal theory, illiberal constitutionalism, and illiberal equality law. Finally, the fourth (smaller) part is concerned with engaging philosophical illiberalism critically.

4.1. Introduction: liberalism and (liberal) constitutionalism

The introduction of liberalism in this chapter cannot be aimed at discussing it comprehensively. Rather, I will approach this task by roughly discerning the elements that are most relevant for the discussion of illiberalism that follows. There are three such elements that seem particularly pertinent: (1) liberalism's core normative commitments; (2) its view of law and constitutionalism; (3) its stance towards "identity categories" such as gender, sexual orientation, religion, race, and class – it is in this area that illiberal attacks on liberal views are particularly fierce (cf. Holzleithner 2022).

---

[22] E.g., Baude/Sachs forthcoming.

Liberalism as a political philosophy unquestionably covers a dizzyingly wide range of views.[23] There is, however, one obvious place to start in giving a characterization of it – the central place it grants to the values of liberty and equality, or "equal freedom" (cf., e.g., Charvet 2018, xv-xvi; Holzleithner 2022, 7). Both values have been the object of intense debates in liberal political philosophy,[24] which I hope to reconstruct in outline in the thesis. For now, it should suffice to note that the core idea of equal freedom is, roughly, that everyone equally ought to possess the chance to choose how to act according to their own idea of what it would be good to do, i.e., "to live according to their own ideas" (Holzleithner 2022, 7).

Law, for liberalism, is a way of shaping and legitimizing political power attempting to realize the idea of equal liberty. Of particular importance in this respect is liberalism's view of the role of constitutions, i.e., liberal constitutionalism.[25] According to Scheppele (2018, 558), it mainly imposes two constraints on public power: (1) the protection of "the dignity and liberty of individuals", i.e., their *rights*; (2) the requirement that "all sources of public power be subject to binding legal checks", i.e., they must respect *the rule of law*.[26] I will center my discussion in this chapter around these two aspects of constitutionalism.

The liberal stance towards categories such as gender, sexual orientation, religion, race, and class, in terms of which core identities of humans in contemporary societies are constructed, is far from uniform, and liberalism's history regarding oppression around these categories is infamous. However, there are two developments, which are identified by illiberals (e.g., Legutko 2012, 98f.)[27] as distinctively liberal, that strive towards remedying such oppression: first, feminist philosophy, critical race theory, queer studies, and other academic disciplines have worked to deconstruct traditionalist and naturalizing interpretations of these categories.[28] Second, equality and antidiscrimination law has been further developed and put to use to address the oppressive and exclusionary dynamics that have pervaded, and still pervade, liberal societies.[29]

---

[23] For instance, "political liberalism" (Rawls 1993), "perfectionist liberalism" (Nussbaum 2011), and the "liberalism of fear" (Shklar 1989). For general introductions and academic engagements of liberalism, cf. Freeden 2015, Fischer/Huhnholz 2019, Freeden/Fernández-Sebastián/Leonhard 2019, Ferstl 2021.

[24] On liberty, cf., e.g., Christman/Anderson 2005; Rössler 2017. On equality, cf., e.g., Anderson 1999; Dworkin 2000.

[25] On constitutionalism generally, cf., e.g., Barber 2010; Somek 2014; Grimm 2016. On the relationship between constitutionalism and political liberalism cf. Michelman 2022. For critical studies on the relationship between constitutionalism and liberalism, cf. Dowdle/Wilkinson 2017.

[26] On the "facilitation" of rights as the central principle of constitutionalism (2.0), cf. Somek 2014, 83, 79-86. On the rule of law as an essential aspect of constitutionalism, cf. Wloch 2021.

[27] For an illiberal perspective on critical race theory, cf. Feser 2022.

[28] For relevant work in feminist philosophy cf., e.g., Butler 1993, Haslanger 2012; in critical race theory cf., e.g., Crenshaw 1989, Liebscher 2021; in queer studies cf., e.g., Ahmed 2006.

[29] For legal studies on antidiscrimination law, cf., e.g., Mangold/Payandeh 2022; for a philosophical reconstruction of the point of antidiscrimination law, cf., e.g., Moreau 2020.

4.2. The theoretical and experiential foundations of illiberalism

In this part, philosophical illiberalism in general is the object of inquiry. It is thus intended to answer the first and the second research questions set out above in a hermeneutic and phenomenological stance. The discussion in this part will be structured around one key research hypothesis:[30] There are two kinds of illiberalism, which I propose to call "voluntarist illiberalism" and "objectivist illiberalism", and which may be distinguished in virtue of their view of authority. I will conduct this inquiry in two large chapters. The first will consist of a reconstruction of illiberal critiques of liberalism. The second will reconstruct the positive components of philosophical illiberalism and its experiential foundations. In the following, I will present the main ideas of each chapter in turn.

4.2.1 The illiberal critique of liberalism

Given the current state of my research, I expect to distinguish three illiberal critiques of liberalism: (1) liberalism produces an "empty" self and a bureaucratic form of social power; (2) liberalism favours the development and flourishing of mediocre characters; (3) liberalism is a form of moralism and exercises a specific and harsh form of power through its pretension to rationality.

The first critique covers three steps.[31] *First*, it argues that philosophical liberalism has an impoverished view of human identity because it holds that individuals can be abstracted from their social relations when, really, some of these relations are constitutive of their very identity (cf. Skorupski 2015, 406-410). *Second*, liberal societies treat individuals as though they were only contingently and strategically related to others – they "create" the abstract individual that philosophical liberalism thinks exists naturally (Deneen 2018, 49).[32] Consequently, individuals fail to recognize the reasons and obligations deriving from their most important relationships, such as the nation or the family. Devoid of such reasons, they end up without anything meaningful to do: They are both bored and boring – this is the condition of the empty self (MacIntyre 1981, 36-39).[33] *Third*, as the recognition of reasons stemming from social relations can no longer be expected, social organization needs to proceed differently than by appealing to the loyalty and

---

[30] This hypothesis is inspired by recent research on illiberalism (Varga/Buzógany 2022, see above Ch. 2).
[31] With several variations, it can be found in contemporary authors such as MacIntyre 1981, Molnár 2015, and Deneen 2018.
[32] The idea and the institution of rights play an important part in both the first and the second step. I will explain this in more detail in the thesis.
[33] Cf. liberalism's "anticulture" deplored by Deneen 2018, Ch. 3.

solidarity of its citizens. Hence, it must ensure that sociable actions seem profitable to individuals. In other words, it must manipulate them into being solidaric – this is the bureaucratic form of power (MacIntyre 1981, 40).[34] If this manipulation fails, it may even seem necessary to straightforwardly force people to behave in an orderly manner. This way, a straight line is drawn from liberalism to authoritarian abuse of power (Deneen 2018, 62f.).[35]

The second critique is simpler at first sight.[36] It holds that liberalism's core idea – that everyone must be granted the chance to shape their own life – is both too demanding and too indulgent. It is too demanding because it demands the development of such a life plan of everyone, even of people who would be perfectly happy not to shape their own life but to play a role in the greater plan someone else has set out for them and others.[37] It is too indulgent because these autonomous life decisions don't need to have any specific quality to be respected, and, therefore, may be perfectly mediocre, common, and vulgar.[38] Those who do have the capacity to escape mediocrity and to create projects which are able to infuse life with something that makes it worth living may not get the chance to realize these projects because, everyone pursuing their own petty plans, they can get no support and are condemned to loneliness. In short, the right of "the great man" (Dugin 2009, 54)[39] to install order according to his own will is denied. As is hopefully evident now, the claim that life in liberal societies is empty and meaningless (see above Ch. 2) can be part of the first and of the second critique.

The third critique is perhaps most ferociously advanced today.[40] It starts with the claim that liberalism's aspiration to defend its commitments solely based on reason is both wrong and pretentious. It is wrong because any normative rationality presupposes the recognition of the traditional concept of objective order (MacIntyre 1981, Ch. 5), or a decision for a set of values

---

[34] Cf. Molnár 2015, 33-42 drawing on both MacIntyre and Habermas for this point.

[35] A supposed connection between liberalism and authoritarianism has also been drawn by left-Wing intellectuals, such as Adorno/Horkheimer 1944 (cf. Amlinger/Nachtwey 2022, Ch. 1), and, recently, Loick 2017, 129f. I hope to have the opportunity in the thesis to compare their arguments with the illiberal argument reconstructed here.

[36] It is more rarely put forward openly by contemporary authors. For an example, cf. Dugin 2009, 52-54. It has a venerable tradition though in Nietzsche and Heidegger (cf. Beiner 2018). For influences of this tradition on contemporary far-right ideological groupings in the US, cf. Beiner 2018, introduction.

[37] This is the core of the speech of the great inquisitor in Dostoyevsky (1879, 332-357, 343): "Nothing is more seductive to humans than freedom of conscience, but nothing is more excruciating either" (my translation; "Nichts kann den Menschen mehr verführen als Gewissensfreiheit, aber auch nichts ist qualvoller für ihn").

[38] Cf. for a remarkable variety in words meant to express this vulgarity Legutko 2012, 177-180.

[39] "Das Recht des großen Mannes", my translation. Cf. Dostoyevsky 1879, 342: "They will marvel at us and think us Gods, because we, who have taken the lead, have accepted to endure this freedom, which was so terrifying to them, and to rule over them." (My translation: "Sie werden uns anstaunen und uns für Götter halten, weil wir, die wir uns an ihre Spitze stellten, uns bereit erklärt haben, die Freiheit zu ertragen, vor der sie erschraken, und über sie zu herrschen.")

[40] It is hardly ever presented fully argued. I have therefore taken more liberty in reconstructing this critique here. Parts and hints of it can be found in Benoist 2004, Ch. 3, and scattered in Legutko 2012.

(Schmitt 1922, Ch. 2). It is pretentious because, in pretending to be based solely on reason, liberalism presents itself as a universal truth everyone ought to respect (Benoist 2004, 61f.). This wrong pretentiousness is not only presented as a "character-deficit" in liberalism. Moreover, illiberals suggest that it implies a moralist exclusion of critical attitudes towards liberalism: what Legutko (2012, 65-71) calls the "coercion to freedom".[41] Given that liberalism presents itself as a universal truth discoverable by reason, everyone who does not understand that it constitutes such a truth must be considered unreasonable, and their position must be disregarded by all "serious" participants of public debate. Hence, other more eccentric standpoints (Legutko 2012, 69), or even entire cultures (Benoist 2004, 62), are forced to give themselves up and everyone ends up obliged to adopt the same liberal views.

4.2.2 Voluntarist illiberalism and objectivist illiberalism

This chapter is dedicated to the positive ideas that characterize philosophical illiberalism. I intend to divide it into three subchapters. *First,* I will distinguish two kinds of illiberalism, voluntarist and objectivist, on the basis of their concept of authority. *Second,* I will reconstruct the most central ideas of objectivist illiberalism and their experiential foundations. *Third,* I will reconstruct voluntarist illiberalism in the same way.

Consider the first critique of liberalism again. What is reproached is that liberalism dismisses the constitutive character of social relations to the individual. These constitutive elements of one's personality, it is implied, give one an obligation to uphold them. Given that these relationships are also constitutive elements of the identity of someone else – a family constitutes the identity of parents, partners, and children – an interlocking order of identities and obligations exists. It is of course not quite clear what this order implies in particular situations. Illiberal theories help themselves by viewing one person as a representative of this ordered relationship itself, e.g., the father as representative of the family, or politicians as representative of the nation. If such persons are recognized as representatives of important social relations, they have the authority to determine what ought to be done to preserve and develop these relationships and help the individuals within them to flourish.[42] This concept of authority, I claim, lies at the heart of objectivist illiberalism.

The second critique functions rather differently. It reproaches liberalism for supporting a petty and mediocre way of living by disabling those projects or actions that would make life worth

---

[41] Legutko 2012, 66 and Vermeule 2017 also refer to the "catechism" or "liturgy of liberalism".
[42] Cf. Vermeule 2022, 46: "Law is an ordinance of reason for the common good, by one *charged with care of the community*" (my italics).

living. It is implied that if someone has the creativity, insight, strength, or clairvoyance needed to devise plans for action (and thought) that make the life devoted to them significant, they ought to be followed and have authority over those who are unable to devise such plans (cf. Beiner 2018, 38). This concept of authority, I claim, lies at the heart of voluntarist illiberalism.

It should be mentioned that theorists may not fall neatly either into the category of objectivist or of voluntarist illiberal. These categories designate structures of ideas, identified here by their view of what authority is, and/or should be. Theorists, as well as other people, may attempt to articulate different sets of ideas without clearly differentiating between them. One contemporary illiberal who seems to be influenced by both voluntarist and objectivist illiberal ideas is Legutko (2012).

Objectivist illiberals are primarily concerned with what the right order of social relationships looks like. For this, they invoke religiously based notions of the common good (Koninck 1943, Maritain 1947, Vermeule 2022).[43] Another important question they ask is who represents that order. Often, it seems that illiberals need not think too long about this – in the family, at least, they immediately resort to the father (cf. Holzleithner 2022, 8 on Legutko 2012). I aim to look behind this appearance of thoughtlessness and to reconstruct illiberal justifications of gendered distributions of authority.[44] Lastly, I will ask whether there are experiences and emotions which are particularly salient for such theorists and why they are so: the hypothesis is that reverence for an order of being higher than one's own rationally empowered will and the experience of being part of social groups are important here.[45]

Voluntarist illiberalism, on the contrary, is primarily concerned with what a strong or authentic will looks like. This idea of a strong will ought to be connected to experiences, which make it seem necessary or important: one hypothesis is that the experience of existential despair or anxiety over life's absurdity (cf. Kierkegaard 1849; Camus 1942) provides such a basis.[46] The core concern of voluntarist illiberals, I intend to argue, is that living life in a way that is

---

[43] All drawing on Aquinas. For research on the common good as a political concept generally, cf., e.g., Sluga 2014; Hiebaum 2022.

[44] For one explicit justification based on what is allegedly natural, cf. Feser 2019.

[45] For the first, I intend to draw on the "phenomenology of religious experiences" (cf. Gschwandtner 2019 for an overview of positions in this field), for the second, I plan to consult phenomenological studies in social ontology (cf., e.g., Schmid 2014; Zahavi 2018). For a discussion of Aquinas's concept of the common good informed by social ontology, cf. Harris 2021. A view of what it is to be part of a group is implied, for instance, by MacIntyre's (1981, 176-178) distinction between virtues and the law.

[46] In this case, authors on whom contemporary illiberals draw for inspiration have also contributed to understanding these experiences, cf. especially Heidegger 1927. These experiences are also often better presented in literature than in philosophy. I thus hope to include reference to such literature and literary criticism in this chapter, e.g., Sweeney 2013 on the novels of Michel Houellebecq.

significant is a profoundly difficult task, and that, for this, a grand, creative will which makes existential decisions (Nietzsche), or a deep reconnection to one's roots in "being" (Heidegger) is necessary (cf. Beiner 2018).[47] These creations of significance may take several forms,[48] one of the most important being that a community makes an existential decision to define and defend itself against existentially different others, who are regarded as enemies (Schmitt 1927). Besides reconstructing these forms, I intend to determine whether and, if yes, how precisely this is a particularly masculine conception drawing on the idea of heroically overcoming one's petty fears of bodily harm and well-being to fight for something higher.[49]

4.3. The illiberal view of law and constitutionalism

In this part, the consequences of the discussion of the preceding part for the illiberal conception of law and constitutionalism will be drawn. It is divided into three chapters corresponding to the three subparts of research question three. Accordingly, the following subjects will be discussed: (a) the illiberal concept of law, (b) illiberal constitutionalism, and (c) illiberal equality law. The discussion will be presented in the hermeneutic stance. It is about discerning what illiberals do or should think about these legal topics given their general philosophical position. In the following, I will present the core ideas of each chapter.

The hypothesis which is intended to structure the first chapter is that the distinctive aspect of an illiberal concept of law is its view of the authority of law. The common starting point of illiberal legal theories is the rejection of contemporary liberal legal theory's insistence on a separation of law from both morality and politics meaning that law's authority derives from neither (seminally, Hart 1961). Instead, illiberal legal theories inspired by voluntarist illiberalism hold that law's authority derives from politics.[50] Illiberal theories inspired by objectivist illiberalism, by contrast, hold that it derives from morality.[51]

---

[47] For a synthesis of these two, cf. Heidegger's (1961) discussion of Nietzsche.

[48] Cf. Dugin 2009, Ch. 2; Evola 1969. For an overview of some thinkers who have tried to spell this out, cf. Rose 2021.

[49] For a concise analysis of one aspect of this heroic masculinity, cf. Kang 2012. For an introduction to the study of masculinity generally, cf. Edley 2017.

[50] A classic statement of this view can be found in Schmitt 1932, a contemporary defense of it in Benoist 2004.

[51] This is the core proposition of the revival of the so-called "classical legal tradition" proponents of which include Casey/Vermeule 2022; Foran forthcoming; Vermeule 2022. This revival is criticized in Baude/Sachs forthcoming.

The discussion of illiberal constitutionalism ought to be started with reconstructing what seems to be the core concern of illiberals with liberal constitutions: human and fundamental rights.[52] They are criticized by both objectivist and voluntarist illiberals (e.g. Benoist 2004, Vermeule 2022) for promoting egoistic individualism and making people like children who obstinately demand that their wishes ought to be fulfilled.[53] Based on this critique and rejections of the other core aspect of liberal constitutionalism, the rule of law,[54] recently, illiberal theorists have offered aspects of their own vision of what constitutions ought to look like, featuring, for instance, a radical reinterpretation of the institution of rights (cf. Vermeule 2022; Foran forthcoming).[55] This chapter will be centered around a reconstruction of this vision and the principles upon which it is based including selected references to recent court decisions which make use of such principles in their reasoning.[56] One goal of further research in this area is to determine whether there are notable differences between voluntarist and objectivist illiberal thoughts on constitutionalism.

The final chapter will distinguish two principled approaches to equality law deriving, again, from different kinds of illiberal thought. By equality law, I mean not only legal provisions pertaining to discrimination but all law that contributes to defining important identities of individuals along the categories of gender and sexual orientation. The focus will lie on family law because the family is where illiberals think these categories are inevitably based (cf., e.g., Feser 2019). I will begin by reconstructing the bitter complaints of illiberals against (liberal, see above Ch. 4.1) equality law (cf. Holzleithner 2022, 11), and move on to reconstruct their own pictures of how gender roles and family ought to be constructed, again including references to recent court decisions where such pictures play a role.[57] It seems that there are two master principles defining an objectivist and voluntarist illiberal approach respectively: Objectivist illiberals insist on the preservation of what they view as the constitutive relationships of humans, such as heterosexual marriage, and childrearing in a family background characterized by traditional gender roles. A voluntarist illiberal approach, on the other hand, is characterized by the

---

[52] Important illiberal and conservative texts critical of (human) rights include Foran 2022, Benoist 2004, Gauchet 2000, Glendon 1991, Villey 1983. Critical appraisals of such texts can be found in Lacroix/Pranchère 2021; Sajó/Uitz 2020.

[53] For the last point, cf. particularly Legutko 2012, 63.

[54] On illiberal/populist/conservative critiques of the rule of law, cf. Blokker 2019, 532-541, Caldwell 2021.

[55] These are predominantly theorists inspired by objectivist illiberalism, contemporary voluntarist illiberals seem to have less to offer in terms of a positive view of what constitutions ought to look like. However, Schmitt's *Constitutional Theory* (1928) may still be influential for them.

[56] This chapter's aim is thus not a systematic and comprehensive study of relevant legal documents. Such documents should rather serve the purpose of illustration.

[57] Rulings may be both relevant for this subchapter and for the preceding, e.g., Poland's Constitutional Court Ruling K 1/20 (for an analysis, cf. Bucholc 2022).

biopolitical concern of securing the "material" human preconditions for carrying out great political projects, where this mostly means ensuring continuous growth of an ethnically homogeneous population expected to inscribe itself into this political project (cf. Petö 2021, 320).

4.4 Critique of Illiberalism

The conclusive part of the thesis will be dedicated to responding to the fourth research question and will be written in the argumentative stance. Its purpose is to point out illiberalism's many shortcomings even when it is interpreted with charity, as the previous two parts have attempted to do. It will be divided into two larger chapters: the first will try to point out flaws in illiberal theorizing, the second will discuss what illiberalism might be, were it rid of these flaws.

The first chapter will begin with an examination of the illiberal critique of liberalism. I will start by pointing out misrepresentations of liberalism in illiberal writings.[58] What is perhaps most striking, though, is the utter disregard of illiberals for similar critiques of liberalism in other traditions which manage to point to various flaws of classical liberalism without abandoning the idea of equal freedom. Feminist work on dependency (e.g., Kittay 1999), for instance, criticizes what may be considered as classical liberalism's failure to take the importance of relationships to others seriously enough, but without going so far as to discard liberalism altogether. With regards to the positive conceptions of illiberalism, and its theory of law, constitutionalism and equality law, this chapter is dedicated to pointing out inconsistencies and other theoretical flaws.

The second chapter will begin with positive accounts of objectivist and voluntarist illiberalism rid of some theoretical flaws pointed out in the preceding chapter. Its task is to think these through, to radicalize them beyond what the illiberal writers presented in previous parts explicitly argue. My hypothesis is that both will end up advocating a totalitarian[59] society – one which controls every element of their members' life and, hence, is unable to tolerate any diversity in conceptions of how individual and collective life ought to be organized. This is a consequence not all illiberals are happy to accept (cf., for instance, Legutko's (2012, 105f.) emphasis on the importance of privacy, which is, however, utterly selective and tied to his conventionally moralist ideas; Holzleithner 2022, 10-11). It is, more importantly, a consequence that no one could reasonably be happy to accept.

---

[58] Deneen (2018), for instance, seems to have a neoliberal homo oeconomicus in mind when he writes about liberalism.
[59] I intend to use Lefort's (1981) concept of totalitarianism.

5. Conclusion

Overall, the aim of this thesis is therefore to take illiberalism seriously as a (legal) philosophical position by offering a general and thorough reconstruction of its core ideas and subjecting them to critical scrutiny. In the course of this work, it should become clear what the appeal of these ideas is, if and where illiberals pick up something right, if and where they go wrong, and what would follow from their ideas if they were pursued radically. In this, I hope to make a substantial contribution to the study of a way of thought that has gained influence recently and presents a serious threat to liberal democracy.

References

Adorno, Theodor W.; Horkheimer, Max (1944): *Dialektik der Aufklärung. Philosophische Fragmente.* Frankfurt/M: Fischer 1988.

Ahmed, Sara (2006): *Queer Phenomenology. Orientations, Objects, Others.* Durham/London: Duke University Press.

Amlinger, Carolin; Nachtwey, Oliver (2022): *Gekränkte Freiheit. Aspekte des libertären Autoritarismus.* Berlin: Suhrkamp.

Anderson, Elizabeth (1999): "What is the Point of Equality?", in: *Ethics* 109 (2), 287-337.

Ashe, Stephen D.; Busher, Joel; Macklin, Graham; Winter, Aaron (eds.) (2020): *Researching the Far Right: Theory, Method and Practice.* Milton: Routledge.

Asladinis, Paris (2016): "Is Populism an Ideology? A Refutation and a New Perspective", in *Political Studies* 64 (1_suppl), 88-104.

Barber, Nick (2010): *The Constitutional State.* Oxford: Oxford University Press.

Bar-On, Tamir (2012): "The French New Right's quest for an alternative modernity", in *Fascism* 1 (1), 18-52.

- (2013): *Rethinking the French New Right. Alternatives to Modernity.* London: Routledge.

Baude, William; Sachs, Stephen (forthcoming): "The Common-Good Manifesto", in: *Harvard Law Review.* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4190445 (last access November 21st 2022).

Beiner, Ronald (2018): *Dangerous Minds. Nietzsche, Heidegger, and the Return of the Far Right.* Philadelphia: University of Pennsylvania Press.

Benoist, Alain de (2004): *Beyond Human Rights. Defending Freedoms.* Transl. by Alexander Jacob. Ed. by John B. Morgan. London: Arktos 2011.

Berman, Sheri (2021): "The Causes of Populism in the West", in: *Annual Review of Political Science* 24, 71-88.

Blokker, Paul (2019): "Populist counter-constitutionalism, conservatism, and legal fundamentalism", in: *European Constitutional Law Review* 15 (3), 519–543.

Brown, Wendy; Gordon, Peter; Pensky, Max (2018): *Authoritarianism. Three Inquiries in Critical Theory.* Chicago: Chicago University Press.

Bucholc, Marta (2022): "Abortion Law and Human Rights in Poland: The Closing of the Jurisprudential Horizon", in: *Hague Journal on the Rule of Law* 14 (1), 73-99.

Butler, Judith (1993): *Bodies that Matter.* NY: Routledge.

Caldwell, Peter C. (2021): "Conservative Critiques of the *Rechtsstaat*", in Jens Meierhenrich, Martin Loughlin (eds.): *The Cambridge Companion to the Rule of Law.* Cambridge: Cambridge University Press, 278-294.

Camus, Albert (1942): *Le Mythe de Sisyphe.* Paris: Gallimard.

Casey, Conor; Vermeule, Adrian (2022): "Myths of Common Good Constitutionalism", in: *Harvard journal of law and public policy* 45 (1), 103-146.

Charvet, John (2018): *Liberalism: The Basics.* London: Routledge.

Craiutu, Aurelian; Kolev, Stefan (2022): "Political thought in Central and Eastern Europe: The open society, its friends, and enemies", in *European Journal of Political Theory* 21 (4), 808-835.

Crenshaw, Kimberlé (1989): "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics", in: *University of Chicago Legal Forum* 1989, 139-167.

Christman, John; Anderson, Joel (eds.) (2005): *Autonomy and the Challenges to Liberalism. New Essays.* Cambridge: Cambridge University Press.

Deneen, Patrick (2018): *Why Liberalism Failed.* New Haven: Yale University Press.

De Sa e Silva, Fabio (2022): "Law and Illiberalism: A Sociolegal Review and Research Road Map", in *Annual Review of Law and Social Science* 18, 193-209.

Dostoyevsky, Fjodor (1879): *Die Brüder Karamasov.* Transl. by Hans Ruoff, Richard Hoffmann. München: dtv/Patmos 1995.

Dowdle, Michael W.; Wilkinson, Michael (2017): *Constitutionalism beyond liberalism.* Cambridge: Cambridge University Press.

Drinóczi, Tímea; Bien-Kacala, Agnieszka (2021): "Illiberal constitutionalism and the European Rule of Law", in: Tímea Drinóczi, Agnieszka Bien-Kacala (eds.): *Rule of Law, Common Values, and Illiberal Constitutionalism. Poland and Hungary within the European Union.* London/NY: Routledge, 3-41.

Dugin, Alexander (2009): *Die vierte politische Theorie.* Transl. by Ben Augustin. London: Arktos 2013 [the English version was unavailable in Vienna at the time of writing].

Dworkin, Ronald (1978): "Liberalism", in: *A Matter of Principle.* Cambridge/London: Harvard University Press 1985.

- (2000): *Sovereign virtue: the theory and practice of equality.* Cambridge: Harvard University Press.

Eatwell, Roger; Goodwin, Matthew (2018): *National Populism. The Revolt Against Liberal Democracy.* London: Pelican Books.

Edley, Nigel (2017): *Men and masculinities: the basics.* London/NY: Routledge.

Evola, Julius (1969): *Revolte gegen die moderne Welt.* Transl. unknown. Vilsbiburg: Arun 1993.

Fawcett, Edmund (2020): *Conservatism. The Fight for a Tradition.* Princeton: Princeton University Press.

Faye, Emmanuel (2005): *Heidegger. L'introduction du nazisme dans la philosophie. Autour des séminaires inédits de 1933-1935.* 2nd ed. Paris: Albin Michel 2007.

Feser, Edward (2019): „Socialism vs. the Family", https://www.youtube.com/watch?v=E7qrKi6hlPo (last access: November 22nd 2022).

- (2022): *All One in Christ. A Catholic Critique of Racism and Critical Race Theory.* San Francisco: Ignatius Press.

Festl, Michael G. (ed.) (2021): *Handbuch Liberalismus.* Stuttgart: J.B. Metzler.

Fischer, Karsten; Huhnholz, Sebastian (eds.) (2019): *Liberalismus: Traditionsbestände und Gegenwartskontroversen.* Baden-Baden: Nomos.

Foran, Michael (forthcoming): "Rights, Common Good, and The Separation of Powers", in *The Modern Law Review,* forthcoming, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4179424 (last access: November 22nd 2022).

Frankenberg, Günter (2020): *Autoritarismus. Verfassungstheoretische Perspektiven.* Berlin: Suhrkamp.

- (2022): "Exploring the Topography of the Authoritarian: Populism, Illiberalism, and Authoritarianism", in *The Journal of Illiberalism Studies* 2 (1), 1-15.

Freeden, Michael (2015): *Liberalism: a very short introduction.* Oxford: Oxford University Press.

Freeden, Michael; Fernández-Sebastián, Javier; Leonhard, Jörg (eds.) (2019): *In Search of European Liberalisms: Concepts, Languages, Ideologies.* NY: Berghahn Books.

Fukuyama, Francis (1992): *The end of history and the last man.* NY: Free Press.

- (2022): *Liberalism and Its Discontents.* London: Profile Books.

Gauchet, Marcel (2000): "Quand les droits de l'homme deviennent une politique", in *La démocratie contre elle-même.* Paris: Gallimard 2002, 326-385.

Glendon, Mary Ann (1991): *Rights Talk. The Impoverishment of Political Discourse.* NY: The Free Press.

Grimm, Dieter (2016): *Constitutionalism: past, present, and future.* Oxford: Oxford University Press.

Gschwandtner, Christina M. (2018): "What is Phenomenology of Religion? (Part II): The Phenomenology of Religious Experience", in *Philosophy Compass* 14, e12567, 1-12.

Halmai, Gábor (2019): "The making of 'illiberal constitutionalism' with or without a new constitution: the case of Hungary and Poland", in: Davida Landau, Hanna Lerner (eds.): *Comparative Constitution Making.* Cheltenham: Edward Elgar, 302-323.

Hamilton, Andy (2019): "Conservatism", in *Stanford Encyclopedia of Philosophy.* First published Aug 1, 2015; substantive revision Oct 29, 2019. https://plato.stanford.edu/entries/conservatism/ (last access: Nov 18, 2022.

Harris, Joshua (2021): "Collective Action and Social Ontology in Thomas Aquinas", in *Journal of Social Ontology* 7 (1), 119-141.

Hart, H.L.A. (1961): *The Concept of Law.* 3rd ed. Ed. by Penelope A. Bulloch, Joseph Raz. Oxford: Oxford University Press 2012.

Haslanger, Sally (2012): *Resisting Reality. Social Construction and Social Critique.* NY: Oxford University Press.

Heidegger, Martin (1927): *Sein und Zeit.* Tübingen: Max Niemeyer 2006.

-   (1961): *Nietzsche. Erster Band.* Ed. by Brigitte Schillbach. Frankfurt/M: Vittorio Klostermann 1996 [= Gesamtausgabe, Bd. 6.1].

Hiebaum, Christian (ed.) (2022): *Handbuch Gemeinwohl.* Wiesbaden: Springer.

Hodrick, Courtney (2022): "From Neoreaction to Alt-Right: A Schmittian Perspective", in *Telos* 198, 90-112.

Holmes Stephen (1993): *The Anatomy of Antiliberalism.* Cambridge/London: Harvard University Press.

-   (2021): "The Antiliberal Idea", in: András Sajó, Renáta Uitz, Stephen Holmes (eds.): Routledge Handbook of Illiberalism. NY/London: Routledge, 3-15.

Holzleithner, Elisabeth (2021): „Shklar versus Schmitt. Kontrastierende Perspektiven eines pessimistischen Menschenbildes in der politischen Philosophie", in: *Crisis and Critique: Philosophical Analysis and Current Events. Proceedings oft he 42nd International Ludwig Wittgenstein Symposium.* Ed. by Anne Siegesleitner, Andreas Oberprantacher, Marie-Luisa Frick, Ulrich Metschl. Berlin/Boston: De Gruyter, 79-99.

-   (2022): "Reactionary Gender Constructions in Illiberal Political Thinking", in *Politics and Governance* 10 (4), 6-15.

Kang, John M. (2012): "Manliness's Paradox", in Frank Rudy Cooper, Ann C. McGinley (eds.): *Masculinities and the Law. A Multidimensional Approach*. NY/London: New York University Press, 136-145.

Kant, Immanuel (1798): *Die Metaphysik der Sitten. Erster Theil. Metaphysische Anfangsgründe der Rechtslehre.* Ed. by Wilhelm Weischedel. Frankfurt/M: Suhrkamp 1968 (=Werkausgabe Band VIII).

Kauth, Jasper Theodor; King, Desmond (2020): "Illiberalism", in *European journal of sociology* 61 (3), 365-405.

Kervégan, Jean-Francois (2011): *Que faire de Carl Schmitt?* Paris: Gallimard.

Kierkegaard, Soren (1849): *Die Krankheit zum Tode.* Ed. by Hermann Diem, Walter Rest. Transl. by Walter Rest, Günther Jungbluth, Rosemarie Lögstrup. München: DTV 2005.

Kittay, Eva Feder (1999): *Love's Labor. Essays on Women, Equality and Dependency.* 2nd ed. Abingdon/NY: Routledge 2020.

Koninck, Charles de (1943): *The Primacy of the Common Good Against the Personalists and the Principle of the New Order.* In: *The Writings of Charles de Koninck. Vol. 2.* Ed. and transl. by Ralph McInerny. Notre Dame: University of Notre Dame Press 2009, 63-164.

Krastev, Ivan; Holmes Stephen (2019): *The Light That Failed. A Reckoning.* London: Penguin Press.

Lacroix, Justine/Pranchère, Jean-Yves (2021): *Les droits de l'homme, rendent-ils idiot?* Paris: Seuil.

Laruelle, Marlène (2008): *Russian Eurasianism: An Ideology of Empire.* Washington: Woodrow Wilson Press.

  -    (2022): "Illiberalism: a conceptual introduction", in: *East European Politics* 38 (2), 303-327.

Lefort, Claude (1981): *L'invention démocratique. Les limites de la domination totalitaire.* Paris: Fayard.

Legutko, Ryszard (2012): *The Demon in Democracy. Totalitarian Temptations in Free Societies.* Transl. by Teresa Adelson. London/NY: Encounter Books 2016.

Levitsky, Steven; Ziblatt, Daniel (2018): *How Democracies Die.* NY: Viking.

Liebscher, Doris (2021): *Rasse und Recht – Recht gegen Rassismus. Genealogie einer ambivalenten Kategorie.* Berlin: Suhrkamp.

Loick, Daniel (2017): *Juridismus. Konturen einer kritischen Theorie des Rechts.* Berlin: Suhrkamp.

Luf, Gerhard (2004): "Freiheit als Rechtsprinzip. Aspekte einer deontologischen Rechtsethik in der Tradition Kants", in: Gerhard Luf: *Freiheit als Rechtsprinzip. Rechtsphilosophische Aufsätze.* Ed. by Elisabeth Holzleithner, Alexander Somek. Wien: Facultas 2008.

MacIntyre, Alasdair (1981): *After Virtue. A Study in Moral Theory.* London/NY/Dublin: Bloomsbury Academic 2014.

Main, Thomas J. (2021): *The rise of illiberalism.* Wahington: Brookings Institution Press.

Mangold, Katharina; Payandeh, Mehrdad (eds.) (2022): *Handbuch Antidiskriminierungsrecht.* Tübingen: Mohr Siebeck.

Maritain, Jacques (1947): *La personne et le bien commun.* Paris: Desclée de Brouwer.

McAdams, James A. (2021): "Making the Case for 'Difference'. From the *Nouvelle droite* to the Identitarians and the new vanguardists", in A. James McAdams, Alejandro Castrillon (eds.): *Contemporary Far-Right Thinkers and the Future of Liberal Democracy.* London: Routledge, 85-102.

Michelman, Frank I. (2022): *Constitutional Essentials. On the Constitutional Theory of Political Liberalism.* Oxford: Oxford University Press.

Molnár, Attila K. (2015): "The problem of good order. Burke's and Tocqueville's tradition of the criticism of modernity", National University of Public Administration/Thomas Molnar Institute for Advanced Studies, Working Paper No 2.

Moreau, Sophia (2020): *Faces of inequality: a theory of wrongful discrimination.* NY: Oxford University Press.

Mudde, Cas (2004): "The Populist Zeitgeist", in: *Government and Opposition* 39 (4), 541-563.

Nietzsche, Friedrich (1886): *Jenseits von Gut und Böse. Vorspiel einer Philosophie der Zukunft.* Ed. by Giorgio Colli, Mazzino Montinari. München: dtv 1999 (=KSA 5).

Nussbaum, Martha (2011): "Perfectionist Liberalism and Political Liberalism", in *Philosophy & public affairs* 39 (1), 3-45.

Orbán, Viktor (2014): *Full text of Viktor Orbán's speech at Băile Tuşnad (Tusnádfürdő) of July 26, 2014* [Speech transcript]. Budapest Beacon. https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/ (last access: 31.10.2022).

Petö, Andrea (2021): "Illiberalism and Gender", in: András Sajó, Renáta Uitz, Stephen Holmes (eds.): Routledge Handbook of Illiberalism. NY/London: Routledge, 313-325.

Rawls, John (1993): *Political Liberalism.* Expanded Ed. NY: Columbia University Press 2005.

Rose, Matthew (2021): *A World After Liberalism. Philosophers of the Radical Right.* New Haven/London: Yale University Press.

Rössler, Beate (2017): *Autonomie. Ein Versuch über das gelungene Leben.* Berlin: Suhrkamp.

Rovira Kaltwasser, Cristóbal; Taggart, Paul; Ochoa Espejo, Paulina; Ostiguy, Pierre (eds.) (2017): *The Oxford Handbook of Populism.* Oxford: Oxford University Press.

Sajó, András; Uitz, Renáta (eds.) (2020): *Critical Essays on Human Rights Criticism.* The Hague: Eleven International Publishing.

Schenkkan, Nate (2018): "Nations in Transit 2018: Confronting Illiberalism", in: Freedom House: *Nations in Transit 2018: Confronting Illiberalism,* 1-5, https://freedomhouse.org/sites/default/files/2020-02/FH_NationsInTransit_Web_PDF_FINAL_2018_03_16.pdf (last access: November 21st, 2022).

Scheppele, Kim Lane (2018): "Autocratic Legalism", in: *University of Chicago Law Review* 85 (2), 545-583.

Scheuerman, William E. (2020): *The end of law. Carl Schmitt in the 21st century.* London: Rowman & Littlefield.

Schmid, Hans Bernhard (2014): "Plural self-awareness", in *Phenomenology and the cognitive sciences* 13 (1), 7-24.

Schmitt, Carl (1922): *Politische Theologie. Vier Kapitel zur Lehre der Souveränität.* 10th ed. Berlin: Duncker & Humblot 2015.

  - (1928): *Verfassungslehre.* 7th ed. Berlin: Duncker & Humblot 1989.

  - (1932): *Der Begriff des Politischen.* Berlin: Duncker & Humblot 1963.

Shklar, Judith (1989): "The Liberalism of Fear", in: *Political Thought and Political Thinkers.* Ed. by Stanley Hoffmann. Chicago/London: University of Chicago Press 1998, 3-20.

Shurts, Susan (2021): "Far-right intellectuals and the illiberal discourses of identity", in: A. James McAdams, Alejandro Castrillon (eds.): *Contemporary Far-Right Thinkers and the Future of Liberal Democracy.* London: Routledge, 27-44.

Skorupski, John (2015): "The conservative critique of liberalism", in: Stephen Wall (ed.): *The Cambridge Companion to Liberalism.* Cambridge: CUP, 401-422.

Sluga, Hans (2014): *Politics and the Search for the Common Good.* Cambridge: Cambridge University Press.

Smilova, Ruzha (2021): "The ideational core of democratic illiberalism", in: András Sajó, Renáta Uitz, Stephen Holmes (eds.): *Routledge Handbook of Illiberalism.* NY: Routledge, 177-202.

Somek, Alexander (2014): *The Cosmopolitan Constitution.* Oxford: Oxford University Press.

Sweeney, Caroline (2013): *Michel Houellebecq and the Literature of Despair.* London: Bloomsbury Academic.

Varga, Mihai; Buzogány, Aron (2022): "The Two Faces of the 'Global Right': Revolutionary Conservatives and National-Conservatives", in: *Critical Sociology* 48 (6), 1089-1107.

Vermeule, Adrian (2017): "Liturgy of liberalism", in *First Things.* https://www.firstthings.com/article/2017/01/ liturgy- of- liberalism (last access: November 22nd 2022).

  - (2022): *Common Good Constitutionalism. Recovering the Classical Legal Tradition.* Cambridge: Polity Press.

Villey, Michel (1983): *Le droit et les droits de l'homme.* Paris: PUF.

Vries, Bouke de (2021): "What Does It Mean to Be 'Illiberal'?", in *Netherlands Journal of Legal Philosophy* 50 (1), 13-21.

Walter, Stefanie (2021): "The Backlash Against Globalization", in: *Annual Review of Political Science* 24, 421-442.

Wloch, Wojciech (2021): "'Where the laws do not govern, there is no constitution' – On the relationship between the Rule of Law and constitutionalism", in: Tímea Drinóczi, Agnieszka Bien-Kacala (eds.): *Rule of Law, Common Values, and Illiberal Constitutionalism. Poland and Hungary within the European Union.* London/NY: Routledge, 77-101.

Zahavi, Dan (2014): *Self and Other. Exploring Subjectivity, Empathy, and Shame.* Oxford: Oxford University Press.

-    (2018): "Collective Intentionality and Plural Pre-Reflective Self-Awareness", in *Journal of Social Philosophy* 49 (1), 61-75.

Zakaria, Fareed (1997): "The Rise of Illiberal Democracy", in *Foreign Affairs* 76 (6), 22-43.