RED SPINEL

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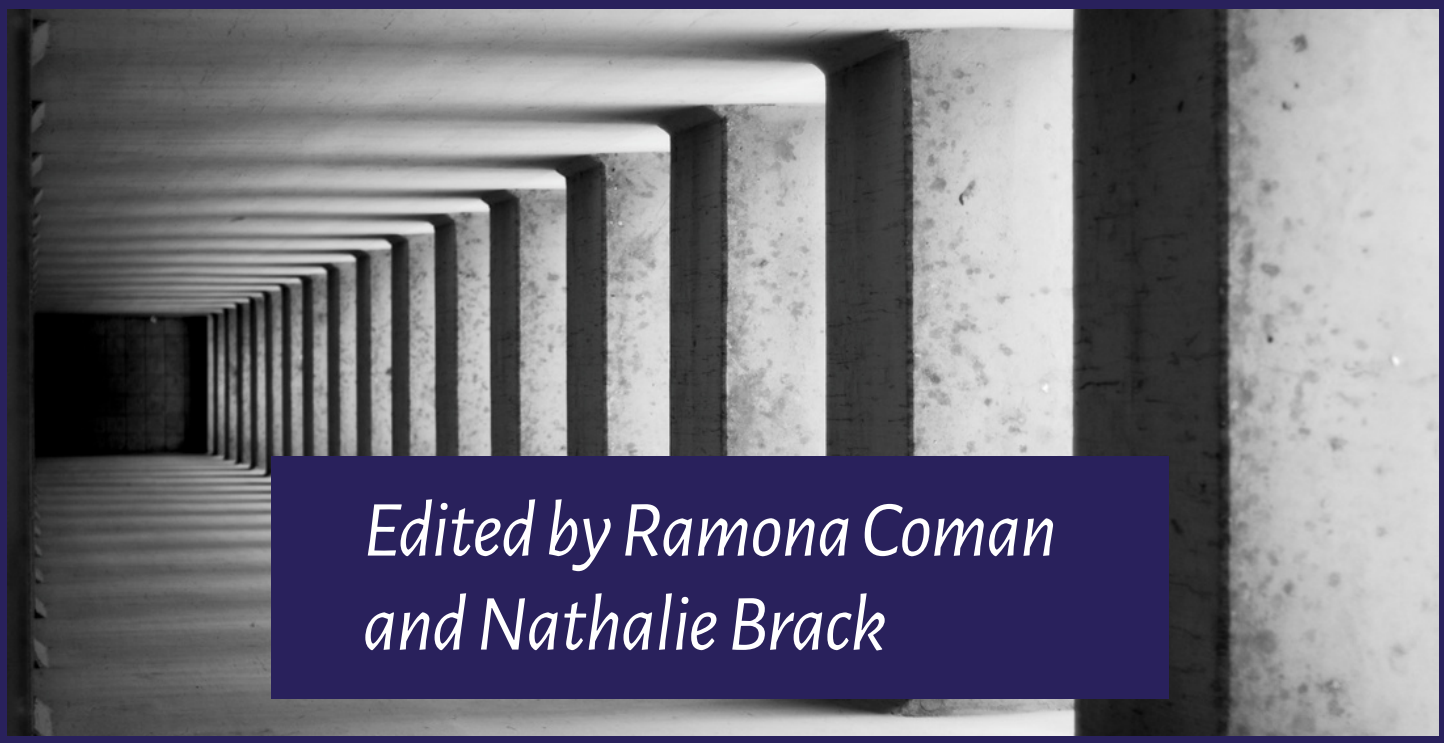
DEBATING DISSENSUS OVER LIBERAL DEMOCRACY

WORKING PAPER SERIES N°I



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About the RED-SPINEL project

The Horizon Europe research project RED-SPINEL seeks to shed light on the growing dissensus surrounding liberal democracy and the rule of law within and beyond the EU. RED-SPINEL examines **how policy instruments and legal mechanisms at the EU level have evolved in response to dissensus surrounding liberal democracy and its constitutive dimensions.** Bringing together academics and researchers from 10 universities (UvA, LUISS, UCPH, UBB, Paris1, UoW, UNIGE, UL, WUT, FGV) and 6 leading non-academic institutions (CEPS, IAI, GMF, PATRIR, FIDH, Clingendael Institute), the project addresses key transversal questions:

1. What is the nature of the current dissensus and how disruptive is it to the EU?
2. How have EU institutional actors and instruments contributed and responded to this increased dissensus?
3. What are the implications of this dissensus for policy instruments at the EU and member-state levels?

These are the project's main questions, which will also be explored empirically in relation to

- Instruments relating to the promotion of democracy and the rule of law within the EU (WP2);
- Instruments relating to the promotion of democracy and the rule of law within the EU neighbourhood (WP3);
- Legal mechanisms and technocratic instruments fostering citizen participation, defending fundamental rights and promoting climate justice (WP4)
- Instruments relating to EU economic governance, and notably the European Semester (WP5).

Against this backdrop, the ambition of Work Package 1 (WP1), **Conceptualising changes to EU policy instruments in the face of mounting dissensus**, is to

(1) **define the normative contours of dissensus;**
(2) **develop a typology of the current forms of dissensus, while also**
(3) **mapping the actors (political, social, legal), and their networks, that are driving the dissensus and**
(4) **identifying the mechanisms that actors of dissensus bring to bear when contesting liberal democratic institutions in Europe.**

RED SPINEL aims to produce **theoretically innovative** understandings of the nature and implications of the present-day dissensus; examine innovative **empirical findings** on how the EU's supranational instruments have fared in an environment shaped by increasing dissensus; ultimately, develop recommendations and toolkits that aim to restore the legitimacy and effectiveness of European multi-level liberal democracy.

*This working paper is a deliverable attached to **WP 1**, which seeks to **collectively discuss the concept of dissensus***

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1. FOREWORD

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This is not the first time that liberal democracy has come under strain. As Sheri Berman reminds us in her comprehensive historical analysis of *Democracy and Dictatorship in Europe*, 'consolidated liberal democracy most often comes at the end of a long and difficult process that involved missteps and even failure along the way' (2019: 377). The critique of liberal democracy is not new, and tensions between liberalism and democracy have shaped many formative critical junctures in the EU's history. However, over the past decade, illiberal competition has become ever more testing, and contestation has heightened and taken on a range of different forms, while the actors of dissensus across the EU have become more institutionally embedded and vocal in their support of anti-liberal ideas. Our collective ambition for the years to come is to shed light on how liberal democracy is being contested and what this means for the EU and its member states. In other words, our intellectual endeavor consists in Respond(ing) to Emerging Dissensus by looking at Supranational Instruments and Norms of European Liberal democracy (RED-SPINEL).

What is dissensus?

The 'what is' question is inherent to any research.

Dissensus is not a new concept. It has found its way directly or indirectly into all works on democracy. Politics is about disagreement: about 'who should get what', about how collective decisions should be made, and about how power and resources should be distributed in society. Because all societies are characterized by opposing interests and rival opinions, politics implies contestation and competition between divergent forces reflecting a diversity of preferences, interests, or needs. If dissensus is the essence of politics, encapsulating the idea of non-agreement toward a prevailing idea, politics, in contrast, is a process through which competing views are reconciled with one another.

Defining a concept is without a doubt a challenging and ambitious exercise.
As Peter Mair (2008: 179) reminds us, 'sometimes we specify our concepts based on observations, which is when we deal with empirical concepts; sometimes we specify them on a more abstract basis, which is when we deal with theoretical concepts.'

Tracing the evolution of dissensus in different fields of research – from political theory to political science and EU studies and law – it appears that the most advanced reflections have been anchored in political theory, while the empirical dimensions of dissensus have remained fluid. Yet is dissensus different from other concepts such as contestation, opposition, resistance/Euroscepticism, and politicization? How and why? What is its relation to more traditional and well-established concepts? What are the goals of the current dissensus over liberal democracy and the rule of law? Who are the actors? What are the strategies? Ultimately, what are the implications for policy and polity in the EU and beyond? This is the set of questions that Work Package 1 of the Horizon Europe RED SPINEL project will investigate, both from a theoretical and empirical point of view, in the years to come.

The collection of papers brought together in this think piece seeks to address some of these questions.

The first contribution, by Ramona Coman and Nathalie Brack, proposes theoretical reflections on the concept of dissensus. After discussing the current scholarly debates related to populism, undemocratic liberalism, and the erosion of democracy, it proposes a new definition of dissensus as an empirical concept.

More precisely, dissensus is defined as the expression of social, political, and legal conflicts(a) driven by political, social, and legal actors, including state and non-state actors, that (b) take place concomitantly in different institutional and non-institutional arenas (parliamentary, constitutional, technocratic and expert, among others, as well as in the public sphere) and (c) seek to maintain liberal democracy, replace liberal democracy or restructure liberal democracy. The paper then discusses the methodological aspects of the study of dissensus.

The second contribution, by Luca Tomi, Seda Gürkan, and Marta Matrakova, also seeks to contribute to the conceptualization of dissensus. More precisely, this contribution offers an analytical framework to study the interaction between domestic and international dissensus, by analyzing their interaction and mutual reinforcement in the EU neighborhood. They define dissensus as irreconcilable views of actors regarding the fundamentals of global governance and international authority structures (including the EU). As actors' views are incompatible, the ways these views are expressed in international relations involve a distinctive set of tools (other than what we observe with norm contestation), such as disinformation campaigns, the use of force, or the de-legitimization of existing structures or institutions. They then propose a typology through which to understand the nature and forms of dissensus both outside of EU borders and, particularly, in the EU neighborhood: a) anti-liberal/normative dissensus; (b) authoritarian-normative dissensus; (c) anti-liberal/disruptive dissensus; and (d) authoritarian-disruptive dissensus.

In the third paper, Wojciech Włoch delves deeper into the literature from political theory and philosophy to examine whether liberal democratic politics' aspiration to achieve a state of consensus or whether the tension between dissensus and consensus is a permanent feature of the political. Is dissensus always a negative phenomenon, or is it possible to distinguish dissensus inherent in the very idea of democracy and dissensus that is a threat to it? Discussing authors such as Mouffe and Rancière, Włoch shows that dissensus can be seen as an activity directed against the political system (extra-systemic dissensus) and as an essential element of the democratic system (intra-systemic dissensus). Furthermore, he also examines the tensions between consensus and dissensus at the heart of democracy, and discusses the role of conflict and liberalism, and finally analyses the dissensus 'in' and 'against' liberal democracy.

The fourth contribution focuses on the relationship between the parliaments of the EU as a test bench on consensus and dissensus. Cristina Fasone maps the developing relationships between the parliaments in the EU across various policy areas and draws on the work of Mouffe to show that these relationships can be seen as a case of 'conflictual cooperation'. Indeed, moving from the common premises that see the European Parliament (EP) and National Parliaments (NPs) as allies in the promotion of fundamental values and of European citizens' interests for the sake of EU democratic legitimacy, there is then ample space for disagreement between the EP and NPs and among NPs on how to concretely direct and organize interparliamentary cooperation in the absence of an ultimate ordering principle settling their relationships. Cristina Fasone further argues that the nature of the competence, the timeframe, and the salience of a certain issue in the public debate are all essential to understanding the likelihood of the emergence of dissensus.

In the fifth paper, Christina Eckes concentrates on the role of courts in climate action. More precisely, drawing on the definition of dissensus by Coman and Brack, she looks at civil disobedience as a case of constructive dissensus and examines the case of the prosecution of climate protestor David Nixon. Indeed, she argues that this case illustrates how judges criminalize protestors' actions and deprive democracy of their constructive contribution to democratic will formation.

Focusing on the Polish case, in the sixth contribution Maciej Serowaniec then analyses the process of constitutional change that has occurred since 2015. This process involves the amendment of the existing Constitution using ordinary laws and the arbitrary change in the practice of its application, referred to as the 'good change'.

He argues that the constitutionalism inherent in a democratic rule of law – assuming the limitation of power by law – has been replaced in Poland by constitutional decisionism, which reflects the principle of the primacy of politics over law. This evolution was made possible by parliamentary and presidential elections allowing for the subordination of the legislative and executive powers to one political orientation and its leaders. As a result, the majority and its government could take control of the Constitutional Court, as well as of the legislature, the National Council of the Judiciary, the Supreme Court, the judiciary, and other public institutions. This process was accompanied by a fundamental limitation of the opposition's role in legislation, violating the rules of rational law-making. Thus, step by step, the Polish Constitution has become everything that those in power consider to be the Constitution.

In the seventh paper, Sergiu Mișcoiu and Sergiu Gherghina briefly discuss the stances of political parties regarding liberal democracy, distinguishing between fringe and mainstream parties. They argue that the strong embeddedness of political parties in democracy does not mean that there is an ideological consensus among them about liberal democracy. They then discuss four main areas of hard dissensus, regarding 1) the legitimacy of decision-makers; 2) the homogeneity and uniformity of preferences in society; 3) the promotion of polarization, and 4) the tyranny of the majority.

Concentrating on think tanks in the EU, in the eighth contribution Camille van Hees and Louise van Schaik argue that think tanks can play a crucial role in helping to shape the public debate on EU policy-making, especially in times of crisis. Mapping the landscape of EU think tanks, they show that in a time when European integration is contested in political and public debates, most EU think tanks discuss rather than oppose EU policy developments. Examining their role, they also demonstrate that depending on the type and topic of focus, think tanks contribute differently to the EU debate.

Finally, the last contribution, by Dana Dolghin, examines how current illiberal/anti-liberal positions in the cultural space deal with dissensus, and the role of cultural policy in illiberal discourses. Indeed, she argues that 'culture' becomes an essential alternative to politics in the agendas of the new conservative alternatives to liberal democracy because it can meet the demands of a unifying and leveling field where the consumption of indirect messages is critical. Through an overview of the role of cultural actors in new regimes that contest liberal democracy, she emphasizes their political centrality and highlights that dimensions of dissensus are integral to conveying political messages and even tend to normalize and mainstream messages of illiberal or anti-liberal narratives.

2. UNDERSTANDING DISSENSUS IN THE AGE OF CRISES: THEORETICAL REFLEXIONS

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Work in progress. Comments welcomed.[1]

1. Introduction

The beginning of the 21st century could have been expected to be an era of democratic triumph following a long period of international instability, including the Cold War and internal pressures coming from the crisis of representation and voter apathy. The democratization waves of the 1980s and 1990s seemed to give some credit to that expectation, with many states becoming democratic for the first time (Diamond 2021). The collapse of communism in Central and Eastern Europe and the global transformations that followed in the 1990s have given rise to or created the illusion of a global consensus over liberal democracy and the rule of law. Liberal democracy or constitutional democracy (Plattner 2021: 45) has been promoted by a variety of regional and international actors, with the support of governments and political, social, and legal actors active at the national and supranational levels. As noted by Wolff (2023), the struggle over the meaning of democracy has diminished, resulting in a convergence around an uncontested liberal democracy. Today, this so-called **consensus** over liberal democracy looks more like a myth (Coman 2022). The two first decades of the 21st century have been characterized by democratic stagnation and setbacks, with old and new democracies being confronted with a range of internal and external challenges (Carothers and Donahue 2019; Eckes 2019). In various contexts, political actors seek to separate democracy from liberalism (Plattner 2021). Not only are rights contested (Lacroix and Pranchère 2019) but so is the rule of law, this old normative ideal that has shaped political regimes and supranational polities to avoid arbitrary power and to guarantee individual rights (Tamanaha 2004; 2009). Whether there was a consensus over liberal democracy in the 1990s, a value taken for granted, or merely an illusion (see Barthels et al. 2023), it seems to have been shattered. The foundational rules of the polity, its core principles, and values are now a source of conflict, and the EU is no exception.

While the crisis of democracy has been studied in many ways, this paper seeks to contribute by focusing on the nature of dissensus over liberal democracy and its actors. **Dissensus** has been used sporadically in different fields of research, including political science and EU studies, but as a metaphor rather than a well-established concept. The etymological meaning of the word is quite explicit. As a concept, it is directly or indirectly related to what defines democracy, as a precondition or the quintessence of democracy.

[1] We would like to thank all participants at the GEM-DIAMOND annual conference that took place at the *Institut d'études européennes* of the Université libre de Bruxelles on the 13th of March, 2023, for their constructive comments, as well as participants of the Horizon Europe RED-SPINEL workshop that took place in Brussels on the 12th of May, 2023. In particular (and in no specific order), our thanks go to Amandine Crespy (ULB), Antoine Vauchez (Paris 1 Sorbonne), Sergiu Miscoiu (UBB Cluj), Cristina Fasone (LUISS), Cristina Ekes (Amsterdam University), Thomas Christiansen (LUISS), Seda Gurkan (Leiden University and ULB), Sarah De Lange (Amsterdam University), Luca Tomini (ULB) and Edouard Hargrove (ULB). Special thanks also go to Leonardo Puleo (ULB), who provided very insightful comments on different versions of this draft, including this one.

But dissensus has rarely been studied per se, and this is the goal of this paper: to put dissensus at the center of academic discussions to understand current pressing debates about the nature of liberal democracy and its core pillars.

Although dissensus over liberal democracy is not a specifically European phenomenon, for several reasons **Europe represents an interesting field** to show how liberal democracy has become a source of tension and conflict. On the one hand, from the 1950s onwards nation-states in Western Europe have emerged as liberal democracies; on the other hand, the process of European integration has also been anchored in liberal democracy, both from an institutional and an ideational point of view. Over time, claims that democracy needs to 'democratize' (Offe 2003) through direct, participatory, deliberative, or even radical forms of political participation have flourished. This was particularly the case in the 1980s, amid the crisis of party democracy that marked Western Europe, not only in nation-states but also at the EU level in the 1990s. The democratic credentials of the EU have frequently been challenged, as EU institutions have tended to promote a rather unbalanced view of liberal democracy, with more emphasis on the liberal (and economic) component than on the democratic (and social) dimension.

The current expression of **dissensus over liberal democracy** takes place in a specific context, and the causes and consequences of this phenomenon overlap and feed one another. On the one hand, the rise of populism in recent decades has put liberal democracy into question (Mudde and Kaltwasser 2017; Mudde 2021). Political actors who claim that democracy can be also 'illiberal' or 'anti-liberal' are gaining ground and contesting its 'liberal' dimension, traditionally understood as a set of limits on the power of 'who rules'. In Europe, and in particular in Central and Eastern Europe, political parties win elections in reaction to this model of democracy, although the phenomenon is not specific to this part of the continent (Blokker 2022:305).

On the other hand, from the 2010s onwards a decade of crises in the EU also added more stress on democracy (Fasone and Fromage 2017; Christiansen et al. 2021). The Eurozone and economic crisis were mostly managed through austerity measures presented as the only way out (under the slogan 'There is no alternative'), resulting in a depoliticization of the debates, a lack of responsiveness from mainstream parties, and a fuelling of the rise of radical actors. The 'messy compromises and contentious outcomes' that define the very meaning of liberal democracy are facing criticism (Urbinati 2014), while its effectiveness and fairness are subject to mounting skepticism (Katznelson 2015). The global COVID-19 health crisis further contributed to this depoliticization, with many governments bypassing parliaments to take mitigation measures and elected politicians 'hiding' behind experts and non-elected institutions (Schmidt 2020; Bickerton 2023;). To solve the problems of the various crises, the EU has impacted the linkage between political authority and the people in the member states, relying on **depoliticization, technocratic decision-making,** and the **domination of executive power**. At the same time, in some member states, we have been witnessing a process of **de-democratization,** as well as a renewed success of radical-right, authoritarian, and populist parties, which, when in government, have further undermined liberal democracy. **The EU has become not only an arena of dissensus over liberal democracy but also a target and an actor, seen as a source of authoritarian liberalism itself while seeking to safeguard this model of democracy.**

We argue that the current stage of European integration has reached a point at which liberal democracy is not only **politicized** but is also a polarising issue; **opposition** and **contestation** have flourished, and they target core principles of liberal democracy such as the rule of law and rights, giving rise to conflicts over the nature of the polity. On the one hand, radical parties rise against the core pillars of liberal democracy, fueling discontent and polarization. On the other hand,

there is a mainstreaming of the critique of liberal democracy, with a more diverse group (including governing actors) **claiming that democracy needs to be reinvented.** As Weinman and Voorman (2021) have underscored, there is a crisis of conviction at the centre. Not only do claims against liberal democracy come from different ideological corners and political parties, but they are also supported by a broad range of social actors. If the contestation of liberal democracy or the expression of forms of opposition in different arenas has always existed, what is new is that this phenomenon is no longer confined to the margins of the political spectrum: it takes place at its core. **Moreover, it is not only that the proliferation of actors putting liberal democracy at the centre of their claims requires further investigation but also that the institutions that are supposed to channel social, political and legal conflicts about core principles of liberal democracy into the political game seem to be failing, being also divided by conflicts.**

The remainder of this paper is organised as follows. Section 1 situates dissensus as a phenomenon in the current academic debates on populism, the rise of undemocratic liberalism, the erosion of democratic institutions, norms and values, as well as the paths towards autocratisation leading to the dismantlement of core pillars of democracy in the EU. In Section 2, we discuss the concept of dissensus as a normative concept, drawing on seminal definitions coined in political theory. In Section 3, we define dissensus as an empirical concept by showing how it relates to other key concepts in political science such as opposition and contestation. Section 4 discusses methodological aspects pertaining to how to study dissensus over liberal democracy and the actors seeking to replace/reinvent liberal democracy or maintain the status quo, and the implications for the EU in terms of polity and policies.

2. The puzzle: populism, automatisation and undemocratic liberalism as turning points for European democracies

We live in a world in which the hopes of the 1990s that democracy and rights would triumph everywhere are crumbling, in some contexts like a sandcastle, in others in more incremental and elusive ways, and the EU is no exception. Not only are its foundations – institutions, norms, and values – eroding, but the belief in the efficacy and responsiveness of liberal democracy has also declined (Berman 2019). Different factors are put forward to explain the **global crisis of democracy**. Some are recent, such as the Great Recession of 2008 and the Eurozone crisis or the rise of populism and undemocratic liberalism (Mudde 2021), amplified by the global health crisis. Others are older and go back to the domestic transformations of nation-states following WWII, but also the emergence of polities beyond the state, including the EU (see Bickerton 2012). The transformation of democracy in Western Europe and the crisis of representative democracy cannot be dissociated from European integration, which has reshaped institutions, democratic norms, and practices (Schmidt 2006; Bickerton 2012).

Since the early 2010s, liberal democracy has been openly contested from below. The most outspoken and virulent criticism of liberal democracy has come from 'exclusionary populists', i.e. authoritarian and nativist populists or anti-establishment parties, as they blatantly attack – with different arguments – the core pilla-

It is not only the proliferation of actors putting liberal democracy at the centre of their claims that requires further investigation but also that the institutions that are supposed to channel social, political and legal conflicts over core principles of liberal democracy into the political game seem to be failing, being also divided by conflicts.

rs of liberal democracy. As noted by Pappas (2016: 33-35), the main threat to political liberalism comes from populists, and they thrive where institutions are weak and majoritarian tendencies are strong. Marginal in Europe in the 1980s, populist parties have flourished in recent years in several member states of the EU (Mudde 2021). There has been an extensive academic debate as to whether populism is a threat or a corrective to liberal democracy (Kaltwasser 2012; Galston 2018; Bugaric 2022; Vittori 2022). Populists accept the basic principles of democracy (i.e. popular sovereignty and majority rule) (Mudde 2014: 14), but they embrace 'a vision of democracy which is not tied to liberalism or to constitutionalism' (Plattner 2010: 88). Indeed, populism challenges the essence of contemporary liberal democracy as it targets pluralism and mediated forms of political representation, as well as checks and balances (Pappas 2016; Rummens 2017; Vittori 2022; Urbinati 2013). But populism can also be seen as a corrective for democracy: while it constitutes a threat to public contestation, it can foster inclusiveness and emphasize issues neglected by mainstream actors (Rovira Kaltwasser 2012). Scholars usually distinguish authoritarian from libertarian versions of populism (Norris and Inglehart 2019). Authoritarian populism leads to democratic backsliding; democratic populism can foster democratization (Bugaric 2022: 28), and in particular soft populism when it 'remains in the boundaries of liberalism' (Corso 2022: 76).

Although not all populists share the same agenda, recent examples show that once in power, populist parties have targeted the transformation of norms and institutions of liberal democracy through *abusive constitutionalism* (Krygier 2022: 6), *autocratic legalism* (Scheppele 2018), *constitutional coups* (Sadurski 2019) or *abuse of the constitution* (Blokker 2014), paving the way towards **autocratisation**. In some cases, their explicit aim is to separate democracy from liberalism in the name of a certain conception of democracy and of the people that excludes the intermediation of liberal democratic institutions (Schmidt 2023). As an illustration, since the 2010s in Poland and Hungary elected officials have undone checks and balances through a wide range of interventions in the judiciary, limiting the powers of constitutional courts as well as the independence of judges, 'twisting and turning of the rule of law' (Krygier 2022: 6). The *'bad'* elite has been replaced by the *'good'* elite (Bill 2022), the one meant to represent the interests of the *true demos*. Pluralism and multiculturalism have also been under attack, as have rights and freedoms, all in the name of the people and against supranationalisation. Elections seem to remain 'competitive' but, as Krygier (2022: 7) put it, in a context in which freedoms are eroded. In a nutshell, the pillars of liberal democracy, characterised by electoral regimes, political and civil rights, accountability and the structure of power (Merkel 2004), have been dismantled one by one, in some contexts in an incremental way and elsewhere in more abruptly.

The crisis of liberal democracy goes beyond the rise of right-wing populist movements.

But the crisis of liberal democracy, we argue, goes beyond the rise of right-wing populist movements (Milstein 2021: 27). In recent years, mainstream political parties have deplored the rise of **'undemocratic liberalism'** (White 2022) or **'authoritarian liberalism'** (Wilkinson 2018) in the European Union, fuelled by 'emergency politics' or 'governing by the principles of necessity' (White 2022). In the decade of crises in the EU, decisions have been taken away from representative bodies or by legislation put in the hands of experts or constitutional judges (Czarnota 2022), leading many actors to attempt to 'take back control'.

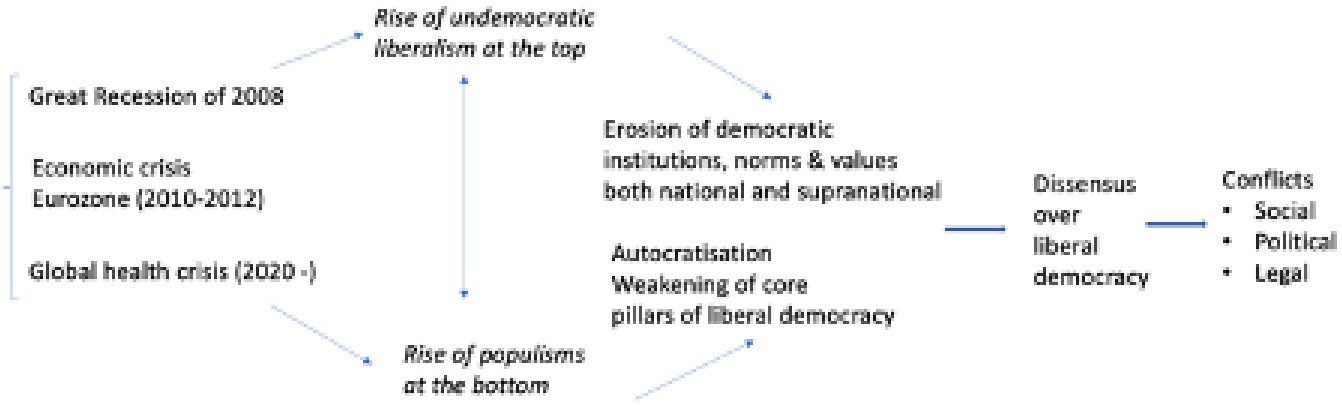
The Eurozone crisis and the attempts of the EU to sign new trade agreements are good illustrations of the contestation of decisions taken for the people but without the people. While some contend that undemocratic liberalism was already at the basis of European integration after WWII (Wilkinson 2021), it has become more visible in the post-Maastricht era, and more specifically in times of crises, when decisions have been taken behind closed doors and have put non-majoritarian institutions at the centre (Schäfer and Zurn 2021), as well as non-elected (yet central) actors such as lawyers and experts. Indeed, although concerns about the EU's democratic deficit predate the successive recent crises and have been partially imputed into its technocratic and free-market bias (Follesdal and Hix 2006; Caramani 2017), the EU's response to the crises has had a significant impact on the decision-making processes of the EU, its nature and its policies. The executive branch has emerged as the main actor in these crises, with increasing oversight and powers extended to technocratic institutions such as the ECB, the Commission and the ECJ, while parliamentary debates and parliamentary authority have been bypassed (Schmidt 2023). This way of managing crises, with major implications for the people but conducted without the people (Schmidt 2020), has cast a shadow on democracy and has fuelled waves of discontent, in particular in response to austerity measures decided upon behind closed doors. Both EU and national leaders have obscured the political nature of measures taken to deal with the various crises, be it austerity, recovery plans or responses to the pandemic, with more or less success (Borriello 2017; Donà 2022; Bourgeaux 2023). These measures were mostly justified on the basis of the need to return to the 'market conditions' of competitive economic practices and were presented as the only alternative. They have also given rise to questions about 'who governs' (Schmidt 2021) in the end and the relationship between politics and the economy, or the coexistence of capitalism and democracy (Wolff 2023). As noted by Dahrendorf three decades ago, globalisation and crises create perverse choices for liberal democracy as governments have to square the circle of ensuring conomic competitiveness, social cohesion and political freedom (known as the Darhendorf Quandary).

For political scientists, the question of whether it is the financial and economic crisis that has given rise to populism or whether it is undemocratic liberalism that explains the great success of populist parties is still open to debate. Scholars such as Cas Mudde argue that populism is a consequence of undemocratic liberalism (Mudde 2021), that economic liberalism has failed, but that political liberalism is to be held responsible (Weinman and Voorman 2021: 11). Others contend that populism is a threat to democracy (Galston 2017). The polarising effect of global markets and economic insecurity might lead to authoritarian temptations, as governments try to ensure social cohesion and economic competitiveness at the expense of some aspects of liberal democracy (Dahrendorf 1996; Anheier and Filip 2021). **This paper does not discuss the sequence of events or causal links. Yet, all these big crises together constitute the broader context in which dissensus over liberal democracy has flourished.**

We argue that these two broad and interconnected phenomena – the **rise of populism from below** and **undemocratic liberalism from above** – have provided fertile ground for the erosion of democratic institutions, norms and values in some cases and the dismantlement of core pillars of liberal democracy and paths towards autocratisation in others, as we summarise in Figure 1. All together have given rise to the dissensus over liberal democracy that this paper seeks to conceptualise.

Liberal democracy has always been contested. Yet three further elements characterise the phenomenon we intend to study. First, what is 'new' compared with debates about liberal democracy in the 1990s and 2000s is the mainstreaming of the critique of liberal democracy.

Figure 1: Situating dissensus over liberal democracy in current academic debates.
*The aim is not to explain the causal relationships between phenomena but, rather, their potential interactions.



- First, the stances and claims against liberal democracy are no longer located at the extremes of the political spectrum but have become mainstream and have expanded beyond the fringes of society. Not only have populists from different ideological corners launched assaults on liberal democracy, but there is also a crisis of conviction at the centre (Weinman and Voorman 2021), leading a wide range of actors – less studied in the literature – to contend that liberal democracy has become an 'empty shell' and needs to be reinvented (Berman 2019; Vormann and Weinman 2019; Mudde 2021).

- Second, forms of contestation and opposition have flourished, targeting the core principles of the political game, which have long been taken for granted.

- Third, they give rise to **dissensus** over the nature of the polity (liberal democracy) – that is, different opinions, perspectives, beliefs – which leads to **conflicts** in different areas (social, political and legal), and bandwagon from one arena to another as traditional channels of conflict resolution are not only contested but also weakened.

Liberal democracy has always been contested.

- Amid conflicts, different conceptions of democracy and its core pillars are disputed within the EU (at both the domestic and supranational levels), as a wide range of national political, social and legal actors and the EU compete in safeguarding and upholding democratic institutions, understood in various ways.

The most advanced discussion of the concept of dissensus in general and dissensus concerning liberal democracy finds its origins in political theory. In EU studies, the concept has been used rather metaphorically about the 'end of the permissive consensus' (Hooghe and Marks 2009), yet not about liberal democracy but, rather, EU integration. As discussed in Section 2, scholars of political theory have conceptualized dissensus as a normative/theoretical concept (about a certain understanding of democracy). Drawing on this, our aim in Section 3 is to capture the meaning of dissensus by looking at real-world phenomena (making use of empirics).

3. Defining dissensus: insights from political theory

Dissensus as the essence of or a pre-condition for democracy

Dissensus and democracy are intimately related. **Dissensus is the quintessence of democracy.** Or, as Rancière (2010: 37) argues, 'the essence of politics is dis-

-sensus'. Democracy is an old idea and ideal whose meaning has been coined over several thousands of years (Dahl 1989: 2), from the Athenian democracy (Parekh 1992: 160) to the French Revolution, which Berman (2019: 284) regards as the starting point of liberal democracy's consolidation process as a struggle in Europe. Yet, it is only in the second half of the 20th century that liberal democracy in its modern understanding 'gained almost universal force' (Dahl 1989: 213) as a unique mix of individual rights and popular rule, which has long been a dominant type of government in North America and Western Europe (Mounk 2018: 14).

Yet **democracy is a contested concept** (Dahl 1989: 2; Collier et al. 2006). The term has been defined in many ways, drawing on different conceptions rooted in conservative, social-democratic, liberal, neoliberal, and radical ideas (Mouffe 2016). Their confrontation is the essence of democracy (Mouffe 2016: 100). Beyond its ideological roots, in recent years scholars have identified **seven varieties of democracy** (Coppedge et al. 2022), each centered on a distinctive value: electoral, liberal, majoritarian, consensual, participatory, deliberative and egalitarian, and each of which supports the others. In this respect, Mouffe (2016: 14) reminds us that a modern democracy derives its specificity from the articulation of two different traditions: on the one hand, the *liberal tradition* based on the rule of law, respect for human rights, and individual liberties, and on the other hand, the *democratic tradition* based on equality and popular sovereignty. If historically speaking, democracy is about 'who rules', which requires the people to be sovereign, the adjective 'liberal' encapsulates less the idea of how rulers are chosen and the limits to their power (Plattner 2021: 44). As Lacroix and Pranchère (2019) point out, there is no democracy without rights. In the same vein, the rule of law outside of democracy is simply the most effective instrument of authoritarianism or worse, as underscored by Weiler (2021).

Democracy also requires a diversity of opinions (Dahl 2006: 78) and therefore rests upon both contestation and opposition, which is unavoidable as modern societies are characterised by a remarkable diversity of opinions about how social life ought to be organised (Latham-Gambi 2020). Opposition, as Dahl highlighted, is the essence of democracy. The expression of contestation and opposition has been institutionalised in different ways in national and supranational political regimes (as discussed in the next section).

Dissensus as a normative concept

Dissensus has been at the centre of philosophical reflections since the late 1990s and has been discussed in political theory by the Belgian political theorist Chantal Mouffe (1996; 2016), the French philosopher Jacques Rancière (2010) and the American political theorist John A. Dryzek (2000), among others.

The theoretical debates around the notion of dissensus flourished in the context of the 1990s, when consensus became 'the gold standard of political justification' and 'an ideal to secure political legitimacy' (Dryzek 2000; Dryzek and Niemeyer 2006). Scholars such as Manin (1987) and Elster (1987) have, in different ways, focused on the virtues of **consensus** in democracy, understood as 'deliberation' (Manin 1987), an 'aggregative model of democracy' (Elster 1998) or an 'outcome' of the democratic process (Cohen 1989: 122, quoted in Dryzek and Niemeyer 2006). Most of the seminal books by the advocates of consensus were published in the late 1990s, including *A Theory of Justice* by John Rawls (1993) and *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* by Jurgen Habermas (1996), who put forward a model of deliberative democracy to reach consensus.

In response, in the 2000s several pluralist scholars developed a more critical approach expressing arguments in **opposition to consensus**, and more specifically in response to Rawls' concept of 'overlapping consensus'. This critical approach contends that the deliberative understanding of democracy proposed by John Rawls and Jürgen Habermas to overcome conflicts in democracy (conflict between rights and liberties on the one

hand and equality and popular sovereignty on the other) creates the illusion of pluralism, as power relations are erased (Mouffe 2016). Against this backdrop, the books by Dryzek (2000), Rancière (2010), and Mouffe (2016) take a critical stance vis-à-vis consensus, arguing in favor of a **'more robust pluralism'** (Drysek and Niemeyer 2006: 634) **instead of a harmonious agreement where all conflicts and differences are solved.** Rancière (2010: 42) argues that the 'essence of consensus lies in the annulment of dissensus'. In other words, '**consensus is the end of politics'** or return to a normal state of things', that is, 'the non-existence of politics'. For Chantal Mouffe (1996: 248), the consensus is also problematic as the real threat to democracy is 'to negate the ineradicable character of antagonism and aim at a universal rational consensus'.

All these authors challenge the idea of consensus as a core principle for democratic politics, underscoring the positive role of dissensus in democratic politics. Conflicts are inherent, and Mouffe distinguishes between antagonist conflicts (conflicts between enemies) and agonist conflicts (conflicts between adversaries). The essence of democratic politics, in Mouffe's view, is to transform antagonism into agonism (2016: 100). As she explains, agonistic conflicts do not imply eliminating passion or conflict but, rather, mobilizing such passions towards democracy (Mouffe 2016: 101). Yet Mouffe (1999: 756) concedes that 'pluralist democracy requires a certain amount of consensus'. In a context in which liberal democracy is at a crossroads, she underlines that the liberal democratic institutions should not be taken for granted as there is always a need to strengthen and defend them, but to do so 'it is necessary to understand their specific dynamics and to recognize the tension created by their different operating logics' (2016: 15). Dissensus over liberal democracy is explained by Mouffe (2016) as the prevailing tendency today to view democracy in such a way that it is almost exclusively identified with the rule of law and the defense of human rights, without regard for popular sovereignty. For Drysek and Niemeyer (2006: 636), 'liberal democracy looks neutral but supports the powerful', while 'the experience and perspectives of marginalized and oppressed groups are likely to be very different from dominant groups'.

Dissensus as an empirical concept: actors, the nature of the conflict, and its expression

Beyond the positive role attributed to dissensus in political theory, we lack a proper definition for empirical research, and this is precisely the aim of this section. Yet **defining such a concept** is not only ambitious but also a complex exercise and often takes the form of a snowballing process. **Defining a concept is a gradual process and an interactive one between theory and empirics**. As Max Weber has said, 'progress of cultural sciences occurs through conflicts over terms and definitions' (Gerring, 1999: 359), as concepts mean different things to different people.

In our attempt to define dissensus, we follow the methodological guidance provided by Sartori, Mair (2008), and Collier et al. (2012). The seminal work of Sartori is often referred to when it comes to concept formation. Sartori (1970: 1052) introduced the 'ladder of abstraction' to refer to the number of properties that define a concept. If the concept is defined by a limited number of properties, it can include a large number of cases.

We define dissensus as the expression of social, political and legal conflicts (a) driven by political, social and legal actors, including state and non-state actors, that (b) take place concomitantly in different institutional and non-institutional arenas (parliamentary, constitutional, technocratic and expert, among others, as well as in the public sphere) and (c) seek to maintain liberal democracy, replace liberal democracy or restructure liberal democracy.

In contrast, 'the more concrete the concept, the narrower the range of cases' (Mair 2008: 178). Drawing on these insights, we proceed in three steps to define dissensus. First, we identify the main components of the concept (Goertz and Mahoney 2012). In a second step, we propose a typology of dissensus (Collier et al. 2012) as a way to explain the concept's meaning by mapping its dimensions. Finally, we resort to 'negative identification' (Sartori 1970), namely determining what the concept of dissensus is not by discussing other concepts that share a common core as words but are different when used as concepts, and we compare these to dissensus.

To begin with, as Mair (2008: 190) put it, every concept must have a core or minimal definition shared by all users. With our tentative definition, we seek to go beyond the implicit meaning of dissensus as the quintessence of democracy. In the current context of a global crisis of democracy in which its core pillars – the rule of law and rights – are under strain, we define dissensus as the *expression of social, political, and legal conflicts (a) driven by political, social and legal actors, including state and non-state actors, that (b) take place concomitantly in different institutional and non-institutional arenas (parliamentary, constitutional, technocratic and expert, among others, as well as in the public sphere) and (c) seek to maintain liberal democracy, replace liberal democracy or restructure liberal democracy*. The expressions of these conflicts oppose actors who are no longer situated at the margins of the political regime but, rather, at its core.

In this tentative definition, dissensus has three components: the actors (a), the nature of the conflict (b), and the goals (c).

a) The actors of dissensus come from different ideological corners.

Political parties, especially populist ones, have mobilized around the notion of liberal democracy and its core pillars, attacking legal constitutionalism and political liberalism alike. This has led to tensions across the political spectrum, in public debates as well as in parliament, and to a crisis of conviction amongst some mainstream parties. **However, the critique of liberal democracy goes beyond populist parties, as discussed in the previous section.** Other actors have politicized liberal democracy to reform or 'democratize' it by adding other means of representation, or to defend complementary models. It has also flourished within **civil society**, where these conflicts have found fertile ground. While the 1990s gave rise to a wide range of civil society organizations either promoting democracy or playing a role in EU decision-making, little attention has been paid to 'non-democratic civil society', alternative actors, conservative or illiberal actors (see Bluhm and Varga 2019), which have flourished in recent years with the support of populist governments. In some contexts (Poland and Hungary), new organizations have emerged seeking to 'reinforce the party's political narratives through the support of the broader right-wing cultural narratives that underpin them' (Bill 2022: 120). An alternative civil society is emerging (Dabrowska 2019) whose aim, according to Polish Minister Glisnki (quoted in Bill 2022), is 'pluralization'. Pluralization is understood in this context as an attempt to counterbalance the 'imported' dimensions of civil society with a focus on gender and minority rights, and more concretely the 'promotion of organizations with right-wing profiles and amplification of the "thickened" cultural narratives', moving towards 'national and Christian values', as promoted by the main radical populist parties (Bill 2022: 122). The Church and other religious organizations play a major role in this process (Bluhm and Varga 2019: 7; Gherghina and Miscoiu 2022). The role of intellectuals is also key, as they are also actively engaged in think tanks, foundations, and even academic institutions (Behr 2021; Buzogany and Varga 2021; Bohle et al. 2023).

But here again, contestation does not come only from new conservative and populist radical-right parties and actors. In recent years, a wide range of protests have erupted in different EU member states,

directed against neoliberal policies (for example, protests related to the TTIP or CETA; see Crespy and Rone 2019 and Oleart 2021), not to mention the disobedience movements in reaction to emergency politics or 'There is no alternative' (see Borriello 2017). Ultimately, the critique of liberal democracy has also found a form of expression in the **legal sphere, among legal actors, courts, judges, lawyers, academic professionals, and experts.** Courts are an embodiment of liberal democracy (Sadurski 2022: 521). These have been under attack in recent years (Bugaric and Ginsburg 2017; Pech and Scheppele 2017; Scheppele 2018), with consequences for their independence (François and Vauchez 2020; Vauchez 2021). Yet at the same time, populists use courts and the law to bolster their rule.

Beyond the goals of the actors, a further crucial element relates to their actions and strategies, and more specifically, their attempts at or actions of politicizing liberal democracy by raising awareness and mobilizing on this issue. Indeed, dissensus presupposes the politicization of liberal democracy, understood as transporting an issue or an institution into the sphere of politics and making previously unpolitical matters political (De Wilde and Zürn 2012: 139; Zürn 2019: 977-978). **For dissensus to occur, liberal democracy needs to be discussed frequently and be contested by a wide range of political actors in public debates, leading to the formation of diverging preferences and public mobilization** (on politicization, see Zürn et al. 2012 and De Wilde et al. 2016). Politicization, as an actor's strategy, is therefore seen here as a key condition for dissensus.

b) The nature of the conflict: norms, values, institutions, or policies of liberal democracy

Conflicts over liberal democracy can take place at different levels and in different arenas. They can take place at the European level, through opposing member states and supranational institutions. They can also take place at the national level, with opposing key political actors or key institutions.

Dissensus over liberal democracy, its norms and values, institutions and policies has given rise to conflicts between rights and liberties on the one hand and egality and popular sovereignty on the other, between political and economic liberalism and between political and legal constitutionalism.

At the same time, dissensus can also occur in different arenas. It can be restricted to parliament, for instance, or involve the streets and civil society, or pitch the courts against the government or the parliament.

The decade of crises has given rise to various conflicts between political, social, and legal actors – both between the EU and domestic actors and between domestic actors within nation-states. Some of these conflicts are purely institutional and inherent to any democratic regime. Some have targeted the nature of liberal democracy: its norms and values, related policies and institutions.

Norms and values: An ample literature has shown that in recent years, not only the rule of law but also rights have been contested, giving rise to conflicts in the political, social, and legal spheres both at the national and the EU level. This goes beyond a pure contestation of the rule of law, for instance. In some cases, it has been followed by institutional transformation limiting, for example, the power of judges and the role of constitutional courts, with the potential for conflict.

Institutions of liberal democracy: If values are undermined, there is also an effect on the institutions designed to safeguard them. As an example, undemocratic liberalism leads to the empowerment of non-elected, non-majoritarian institutions; populists, in contrast, are against constitutionalism and courts. This tension generates conflicts.

Policies: The contestation of the norms and values of liberal democracy also has implications for policies (Coman and Volintiru 2022). The Eurozone crisis has given rise to conflicts opposing political and economic liberalism. Political and economic liberalism are in tension, amplified by undemocratic liberalism aimed at designing neoliberal solutions. The crisis of liberalism is not solely related to challenges coming from domestic right-wing populists or external authoritarian or illiberal regimes. It is also political liberalism's crisis (Weinman and Vormann 2021: 21-22). That is, liberal democracy in its current form is contradicting its principles. Weinman and Vormann (2021) argue that markets alone have failed to bring social peace and stability, and neoliberalism has led to this contradiction. In their words, 'economic liberalism has failed but political liberalism is being held responsible' (Weinman and Vormann 2021: 21).

Dissensus over liberal democracy, its norms, values, institutions, and policies have given rise to conflicts between rights and liberties on the one hand and legality and popular sovereignty on the other, between political and economic liberalism and between political and legal constitutionalism (as ways to solve the conflicts). In this context, the relationship between political and legal constitutionalism has become tense. Political constitutionalism is perceived as democratic; legal constitutionalism is perceived as an elitist and constraining form of political constitutionalism (Czarnota 2022). Which should prevail? Some political and legal actors have argued that political constitutionalism (understood as parliamentary rule and weak judicial review) should prevail, whereas others, in contrast, have deplored political attacks on legal constitutionalism. In other words, a key dimension here is which and to what extent mechanisms of conflict resolution are challenged or even dismantled within a polity. Within the EU, this question of who has the last word has remained unsolved as an expression of constitutional pluralism, understood as the co-existence of multiple autonomous and overarching constitutional sites, each claiming ultimate authority yet respecting and accommodating others (Scholtes 2022: 401).

C. The goals of the conflict

In this context in which the institutions, norms, and values of liberal democracy, as well as the balance between political and economic liberalism, conflict, some actors seek to maintain liberal democracy, to replace liberal democracy, or to restructure liberal democracy, a dimension that requires empirical investigation.

4. A descriptive typology

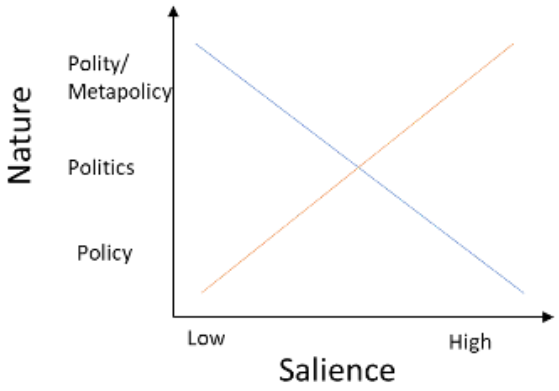
Typologies help in 'forming and refining concepts, drawing out underlying dimensions, creating categories for classification and measurement, and sorting cases' (Collier et al. 2012: 217). Typologies are created through the combinations of two or more dimensions, where the categories of a classification acquire two- or multi-dimensional characteristics (Mair 2008: 183). They can be descriptive or explanatory (Collier, Laporte, and Seawright 2010: 153): in descriptive typologies, the cells of the rows and columns correspond to specific dimensions of the concept; explanatory typologies can be translated into hypothesized outcomes. In our attempt to elaborate a descriptive typology of dissensus, we bring together two of the dimensions discussed in the previous section: the nature of the conflict (and its focus on the institutions of liberal democracy and its norms, values, or policies) and its intensity, as expressed by the actors of dissensus.

If dissensus is the essence of democracy, the blue line in Figure 2 indicates dissensus as we knew it in the 'golden age' of political parties: dissensus is concentrated at the level of policies, with very little dissensus at the polity level (rules of the democratic game). Of course, there were exceptions, for instance in countries divided on identity/nationalistic issues. Radical parties were challenging (liberal) democracy, but the salience of these issues was low. Mechanisms of conflict resolution within the framework of lib-

-eral democracy and the rule of law were not contested.

The orange line in Figure 2 illustrates contemporary dissensus, where there is a growing lack of differentiation at the policy level but increasing differentiation on polity and meta-polity issues such as values, the rule of law and liberal democracy.

Figure 2: Two tentative types of dissensus.[2]



Furthermore, as previously mentioned, conflict around liberal democracy has an inherent conductivity, effectively transferring dissent between the social, legal and political arenas. It is therefore crucial to take into account the nature of the conflict (and its intensity), as well as the links and interactions between arenas and between levels.

5. Negative identification: opposition and contestation versus dissensus

Why dissensus? This question is unavoidable considering that opposition and contestation are concepts coined to express different forms of dissent inherent to any democratic regime, against either policy or polity or both (to use Dahl's expression). These forms of dissent refer to an act as well as a strategy. They have developed in the literature as two separate concepts, despite their common core: **opposition**, associated with political parties and parliamentary opposition, and **contesta-tion,** used to refer to social actors located at different levels. This dividing line has become more porous in recent years. It is no longer the nature of the actors that determines the boundaries of the concept. Like contestation, opposition can also be examined in extra-parliamentary settings. Despite their centrality in different sub-fields of political science, these concepts still lack proper definition, as Helms (2021) and Wiener (2014) have emphasized – the former on the concept of opposition and the latter about constatation. We first briefly explain the two concepts before discussing the insights as well as limitations of these concepts in studying the clashes between different conceptions of democracy that the current crises have exposed (as summarised in Section 1).

Opposition

The right to criticize and publicly contest measures and policies adopted by the government is one of the fundamental pillars of democratic regimes (Helms 2008; 2021), one that has been underscored by Dahl (1966; 1971) as the first axis constituting polyarchies. Yet, since Dahl, the concept of opposition has rarely been rigorously defined, and its conceptual boundaries are still elusive and contested (Helms 2021: 570). In a minimalist fashion, **opposition can be defined as an action: disagreeing with and challenging the government, or in the words of Dahl (1966: 18), there is opposition when B is opposed to the conduct of government A.** Many typologies have been provided, drawing on the distinction introduced by Kirchheimer (1957) and then developed by Dahl by distinguishing between opposition to policy and opposition to polity. On the one hand, we find a 'normal', 'classical' (Kircheimer 1957), or 'non-structural' opposition, defined by Schapiro (1967: 183) as 'an organized political group, or groups, and to replace it by one of its choosing'. On the other hand, we find more 'deviant forms' (Weinblum and Brack 2011).

[2] We are extremely grateful to Leonardo Puleo (ULB) for suggesting illustrating the typology as presented in Figure 2.

Kirchheimer (1957: 130-136) talks about 'opposition of principle when a party which is not in government, is not only against government's policies but the political system as a whole', while Sartori (1966: 151) refers to anti-system opposition when opposition challenges the legitimacy of the political system and there is no consent at the community or regime level. As far as the means are concerned, scholars usually distinguish between loyal, semi-loyal and disloyal opposition to denote whether the actors act constructively, obstructively/irresponsibly or with violence (Sartori 1966; Linz 1974; Gel'man 2005).

Despite the centrality of this concept in the understanding of democracy, the literature on opposition in national democratic polities has remained underdeveloped, with a burgeoning scholarship focusing on manifestations of opposition in authoritarian and hybrid regimes (see Helms 2021, 2023). The literature on opposition in democracy tends to focus on political opposition, understood as a certain group of actors, namely the parliamentary opposition. Indeed, a distinction is made between political opposition as institutionalised forms of contestation and opposition, or non-institutionalised forms of disagreement with power holders (Ionescu 1967; Barnard 1972). Therefore, **the classical literature on democratic regimes has tended to concentrate on electoral and parliamentary opposition and, more particularly, on the minority parties in parliament as institutionalised actors. When it comes to political opposition to (aspects of) liberal democracy, the focus has been on anti-system and disloyal parties, which are usually on the fringes of the political spectrum.** Following recent calls 'to extend the concept from party politics within and beyond the parliamentary arena to manifestations of protest and dissent' (Helms 2021: 571), a burgeoning literature has developed to include social actors and movements, especially those contesting the nature of political regimes and, by the same token, liberal democracy and its core pillars). This literature has highlighted the role of antidemocratic actors, from political parties to churches and social movements, in providing support for authoritarian politics or even autocratization tendencies (Graff et al. 2019; McKenna 2020; Seman and Garcia Bossio 2021). There are similarities between anti-system/principled opposition and dissensus in the sense that both are about commitment (or a lack thereof) to democratic values and norms. But the concept of (political) opposition falls short in the study of the phenomenon we are interested in as it focuses on oppositional actors only.

In contrast, opposition to policies has been studied about EU integration, Europeanisation, and globalization. Yet, even in this case, despite the 'growing opposition to Europe', as Peter Mair (2007: 3) has underlined exactly 'what this opposition involves, and from where it comes' has remained unclear. In the EU polity, there is little opposition in the sense of the institutional government-opposition dynamic that is well established in some political regimes (Mair 2007: 4). The EU lacks the traditional 'majority/opposition axis', and classical opposition, directed towards policies, tends to turn into opposition to principles, directed towards the polity, i.e. in Euroscepticism (Mair 2007: 5-6). The political regime of the EU has been designed to accommodate the participation of a variety of actors in a fragmented and non-hierarchical system (Magnette 2003; Brack and Costa 2018). However, increased participation has not led to policies expressing the preferences of Europeans, giving rise not only to Euroscepticism but also to what Vivien Schmidt defined as 'policies without politics' or 'politics without policies' and various forms of dissent. When it comes to the EU, the literature tends to resort to another concept, namely Euroscepticism. Although there are multiple definitions, **Euroscepticism** can be considered as opposition specifically oriented towards European integration and/or the EU, or as noted by Taggart and Szczerbiak (2001: 10), a qualified or principled opposition to European integration, to the policies being promoted at the EU level or to the EU polity (an anti-system opposition).

Contestation

Whereas opposition has been traditionally used to study parliamentary action (although more recently it has also been extended to non-parliamentary actors), **contestation** was coined in the mid-1960s concerning social movements and since then has often also been used in international relations (Pulzer, in Kolinsky 1987: 13; Börzel and Zürn 2021: 282). Like opposition, contestation is seen as a key element of democratic politics. Overall, it refers to actions, strategies, or processes through which individuals, actors, or states challenge the status quo (be it the existing power structure, institutions, or norms) and promote an alternative. When applied to social movements and mobilization, the literature seeks to understand the different forms of contestation, ranging from protest to civic disobedience and violence, to examine the actors' strategies and repertoire of actions, as well as their networks and the relationship between institutional structure, the nature of the contestation and the effectiveness of the form of contestation.

According to Wiener (2014: 1), contestation in IR implies 'disapproval of norms' like the opposition is oriented towards governmental action and Euroscepticism towards the EU. Contestation, like opposition, is an 'interactive practice' that involves at least two participating agents' (Wiener 2014: 1). Yet, whereas opposition can be expressed towards policies or polities, contestation, is 'generally directed towards norms (of whatever type)', which to some extent echoes the essence of opposition to polity (norms) and policy (practices). Like the opposition, contestation 'depends on the respective environment where contestation takes place' (Wiener, 2014: 1). Both are shaped by the institutional settings in which they manifest (see Dahl 1966) or, put differently, by the 'political opportunity structures'. They manifest in response to power structures, and the focus of the scholarship is therefore on understanding the endogenous and exogenous causes of the rise and varieties of contestation, with a focus on institutions and, more recently, actors' preferences and institutional power (Börzel and Zürn 2023).

Opposition and contestation are strategies used by actors to target either the institutions, norms and values or the policies of liberal democracy.

The question is then 'Can we shed light on the clash between different conceptions of democracy that the current crises with these concepts?'
Not entirely, we argue. Dissensus over liberal democracy is the phenomenon to be studied, while opposition and contestation are strategies used by actors to target either the institutions, norms, and values or the policies of liberal democracy. More particularly, we contend that studying the conflicts emerging from the clash between different conceptions of democracy through the lenses of opposition or contestation is certainly feasible but would lead to researching mostly the actors in national or international politics themselves, without taking into account interactions or parties that are no longer at the periphery of the political system but are in government contesting liberal democracy.

While the concepts of opposition and contestation (as strategies) can be used to understand different forms of dissent against democracy or democratic norms, **we argue that the concept of dissensus allows us to consider the phenomenon independently of actors' positions in the political game or on the political spectrum.** The concept of dissensus is not only broader but also includes at its core an interaction between stances and actors. The notion of dissensus allows us to study all of these actors, and not only fringe actors opposing governmental action, its policies, or the nature of the polity. While contestation and opposition are unidirectional, dissensus seeks to capture the plurality of claims and their interactions in different arenas. It also allows taking into account the linkages between arenas and interactions between actors. Indeed, dissensus is precisely about a clash between several camps in

potentially different arenas, which goes beyond classical forms of opposition. What we see happening in many countries is governments questioning liberal democracies (not oppositional actors) and thereby threatening the future of the polity as we know it. Furthermore, dissensus allows bridging the gap between opposition to policies and opposition to the polity: as recently noted by scholars, some actors do not always explicitly claim their opposition to liberal democracy, but once in power they may nevertheless erode it, either through reforms of the polity or gradual changes in policies, leading to fundamental changes for liberal democracy.[3]

6. How to study dissensus? Possible research designs

Dissensus can be studied both as an **independent and a dependent variable**, or to follow Peter Mair, as *something that explains* (i.e. changes in terms of policies and institutions) or *something to be explained* (i.e. its contours and forms of expression).

Scholars interested in shedding light on dissensus *as a dependent variable* might focus on its three dimensions as defined in Section 2, that is, **the actors of dissensus, the nature of the conflict, and the goals. This can also lead to research on the interactions between actors and their impact on institutions and policies at the national and supranational levels**. **Yet dissensus does not take place in a vacuum. It is shaped by the institutional context in which it occurs**. Indeed, the institutional context matters to understand contemporary dissensus over liberal democracy. First, the context determines what form and degree of dissensus is possible. The institutional design (for instance, the electoral system and the structure of the state, as well as the nature of the political regime), can have an impact on the degree of conflict: regimes with proportional representation and multiparty coalitions are less prone to extreme polarization (Horne, Adams and Gidron 2022; Van der Meer and Rijpkema 2022) and can be expected to be less conducive to extreme conflict. Second, The institutional context also conditions the arenas, the actors' tools, and expressions of the conflict over liberal democracy. The constitutional and legal structure of the polity will indeed determine at which level(s) conflicts can take place – especially in a multi-layered system like the EU – but also the potential tools (political, legal) actors can use to politicize the conflict and the channels through which dissensus can be expressed. Diamond (2021), among others, noted recently that political norms and institutions are crucial to understanding the room for manoeuver of actors. If there are strong agents of horizontal accountability such as courts or regulatory bodies, executives are more closely monitored and constrained, leaving less room for actors to erode democracy (Diamond 2021).

The literature on self-defense or militant democracy (Lowenstein 1937) indeed shows that there is variation in how and how far democracies can protect themselves against internal challengers of (liberal) democracy. Some states have entrenched the protection of liberal democracy in their constitutional order or basic law, while others have tools to restrict extremist parties, and still, others have alternative legal barriers to protect their core institutions and norms (Issacharoff 2007; Capoccia 2008, 2013; Thiel 2009; Müller 2015).

Scholars examining dissensus as an independent variable might investigate how it shapes policies and polities/political regimes at the national and supranational levels. In the latter case, less attention is **devoted to the nature of dissensus and more to its outcomes, as dissensus has managed to influence decision-making both in the EU and in its member states** (Zaun and Ripoll Servent 2021; Coman 2022; Schmidt 2023).

[3] Can Liberal Democracy Defend Itself from Internal Challengers?, Liberty and Responsibility Podcast, March 2023, https://1062fm.co.il/en/episode/towards-militant-democracy-2-0-can-liberal-democracy/?utm_content=bufferff95eandutm_medium=socialandutm_source=twitter.comandutm_campaign=buffer

For scholars of EU integration, the focus is on the impact of said dissensus on the EU's capacity to act in its internal and external policies – on the instruments used by EU institutional actors at the supranational or domestic level.

In methodological terms, dissensus can be operationalized to be studied through quantitative or qualitative means. From a **quantitative** perspective, dissensus can be measured (how much dissensus?) through one of its key consequences: polarization. Indeed, polarization, understood as 'an increasingly harsh division between opposing political camps and diminishing shared political grounds' (Carothers and Donahue 2019), is an indicator of dissensus as it is likely that a political context characterized by dissensus is also polarised. Scholars can then examine the degree of polarisation to study specific cases of dissensus. Are we talking about non-extreme polarisation, with each camp becoming more ideologically homogeneous while the distance between groups increases, dividing communities into antagonistic camps while the moderates lose ground (Levendusky 2009; Kleiner 2020)? Or are we referring to extreme polarisation, i.e. when cross-cutting differences align along one dimension, when political identity becomes social identity, and when political actors are locked in polarising politics, questioning or even denying each other's legitimacy and perpetuating the process (McCoy et al. 2018; Somer and McCoy 2019)? Research can also analyze – qualitatively or quantitatively – the nature of polarisation caused by dissensus. Does dissensus lead to partisan polarisation whereby it is restricted to political actors, to attitude polarisation spreading among public opinion or to affective polarisation, whereby party supporters tend to view others as a disliked out-group (Iyengar et al. 2012; Reiljan 2020)?

Dissensus can also be disentangled to show which component(s) of liberal democracy in a given arena – political, social, legal – gives rise to conflicts.

In this regard, the categorization of democracies established by the V-Dem project or V-Party can be useful. V-Dem distinguishes between *electoral democracy* (inclusive vote, clean elections, clean officials, freedom of association, freedom of expression, alternative information), *liberal democracy* (civil liberties, judicial independence, legislative independence), *majoritarian democracy* (power concentration, efficient decision-making); *consensual democracy* (supermajority decision-making), *participatory democracy* (civil society participation), *deliberative democracy* (public debate) and *egalitarian democracy* (equal protection of rights and freedoms, equal distribution of resources, equal access to power). A scholar interested in shedding light on the nature of dissensus could operationalize their empirical research by either looking at the specific dimensions of liberal democracy or extending the scope to other dimensions to see which one(s) give rise to dissensus, understood as social, political and legal conflicts.

From a more **qualitative** perspective, dissensus can be examined with an eye on its substance (nature), as not all actors agree on what constitutes a problem for democracy and on the appropriate solution to fix it, that is, whether to *maintain liberal democracy, replace liberal democracy or restructure liberal democracy*. This can be achieved with a focus on the 'discursive construction of discontent' (Schmidt 2023, forthcoming), looking at the message, the messenger, the medium, and the milieu (Schmidt 2022). As summarised in Table 2 below, such an analysis involves distinguishing between cognitive arguments (the nature of the problem), normative arguments (how to solve them), and pragmatic arguments (technical solutions) and capturing the nature of the conflict through a 360° perspective, looking not only at the 'usual suspects' such as political leaders, elected officials, party members and policymakers but also at actors of dissensus in the public sphere as well as social and legal fields. In terms of methods, the study of dissensus is compatible with a variety of approaches, including content analysis (CA) and discourse

analysis (DA), to unpack the nature and degree of dissensus; network analysis (NA) to depict relations between the coalitions of actors underpinning the various strands of dissensus and analyze the social structures that emerge from the recurrence of these relations, and process tracing (PT) to reconstruct dynamics of change and explain evolving power relations over time. These three methods allow investigating the three dimensions of the concept of dissensus: the nature of the conflict with CA and DA, the expression of the conflict with PT and the actors with NA.

Table 1: How to operationalise the study of dissensus? Types of democracy and their dimensions as established by the V-Dem project

	Types	**Dimensions**	
Varieties of democracy	Electoral	inclusive vote, clean elections, clean officials, freedom of association, freedom of expression, alternative information	**Which dimension of democracy gives rise to dissensus?** Methodological options **1) quantitative approach – salience of dissensus** **2) qualitative approach – nature of dissensus**
	Liberal	civil liberties, judicial independence, legislative independence	
	Majoritarian	power concentration, efficient decision-making	
	Consensual	supermajority decision-making	
	Participatory	civil society participation	
	Deliberative	public debate	
	Egalitarian	equal protection of rights and freedoms, equal distribution of resources, equal access to power	

Table 2: Synoptic table bridging the components of the concept, research goals and methods.

	Components of the concept	**Goals of the research**	**Methods**
Dissensus	The actors of dissensus	Unpack the role of the actors – *Who?*	Process tracing (PT), network analysis (NA)
	The nature of the conflict: norms, values, institutions or policies of liberal democracy	Determine the nature of dissensus (i.e. cognitive, normative or pragmatic arguments) – *How?*	Content analysis (CA, discourse analysis (DA)
	The goals of dissensus	The aims to be reached - *What?*	Content analysis (CA, discourse analysis (DA)

7. Conclusions and new avenues for research

Democracy in general, and liberal democracy in particular, are at a turning point on a global level. The European Union is no exception and represents fertile ground on which to study the contestation of liberal democracy. Indeed, European integration has reached a point where liberal democracy is not only politicized but has also become a polarising issue. The decade of crises has brought the combination of a rise of populist actors – especially on the right – who have been vocal challengers of core pillars of liberal democracy, on the one hand, and the rise of undemocratic liberalism on the other, leading to autocratisation tendencies and the erosion of democratic institutions, norms, and values.

More specifically, we have argued that something has changed and democracy is facing a new challenge, namely dissensus. Indeed, compared to the debates about liberal democracy in the 1990s and 2000s, we are witnessing a mainstreaming of the critique of liberal democracy, which is no longer restricted to the fringes of society. A more diverse group including governing actors is nowadays claiming that democracy needs to be reinvented. Liberal democracy has always been contested by anti-system parties, but what is distinctive now is that the stances and claims against liberal democracy are no longer located at the extremes of the political spectrum and have become mainstream. Furthermore, populist and illiberal parties in many countries are large enough to play a governing role or to put pressure on governing parties. And the forms of contestation that have flourished target the core principles of the political game, which have long been taken for granted. In addition, we are witnessing not only an assault on liberal democracy coming from populists from different ideological corners, but also a crisis of conviction at the center, with a wide range of actors – less studied in the literature – who contend that liberal democracy has become an 'empty shell' and needs to be reinvented. Finally, two final elements are crucial. The current conflict around liberal democracy possesses an inherent conductivity, effectively transferring discord between the social, legal, and political arenas and making it more complex and challenging. This is particularly the case since the institutions that are supposed to channel social, political, and legal conflicts also seem to be failing to uphold liberal democracy nowadays. As a result, different conceptions of democracy and its core pillars are disputed within the EU, at both the domestic and supranational levels, with implications for a wide range of national and European policies.

The aim of this paper was not only to take stock of this evolution but also to conceptualize this new phenomenon that we call dissensus. To do so, we proceeded in several steps. First, we situated dissensus in the current academic debates and showed that we are witnessing a new phenomenon that requires further investigation. Second, we proposed a bottom-up definition of dissensus, i.e. as the expression of social, political, and legal conflicts that take place concomitantly in different institutional and non-institutional arenas (parliamentary, constitutional, technocratic, and expert, as well as in the public sphere), driven by political, social and legal actors (including state and non-state actors) seeking to maintain liberal democracy, replace liberal democracy or restructure liberal democracy. We also discussed the three main components of the concepts, namely the actors, the nature of the conflict, and its expression. Third, we defined the boundaries of the concept of dissensus vis-à-vis traditional forms of dissent such as contestation and opposition. Finally, some methodological concerns about how to study dissensus over liberal democracy were highlighted and discussed.

But this paper is also a call to launch a new research agenda aiming to enrich the already well-established literature explaining why democracy is in decline or even dying.

Amid this preoccupying social and political context, our objective is to go one step further and determine how the confrontation of different visions of democracy and alternative models can lead to its refounding, its maintenance as it is, or its replacement. Although this phenomenon is being observed on a global scale, special attention is devoted here to the EU and its member states, to its internal and external policies, and to its instruments that aim to support or promote democracy.

In particular, one avenue for future research is to understand the nature of dissensus in the EU and its member states and unpack the ambiguous role of different actors as either champions or challengers of liberal democratic norms, values, and practices. We also need to understand how the EU is responding to the growing dissensus over liberal democracy and how its institutional actors have reacted. We also need research assessing the impact of increased dissensus on the policy instruments of the EU and the implications for the EU's capacity to act internally and externally. Studies should examine how policy instruments and legal mechanisms at the EU level have evolved in response to dissensus surrounding liberal democracy and its constitutive dimensions. This would provide a comprehensive and original understanding of dissensus at both the national and supranational levels, as well as of the interactions between actors and levels.[4]

[4] See the Gem-Diamond research programme: https://gem-diamond.eu/about/overview.
See also the Horizon Europe RED SPINEL research programme: https://redspinel.iee-ulb.eu/overview/

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3. UNDERSTANDING DISSENSUS DRIVEN BY COMPETING POWER CENTRES AROUND THE EU

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1. Introduction

The EU has been facing several challenges over the last decade. Internally, the EU has been dealing with authoritarian populism, illiberal tendencies in some Central-Eastern European member states, growing Euroscepticism among European societies, the consequences of the 2008 financial crisis, and the ongoing challenges related to its legitimacy. Externally, the EU has been struggling with competing power centers such as China and Russia, COVID-19, instability in the broader neighborhood, and accompanying challenges emanating from these adjacent regions, including the refugee challenge. More recently, Russia's invasion of Ukraine in 2022 and the gross violation of several norms of international law during the war have further complicated and constrained the new geopolitical environment in which the EU's foreign policy is being conducted.

In this new geopolitical environment, while the world continues to be multipolar with rising alternative and autocratic governance models in many countries, the multilateral system for mitigating or addressing crises has eroded. Russia's military aggression in Ukraine and other autocratic countries' overt and unilateral actions in international relations in breach of international law, and their emergence as political and economic competitors and systemic rivals to the EU, have brought the multilateral system to an end. Against this backdrop, the main purpose of this paper is to understand the nature of the phenomenon of the rise of competing powers around the EU that are **contesting the EU and the liberal world order but also to offer an analytical framework for studying the interaction of *internal* (domestic) and *external* (in foreign policy) changes in these norm-breakers.**

To capture the main changes in these alternative models of governance and their approach to international relations, we adopt the concept of **dissensus**, which is discussed along three dimensions in this paper. In the first section, we define the concept of dissensus at the domestic level by focusing on both **anti-liberal dissensus** and **anti-democratic dissensus**. The second section defines dissensus at the international level, with a focus on the similarities and differences between dissensus and its sister concept 'contestation'. The third section addresses the interaction between internal and external dissensus. The conclusion summarises our main argument and sets the scene for a future research agenda on the conceptualization of dissensus from an international relations perspective.

2. Dissensus at the domestic level

The first step in defining dissensus is to be crystal clear about **the *scope* of this definition**. What empirical object does the definition of dissensus apply to? Answering the *what* question regarding scope is a first and necessary step to answer empirical questions such as *who* are the actors expressing dissensus? *How* is dissensus expressed? And *why* are actors expressing this dissensus?

In comparative politics, the concept of dissensus (or its synonyms) has been extensively used and discussed. Dissensus (and the possibility to dissent) is widely seen as a constitutive dimension defining the nature of a political regime. In a pluralistic understanding of democracy (Dahl 1971 [5]), on which most contemporary empirical studies of political regimes are based, dissensus fuels normal democratic life between opposing social groups, political parties, interests, and values. In an autocratic regime, by definition (Linz and Stepan 1996; see also Geddes et al. 2014) the possibility of dissensus is limited or even absent. This has clear effects on other dimensions such as accountability (holding rulers to account requires the possibility of and capacity to dissent) or contestation (being able to contest elections is linked to the expression of dissensus).

However, if dissensus is a core and necessary feature of a democratic regime, why is it now at the center of the academic debate?

The problem lies in the boundaries of the concept. How far can dissensus go? Are there 'reserved domains' in a democracy where dissensus is not legitimate or accepted because it might disrupt the very foundation of democracy? As we have seen, **in autocracies dissensus is severely limited and controlled.** But what about democracy? A possible answer comes from the intersection of the work of various authors who emphasize the limitations that dissensus might have in a democracy: from Popper's view of an open society's right to be 'intolerant' of the intolerant (Popper 1945), to Loewenstein's (1937) concept of 'militant democracy', which can even act, in extreme circumstances, through illiberal means to save democracy, to Linz's definition of democratic consolidation as a situation where the most significant national, social, economic, political or institutional actors, as well as the strong majority of public opinion, holds the belief that democratic procedures and institutions are the most appropriate way to govern collective life and do not spend significant resources attempting to create a non-democratic regime. Basically, **in democratic regimes limitations to dissensus do exist, and these limitations usually refer to the *very foundations of democratic institutions*.** Therefore, dissensus about what? At this point, it might be useful to refer to the recent conceptualization by Coman and Brack (2023) and to define dissensus as 'the expression of social, political and legal conflicts' over the preservation, restructuring or replacement of liberal democracy, driven by a multitude of actors in different institutional and non-institutional arenas. Drawing on their definition, we go further and delve into the distinction between the 'preservation', 'restructuring', and 'replacement' of liberal democracy to better specify three possible types of dissensus we encounter in the empirical reality at the domestic level, in terms of the discourses and behaviors of actors.

First, we refer to the 'preservation' of liberal democracy and define ***democratic dissensus*** as all forms of dissensus existing in democratic politics.

Dissensus as 'the expression of social, political and legal conflicts' over the preservation, restructuring or replacement of liberal democracy, driven by a multitude of actors in different institutional and non-institutional arenas.

[5] The possibility of dissensus is a fundamental component of a pluralist theory of democracy à la Robert Dahl. Still, it can be found in more recent conceptualisations of democracy coming from a different theoretical perspectives. See, for example, Ranciere (2010) and Mouffe (1999) and the discussion of this body of research in the contribution by Coman and Brack in this working paper.

This type of dissensus mainly takes the form of confrontation and competition among actors about public policies (e.g. social democratic vs neoliberal policies). This dissensus never takes the form of a disruptive clash over the 'rule of the (democratic) game', and it never contests the core values and norms of liberal democracy.

Second, we refer to the 'restructuring' of liberal democracy and define ***democratic anti-liberal dissensus*** as all types of dissensus within democracy that take the form of a contestation of the liberal dimension of the democratic regimes, i.e. the 'horizontal' dimension of the rule of law (judicial and legislative constraints on the executive) and the 'vertical' dimension of the rule of law (quality before the law and individual liberties). Still, this dissensus never takes the form of contestation of the 'core' democratic dimensions, basically participation and competition (cf. Dahl). Moreover, this dissensus usually combines the *pars destruens* (contestation of liberal democracy) with a *pars 'construens* (definition of an alternative form of democracy, be it illiberal, delegative, participatory, majoritarian, etc.).

Finally, we refer to the 'replacement' of liberal democracy and define ***anti-democratic dissensus*** as all types of dissensus that take the form of contestation of the 'core' democratic dimensions – basically participation and competition (cf. Dahl) – and contest democracy as the only legitimate form of political regime. This usually involves the rejection of democracy and the legitimation of another form of the political regime ('people's democracy', 'sovereign democracy', outright authoritarianism, military dictatorship, traditional monarchies, etc.).

How does dissensus take shape outside EU borders, and particularly in the EU neighborhood? And what is the consequence of dissensus for the EU? In the last 15 years, two major developments outside the EU that should be considered will be discussed in the following section, which focuses on the external dimension:

- the rise of *anti-democratic dissensus* at the international level (which in the international arena might be defined as disruptive dissensus; see below), with the growing strength and influence of 'authoritarian gravity centers' (Kneuer and Demmelhuber 2020) such as Russia and China that engage in forms of autocratic promotion and counter-multilateralism, acting as actual 'competitors' in the field of norms and values and proposing alternative, non-democratic forms of organization of political power. This 'autocratic influence' is exercised outside the boundaries of the EU (e.g. China and Russia's penetration in the Balkans) as well as inside the EU (e.g. external support of far-right parties, and not only in Europe). Moreover, the external influence of autocratic power on the EU adds to domestic, internal contestation within the EU against liberal democratic values, norms, and institutions (e.g. Hungary).

- the rise of *anti-liberal dissensus* in key states in the EU neighborhood (which in the international arena might be defined as normative dissensus; see below), such as Serbia or Turkey. For domestic reasons, in several countries processes of democratization, fueled by anti-liberal ideas, have taken place in recent decades, creating a new context for the EU's actions towards these countries: from a strategy oriented towards progressive democratization of the region to a strategy oriented towards the defense of democratic institutions and actors against increasingly autocratic states. This new situation, where the external influence of autocratic power adds to domestic processes of autocratisation, creates an autocratic environment where the EU finds it difficult to exercise its norm-based influence.

3. Dissensus at the international level

This section aims to conceptualize **dissensus from an international relations (IR) perspective**. To

do so, we first revisit the concept of norm contestation, which is a well-established concept in IR and can be considered to compete with the concept of dissensus in the literature. We then offer a working definition of dissensus from an IR perspective and illustrate our conceptualization of dissensus through empirical examples.

Norm contestation in international relations

Although the concept of norm contestation began to be widely used in the IR literature in the 2010s, in the critical approach to norms Wiener's (2004) definition has been the most widely accepted conceptualization in the IR literature. According to Wiener (2004), **norm contestation** processes are disputes over the meanings-in-use of norms. Wiener (2014: 1; 2017) defines contestation as 'the range of social practices, which discursively express disapproval of norms'. According to her, contestation is a 'practice that can either indicate objection to something, for example, the implementation of a norm as contested compliance', or breaches of a norm as 'contested norm violation' (Wiener 2020: 1). Therefore, **contestation** includes all instances of 'questioning and/or rejection of norms and institutions *in discourse*' (emphasis added; Deitelhoff 2020). Deitelhoff and Zimmermann (2020) further expand on the types of contestation and suggest that '[c]ontestation can either (1) address the dimension of application of a norm or (2) examine its validity by questioning the righteousness of the claims a norm makes'. Drawing on both Wiener and Deitelhoff and Zimmermann, **we can define contestation as an objection to a norm arising from its meaning or norm application. For example, the contester agrees on the importance of a given norm (sovereignty) but offers his definition (for example, a conventional vs liberal understanding of sovereignty).** Alternatively, norm contesters might recognize the validity of a given norm but claim that it does not apply to a given case (for example, Turkey and Russia state that they abide by the principles of the sovereign equality and territorial integrity of states under international law but claim that these principles do not apply to Northern Cyprus and Ukraine respectively). Therefore, contestation either addresses the validity or the application dimensions of norms.

In both forms of contestation (validity and application), contestation refers to 'conflicts around the meanings (meanings-in-use) of norms (Wiener 2004), which emerge when norms gain validity in different cultural contexts' (Deitelhoff and Zimmermann 2013). In other words, as summarised by Wiener (2010: 203) 'it is through this transfer between contexts, that the meaning of norms becomes contested as differently socialized actors [...] trained in different legal traditions seek to interpret them'. From Wiener's perspective, norm contestation is a normal and even positive feature of global politics, rather than being an anomaly, as contestation derives from cultural, local, or 'international' differences. Hence, according to Wiener we have to acknowledge these processes of contestation, and at the global level, we need to create more space for preventing contestation from turning into conflict. As summarised by Zimmermann (2017), from this perspective 'by talking intensively to each other and trying to understand why and how others interpret norms, we can "sort out the normative baggage" and create shared or accepted meanings'. Wiener's argument follows with the idea that multilateral forums are needed to create these accepted meanings of norms, and in this way, one might prevent contestation from turning into conflict.

What is missing in the concept of 'norm contestation'?

While contestation captures the challenges related to both a multipolar and multilateral world, we argue that the concept does not reflect the current type of external challenge the EU faces. The empirical reality and new forms of delegitimization of international structures (including the EU) and global authority require a new theorization. This is because while the concept of norm contestation suggests that contestation can/needs to be institutionalized to allow legitimacy building or to ensure that the different meanings attached to norms are sorted out, what we observe in IR with competing power centers is both a non-compliance with norms and a conflict over norms. As summarised in the Introduction, with the return of power politics, the basis of multilateral frameworks

for mitigating contestation has been eroded. While disputes over norms have moved from the 'meanings-in-use of norms' to their actual rejection by an increasing number of actors (i.e. external competitors), the primacy of multilateral structures to address these norm rejections has also been undermined by the same actors (i.e. external competitors). These competing power centers not only fail to comply with norms (non-compliance) but also reject them and existing structures for establishing a shared understanding. In a nutshell, the EU's strategic landscape represents the features of a new type of multipolarity in the absence of multilateralism. This is why in this paper we argue in favor of a new concept in IR to better capture both the polarised and conflictual nature of these newly emerging powers' approaches to IR.

Conceptualizing dissensus from an IR perspective

Against this backdrop, **we conceptualize dissensus as irreconcilable views of actors regarding the fundamentals of global governance and international authority structures (including the EU).** As actors' views are incompatible, the way these views are expressed in international relations involves a distinctive set of tools (other than those observed with norm contestation), such as disinformation campaigns, the use of force or the de-legitimization of existing structures or institutions.

We suggest that dissensus can take two forms.

- The first form is **normative dissensus**, which entails a questioning or rejection of the application of a norm in a given case. Here, dissensus is used as a synonym to contestation as the contester agrees on the importance of a given norm but offers her own definition and challenges the applicability of a norm. For instance, Russia agrees that sovereignty is a key norm but claims that it does not apply to Ukraine.
- The second form is **disruptive dissensus**, where both the scope and the form of dissensus are more extensive. In this case, the agent of dissensus attacks not only the validity of a given norm (as in the case of contestation), but also rejects the norm, the institution or the principle itself. An example of this type of dissensus is the unilateral withdrawal of a party from an international agreement or an undermining or attack on the legitimacy of multilateral institutions.

When bringing together domestic and international dimensions of dissensus, we can observe four types of dissensus:

(a) anti-liberal/normative dissensus, where a domestically anti-liberal state embraces normative dissensus in its international relations;

Table 1: Domestic and international dissensus: a tentative typology

Domestic-international axes	Normative dissensus	Disruptive dissensus
Anti-liberal dissensus	Turkey's illegal drilling activities in the Eastern Mediterranean	The Trump administration's rejection of multilateralism: walking away from the Paris agreement
Authoritarian dissensus	China's stance on foreign intervention in domestic politics. While China recognises the 'sovereignty principle', it embraces a traditional understanding of sovereignty (and not a liberal understanding).	Russia's withdrawal from international conventions and treaties such as New START

(b) authoritarian-normative dissensus, where an authoritarian country disagrees on the content of a given norm;
(c) anti-liberal/disruptive dissensus, where an anti-liberal agent rejects the validity of multilateral institutions; and
(d) authoritarian-disruptive dissensus, where an authoritarian agent attacks or rejects the legitimacy of multilateral institutions and withdraws from them unilaterally in the absence of an agreed-upon alternative institutional set-up.
Table 1 brings together domestic (anti-liberal and authoritarian dissensus) and international (normative and disruptive dissensus) dimensions and illustrates these four cases by drawing on recent examples.

4. When domestic-level dissensus meets international-level dissensus

External dissensus (outside the EU) and internal dissensus (inside the EU) over liberal democracy within states in the neighbourhood mirror and mutually reinforce each other through the competition of regional powers (i.e. the EU and Russia) to exert influence on those same states. The parallel analysis of international and domestic dissensus shows a certain discursive alignment between domestic and international dissensus, allowing one to trace the linkages between national and regional actors. The literature on Europeanisation and norm diffusion has studied how international actors create links with domestic actors in the EU neighbourhood, where they seek to promote norm adoption through their socialisation in democratic norms, to enable them to perform the desired domestic reforms. Socialisation mobilises the logic of appropriateness for influencing actors' behaviour based on the internalisation of political norms and the links established with international actors (Freyburg et al. 2015). In these cases, the mechanism of socialisation is used to promote compliance with norms as part of the social identity of domestic and international actors (Finnemore and Sikking 1998).

In the context of **international consensus on liberal democracy** in the 1990s, this mechanism was used to establish links between international and domestic actors to promote compliance with liberal democratic norms through persuasion, socialization, and internalization (Finnemore and Sikking 1998). Even when norms were not adopted at the national level, norm entrepreneurs with 'strong notions about appropriate or desirable behavior' used persuasion to contest the alternative 'not appropriate norms' at the domestic level (Finnemore and Sikking 1998: 896). Moreover, when communication with their governments was broken, they would use transnational networks to contest the illiberal domestic norms and to exert pressure to comply with international liberal norms via international actors that would initiate the 'boomerang pattern' (Keck and Sicking 1998). Against this background of international consensus on liberal democracy, Western norms with universalistic claims seemed to be influential, and national elites would appeal to international norms for the legitimation of their positions if they were discredited domestically (Finnemore and Sikking 1998).

However, in the current context of dissensus on liberal democracy, similar mechanisms for actor engagement and norm contestation are used for the promotion of norms defined by completely different features and content. While the source of legitimation used by norm entrepreneurs in the 1990s was found in the international consensus on liberal democratic norms (Finnemore and Sikking 1998), since 2010 illiberal and conservative norm entrepreneurs have increasingly contested these norms, appealing to domestic or nativist sources of legitimation and presenting them as the innate nature or essence of the traditional socio-political relations in their country. In contrast to the Western norms with universalistic claims that were influential in the 1990s (Finnemore and Sikking 1998), currently particularistic and localized interpretations or frameworks are gaining importance as alternative normative models that contest liberal democracy at the domestic and international levels. Therefore, the contestation of liberal democracy currently originates in conservative norms and nativist values that focus

on the particularistic, exceptional, and unique features of national identities that it is claimed need to be protected by principles such as national sovereignty. These norms stand in stark opposition to the universalistic and interventionist claims that arose in the 1990s.

Despite these differences, the mechanisms of persuasion currently used by conservative actors mimic those developed by liberal democratic norm entrepreneurs in the 1990s. Specifically, links between anti-liberal domestic and international actors are created to mutually strengthen their positions. In addition, anti-liberal domestic actors are reinforced at the discursive level by international actors who can be seen as promoters of normative dissensus supporting anti-liberal ideas. Economic resources are also provided in support of anti-liberal or anti-democratic norm diffusion. These transnational dynamics of collaboration alter the balance between domestic and international actors that support and oppose liberal democracy.

Importantly, conservative and illiberal ideas and norms drawn from the particularistic domestic context can influence and feed into the international debate. This reflection of domestic ideas and oppositions in international debates is possible due to the focus of conservative actors on particularistic norms and the idea of the protection of national sovereignty. Consequently, we can observe a circular dynamic where the domestic and international dissensus feed into each other. Therefore, it is possible to hypothesize that the current conservative and illiberal normative dissensus diffuses more easily in hybrid regimes, where the population has not yet internalized liberal democratic norms. In those cases, the focus on domestic nativist norms does not lead to normative dissonance and does not require effort for domestic adjustment. This pattern transforms international consensus on liberal democracy into international dissensus.

From an empirical perspective, **a central opposition in several countries in the EU neighborhood takes place between traditional domestic conservative groups that support alignment with Russia, on the one hand, and liberal progressive actors that seek integration into the EU on the other.** Nativist and populist groups and parties oppose liberal organizations that support minority rights (such as LGBTQ rights) in the EU neighborhood. For instance, the Duma member Zatulin, a key member of the Commonwealth of Independent States Parliamentary Assembly Organisation, is a major supporter of antiliberal actors in the neighborhood. In addition, the engagement between the Russian Orthodox Church and the Orthodox Church in Moldova illustrates a similar pattern of engagement among conservative actors at the transnational level. From the anti-democratic dissensus perspective, we see how international actors provide support to elites who oppose democracy, such as, for instance, the readiness of Putin to support Lukashenko's political regime in the face of post-electoral protests or the deployment of CSTO troops to control protests in Kazakhstan.

A central opposition in several countries in the EU neighbourhood takes place between domestic traditional conservative groups and liberal progressive actors.

5. Conclusions

This paper has analyzed the challenges to liberal democracy and the EU resulting from increasing contestation by rising competing powers. By bridging and building on the literature on internal domestic dissensus within both democratic and non-democratic states and theoretical developments on international norm contestation, the phenomenon has been conceptualized here as dissensus over liberal democracy. As a result of this conceptualization, a typology that combines the categories of domestic and international dissensus is suggested. Four types of dissensus are discussed based on these categories: a) anti-liberal/normative dissensus; (b) authoritarian-normative dissensus; (c) anti-liberal/disruptive dissensus; and (d) authoritarian-disruptive dissensus.

The anti-liberal and authoritarian types cover the domestic dimension of dissensus over liberal democracy, while normative and disruptive dissensus refer to the relative scope and form of dissensus over the international liberal order. Lastly, this contribution offers an analytical framework for studying the interaction between domestic and international dissensus by analysing their interaction and mutual reinforcement in the EU neighbourhood. According to this framework, the current dynamic of dissensus over liberal democracy employs similar mechanisms to those defined in the norm-diffusion literature in the 1990s, such as the use of links and international coalitions of actors for persuasion and norm contestation. However, these mechanisms are adapted to the use of particularistic and localised norm interpretations to contest Western liberal democratic norms with universalistic claims. Future research on dissensus in the EU neighbourhood should focus more on in-depth or comparative case studies, with a view to shedding light on how domestic and international dissensus interact in these specific cases. Furthermore, the phenomenon of **dissensus contagion** between various power centres in the region, or how growing dissensus among neighbouring countries has an impact on the EU's foreign policy instruments need more thorough investigation in future research.

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4. THE CONCEPT OF DISSENSUS AND THE DIALECTIC OF DEMOCRACY

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Work in progress

1. Introduction

The tension between consensus (agreement, consent) and dissensus (disagreement, conflict) is a constant theme of modern and contemporary philosophy of politics, both explicitly and implicitly. Already at its very origin in the philosophy of Thomas Hobbes, we can find its constant motif: transcending the dysfunction of dissensus through agreement (see Hobbes 1998 and Forsyth 1994: 37-39). In a major simplification, we can say that within Hobbes' contractual theories, the dysfunctional dissensus of the state of nature leads to the necessity of an agreement whose object is the establishment of political power. The state of relatively durable social peace is an artificial product of man and lasts as long as power is effective. Efficacy, on the other hand, can be based on institutionalized coercive measures and/or on the social acceptance of political power. **Consensus** on the legitimacy of political power is a necessary condition for the long-term functioning of the state and its organs. From this outlined perspective, the political institutional structure grows out of the need to overcome **social dissensus**.

This raises the question of whether politics aim to achieve a state of consensus or whether the tension between dissensus and consensus is a permanent feature of the political and the potential aim of political institutions is to weaken the destructiveness of political dissensus. Is dissensus always a negative phenomenon, or is it possible to distinguish between dissensus inherent to the very idea of democracy and dissensus that is a threat to achieving a state of consensus, or whether the tension between dissensus and consensus is a permanent feature of the political and the potential aim of political institutions is to weaken the destructiveness of political dissensus. Is dissensus always a negative phenomenon, or is it possible to distinguish between dissensus inherent to the very idea of democracy and dissensus that is a threat to it? Eat to it?

2. Political action and dissensus

Political action can be interpreted as a specifically human form of organizing 'the world'. According to Hannah Arendt (1998: 177-179), the category of action is appropriately applicable to the public sphere of interaction between diverse subjects who constitute a specifically human world using speech. The action involves the initiation of something new that would not be there without the actors and the speech acts between them. 'The human capacity for political organization' is something different from interpersonal relationships that rely on biological necessity (e.g. family) or private interests (e.g. civil society)[6], because it is based on purely political capacities: action and speech through which 'rises the realm of human affairs [...] from which everything merely necessary or useful is strictly excluded' (Arendt 1998: 24-25). Action directed towards the political organization of reality consists in public utterances and persuasion, not in the use of coercion and/or force. The sustainability of the body politic depends on finding and uttering the words that best articulate the imagined political world of a given 'political unit' (state).

[6] See Hegel (2003) and the distinction between three forms of integration: the family, civil society and the state.

The specifically human public domain includes, firstly, everything that 'can be seen and heard by everyone and has the widest possible publicity', secondly, 'the world itself, in so far as it is common to all of us and distinguished from our privately owned place in it' (Arendt 1998: 52). The addressees of public speech acts are 'all' those who have access to it, and their subject matter should be matters 'concerning all' and/or 'considered important by all'.

The public sphere constitutes the 'place' for the articulation of 'common issues' and, thus, the constitution of a common political organization.

A specific form of activity is political action when it is accompanied by a narrative that reveals and explains 'who' and 'what' it wants to do, as well as 'why' it is relevant (important) to everyone (Arendt 1998: 178). A person acting in public must not only have the ambition to put a particular issue in a public forum but must also be ready to clash with counter-proposals. The diversity of viewpoints and ideas about the device of 'common issues' makes the political mode (form) of action permanent, while its content (substance) is variable depending on the context influencing *how* these 'common issues' are understood and *who* articulates them. Arendt (1998: 57) writes that 'Only where things can be seen by many in a variety of aspects without changing their identity so that those who are gathered around them know they see the sameness in utter diversity, can worldly reality truly and reliably appear'. The factor that ensures the constancy of political organization is *power*. **Power** is a potentiality (*dynamis*) that is activated by words revealing 'reality' (the intentions of the actor and their object relevant 'to all') and by activity aiming 'to establish relations and create new realities' (Arendt 1998: 200). Power cannot be imposed, unlike strength or force, because it is based on the temporary conformity of the will and intention of the human multitude (Arendt 1998: 201). The merging of the multitude that creates new linkages can be presented as a collective constitutive power of the citizens of a given political body, although it presupposes the manifestation of the persons who will utter the words that have the meaning and significance of the establishment of a political organization, as well as being this type of act: 'under modern conditions, the act of foundation is identical with the framing of a constitution' (Arendt 1990: 124). Given the inherent multiplicity and diversity of human experience and understanding of the world, agreement on a particular form of organization of political life is susceptible to contestation and counterproposals, i.e. to action aimed at transforming or changing political organization. The permanence of the political body thus understood depends on the vitality of the covenant between individuals and the propensity to keep promises (Arendt 1990: 175-176). In this view, political power arises in an intersubjective public space and is sustained and developed within it. It constitutes an autonomous form of human activity that is directed towards 'the common'.

The philosophical understanding of political action outlined above reveals the dialectic inherent in it: on the one hand, plurality necessitates the pursuit of the establishment of political order using communicative acts in the broad sense (encompassing speech and texts); on the other hand, this plurality is permanent and prevents the establishment of a definitive order or the attainment of full unity as the goal of political action. **Political dissensus** is organized into a framework of systemic (constitutional) consensus that is susceptible to being undermined and transformed into constitutional dissensus, which in turn can lead to a new form of constitutional consensus. In a dialectical relationship, dissensus and consensus are necessary elements of political dynamics. Eliminating one of them would end politics as a communicative activity in the context of pluralism. The dialectic inherent in political action is particularly evident in the fundamental openness and variability of democracy, which can be interpreted, following Claude Lefort, as institutionalized conflict (see Lefort 1988). Dissensus is democratic when it occurs within a certain consensus about the form in which political competition is conducted; consensus, in turn, is democratic when it allows for political positions and identities that challenge the status quo and seek systemic change.

It is significant that even the question of what the proportions of the two elements in the dialectical relationship should be is, or can be, the subject of political dispute. From this point of view, this type of dialectic is conclusive (i.e. will find reconciliation in the synthesis of the two contradictory elements) and it will be possible to determine with a priori certainty the balance between consensus (constancy and stability) and dissensus (volatility and antagonism) in some subsequent vision of the end of history's quest for the achievement of an ideal system. It seems that one has to come to terms with the negativity of this dialectic (see Adorno 2004), i.e. the lack of a clear reconciliation of its two elements. While rejecting the utopia of reconciliation, one can at the same time conceptually reflect on different forms of interpretation of the democratic dialectic, which will allow for a rough and ambiguous answer to the question of when the dissensus-consensus relation ceases to be democratic. When is consensus a form of domination and dissensus a tool for imposing political will? Thus, when do the two essential parts of the democratic dialectic become a sham?

3. External dissensus and the problem of unity

The dialectical tension that becomes apparent in political action itself can be separated into two phenomena: 'political' and 'politics' (Mouffe 2000: 101). The distinction between friend and foe, and thus conflict, is a criterion of the political but not its definition, nor does it exhaust its content. In the famous formulation of Carl Schmitt (2007: 26-27), 'The distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation. It can exist theoretically and practically, without having simultaneously to draw upon all those moral, aesthetic, economic, or other distinctions. The political enemy need not be morally evil or aesthetically ugly; he need not appear as an economic competitor, and it may even be advantageous to engage with him in business transactions. But he is, nevertheless, the other, the stranger; and it is sufficient for his nature that he is, in a specially intense way, existentially something different and alien, so that in the (extreme case conflicts with him are possible. Antagonism constitutes the political, so no issue can become political without an antagonistic element. For example, the political unification of a nation occurs using the distinction between 'us' (friends) and 'them' potential enemies). The constitution of a nation's political identity can be interpreted as defining the limits of civic inclusion, for which a distinction between 'us' and 'them' is necessary. In such a view, the state is 'an organised political entity', which as a whole 'decides for itself the friend-enemy distinction' (Schmitt 2007: 29-30). The elemental antagonism of politics is institutionalized as a political state unity. From this point of view, democracy as a political form requires homogeneity: 'every actual democracy rests on the principle that not only are equals equal but unequal will not be treated equally' (Schmitt 2000: 9). According to Schmitt (2004: 27-28, 41-42), democracy must be intrinsically based on homogeneity because this system binds legislation to the will of the people, which ensures that the law is socially recognized as true and right. Only under this condition will the law be not only correctly established but also an objective and 'neutral' (non-partisan) expression of the political will. A democracy not based on the homogeneity of the people would be a purely formalist democracy and would constitute a form of minority oppression by the majority. The lack of a strong identity linking rulers and the ruled makes it impossible to formulate criteria of legitimacy based on a shared understanding of 'truth and rightness'.

The vision of democracy outlined above is ultimately anti-dialectical, as effective political action should eliminate dissensus. The constitution of a unified identity of a specific political community requires consensus. Dissensus would be a phenomenon destructive to homogeneous democracy, as it would introduce antagonism into the 'inside' of democracy. This position leads to a critique of pluralistic parliamentary democracy, which is not only based on political differences but also generates them, since the effectiveness of political actors lies in, among other things, distinguishing one from others and delimiting and/or articulating

divisions that engage voters and public opinion. If the main goal of a political party is to influence legislation, then at the same time its goal is a state of asymmetry between the majority and opposition (Schmitt 2004:32-33). Each time, the conditions of political competition are dictated by the forces wielding legislative and state power, so that the alleged 'equality of opportunity' would have to be established, as it were, in a pre-political state, i.e. a priori determining the conditions of the game. The rules of the constitution only constitute political competition in a certain general dimension, while it matters a great deal how they will be concretized in legislation, which is already the area of political competition. In this view, **parliamentary dissensus** is a threat to constitutional consensus. It can be said that in an extremely polarised form of parliamentary dissensus, the goal of the political actors is to ultimately impose their partisan will on the political whole, thus 'imposing the consensus' and marginalizing the dissensus. Are we then faced with the alternative of either democratic consensus or authoritarian dissensus? What makes a dissensus democratic?

According to J. Rancière (2010: 38), dissensus is 'the essence of politics', and in particular, democracy is seen not as a system but as 'the very institution of politics itself' (2010: 32). Rancière sees democracies as a specific situation in which the subject seeking to exercise 'power to rule' has no entitlement to do so. Rancière refers to Aristotle's notion of the citizen: 'someone eligible to participate in the deliberative and judicial office is a citizen in this city-state' (Aristotle 1998: 1275 b) and possesses 'the capacity to rule and be ruled' (Aristotle 1998: 1277 a). A particular subject/actor (e.g. a social group or class) becomes a political subject/actor when it breaks a particular established system of government and claims to rule without any title. The specifically human capacity of using speech to claim sensibility and/or rightness is expressed here, since 'speech is for making clear what is beneficial or harmful, and hence also what is just or unjust' (Aristotle 1998: 1253 a). Through speech understood in this way, political communities are constituted as a kind of institutionalization of ideas or conceptions of what is just. The political, in Rancière's terms, is not the administration or management of this order but the articulated challenge issued by a subject/actor who expresses a claim to justice without having any formal basis for doing so. The tension between 'politics' and 'the police' is revealed here (Rancière 2010: 35-36). 'The police' is a form of ordering society according to a certain logic of rule (e.g. birth or wealth). It stabilizes certain power relations and allows institutions to operate predictably. 'The politics' breaks the order of 'the police' and is a form of contestation of a particular order of power by those who articulate its injustice. The distinction between the politics (dissensus and democracy) and the police (consensus and institutional power) is in analogy with A. Negri's strong contrast between the spontaneity of constitutive power and the conservative function of constitutionalism (whether legal or political) (see Negri, 1999). Constitutionalism, in this view, would be an attempt to stabilize certain power relations ('reasonable consensus') and to safeguard them against unauthorized demands (**'demagogic dissensus'**).[7] Democracy (as well as politics itself) is conceived in the above interpretation as an event, that is, an inherently episodic form of response to harm or injustice inflicted by a system of established power (see Wolin 2004: 602). The political actor challenging 'the police' must do so independently, which is a sign of political equality: a self-legitimising power to govern.

4. Internal dissensus and democratic pluralism

The **antagonism** of consensus and dissensus, in the sense given by Rancière, has the character of a tension between the 'inside' of the system and an 'outside' democratic pressure demanding a change in the order of power. The democratic subject is an actor who appears 'from outside' (for

[7] J. Rancière interprets 'representative democracy' as a form of defense of power and money elites against the dangers of democracy in the strict sense. The demos are reduced to the electorate making a choice between relatively fixed political elites whose activity is reduced to stabilising the economic order. Any grassroots movement challenging the status quo, on the other hand, is labelled 'demagogic' or 'populist' (see Rancière 2014). Political actors can use 'populist' discourse as a tool to stabilise their power using the rhetoric of challenging the status quo in order to gain and maintain power that does not change the logic of its exercise (see Trnowska and Włoch forthcoming).

example, a group of people hitherto unheard and marginalized) with a claim to participate in governance. Such a perspective ignores the 'within-system' dissensus and the internal dialectic of dissensus and consensus that simultaneously affects the dynamism and sustainability of the political system. The actors of 'internal' dissensus can be of various types: informal groups of citizens, formalized interest groups, or highly organized political parties. Karl Marx pointed to the internal tension embodied in the constitution of the then-nascent representative system, i.e. the emancipatory potential of universal rights and freedoms, which is limited by the political reality organized by political elites interested in the stability and security of the political system (see Marx 2002). Intra-systemic dissensus is led by actors interested (in addition to gaining or maintaining power) in reforming certain elements of the system (e.g. introducing institutions to protect workers) or in stopping them (e.g. presenting the reformers' demands as dangerous). Political actors seeking to change the whole system (e.g. Marx's proletariat fighting for communism) locate themselves 'outside' the system of 'normal' political competition. From Marx's perspective, internal dissensus is counterproductive because it does not touch the essence of the unjust system to be abolished. An internal systemic consensus, even when it is narrow and concerns the rules of the political game, stands in the way of truly revolutionary action. Marx rejects the negative dialectic of democracy. **Consensus** is treated here as a discursive expression of elite rule. The discourse of consensus 'justifies' that the particularist interest of one class is the 'universal will' and the common good (Marx and Engels 1998). Consensus becomes the prevailing hegemony in the public discourse of a particular imaginary of a 'just political order'. The broader the consensus of the main political actors, the more the competition between them is illusory. For this reason, according to Chantal Mouffe (2013), the ideal of democracy should not so much be consensus as agonism, that is, antagonism played out in a shared symbolic space.

Marx's critique of formal democracy can be used against the author in defense of a radically pluralist democracy. The formation of diverse political identities is only possible in opposition to other identities and, for this reason, pluralist democracy presupposes the antagonism of political actors. Conflict is inherent in democracy. Thus, if one sees democracy as a political system (contrary to Rancière), its essential characteristic is perpetual conflict (Mouffe 2000: 33-34). **While recognizing the dialectical tension of consensus and dissensus as an indelible 'intra-systemic' feature of democracy, it is also necessary to acknowledge its paradoxical nature: intrinsically, democracy is 'conflictual consensus'** (Mouffe 2000: 103). 'Conflictual' because it is based on pluralism and antagonistic political competition, 'consensual' because it requires rivals to be seen as 'opponents', i.e. actors sharing certain general ideas (such as freedom and equality) but differing in their interpretation. Opponents do not seek the political elimination of rivals. On the contrary, they recognize the rights of opponents to participate in political competition.

To summarise the considerations so far: **dissensus can be seen as an activity directed against the political system (extra-systemic dissensus) and as an essential element of the democratic system (intra-systemic dissensus).** The dialectic of democracy would imply a state of simultaneous realization of both dissensus and consensus. This dialectic can take various forms, as is well illustrated by Martin Loughlin's (2004: 33-52) distinction between three dimensions of the political. The first level of the political refers to the phenomenon of the constitution of identity through distinction from the 'Other' described by Schmitt. At this level, politics is based on the antagonism of enemy and friend: the inherent human condition of the inevitability of conflict (arising from various causes) and efforts to defeat the enemy. The dissensus that arises within a particular identity could be a potentially dangerous factor, as it weakens its internal cohesion. In contrast, dissensus between political identities would be a given, as they are formed through differences.

The second level of politics emerges with the organization of antagonism into a certain internal order. This means that there are institutional mechanisms in place for effective political practice. Conflict and dissensus do not disappear, but they do not have destructive effects thanks to the development of forms and mechanisms for political decision-making or conflict resolution. At the second level of the political, intra-systemic dissensus is discharged through political institutions, while Rancière's extra-systemic dissensus would be a radical attempt to change the existing political order. An effective political order would include institutional mechanisms to effectively resolve antagonism and dissensus within the political system. The third level of politics follows the ordering of politics at the second level. The political is subject to legal regulation in a constitution understood as a law fundamentally regulating the authority of political power, as well as the distribution of sovereign powers and the forms of their exercise. It is based on the distinction between the people delegating political power and the power exercised by that delegation. The Constitution derives its authority from the will of the people. The formation of a unity or consensus regarding the constitution is assumed here, and in this sense, political identity must precede the constitution (Loughlin 2004: 46-47). Political dissensus would emerge in the sub-constitutional space and be resolved through constitutionally defined rules of political rivalry. Loughlin (2004: 50) points out that at the third level of the political, an attitude of constitutional legalism based on the myth that the answer to any pressing political issues will be found directly in the constitutional text or through its interpretation may emerge. In other words, there may be a tendency to judicialize political problems and conflicts, that is, to resolve them in the modus operandi of constitutional application by constitutional courts (see Hirschl 2004). The effect would be to erode dissensus from the sub-constitutional level ('everyday' politics): since the text of the constitution is based on consensus, political issues should also be resolved by consensual reasoning based on the text of the Constitution. The consequence of this phenomenon may be to treat any dissensus as extra-systemic (dissensus in the sense given by Rancierè), which may also increase the radicalism of any counter-systemic claims or demands. At the third level of the political, the dialectical tension would be replaced by a rational constitutional discourse.

5. Democracy and dialectics

The above myth is undermined by the theory of H. Heller, which, while emphasizing homogeneity, at the same time points to the impossibility of neutralizing political dissensus. Heller directly points to the **dialectic of democracy** (the tension between consensus and dissensus) when he claims that the danger for democracy is, on the one hand, the disintegration of society into antagonistic parts and, on the other, the total hegemony of one political entity (e.g. a social class or elite distinguished by race and wealth). One danger does not exclude the other, however: disintegration can pave the way for political dictatorship, and vice versa. Heller (2000: 259) sees democracy as one form of political domination, and like any such form 'it demands itself as its ultimate goal the unity of decision in a determinate territory' (Heller 2000: 257). Political action seeks to achieve a state of ultimate deciding unity of behavior in a determinate territory. Heller considers the pursuit and maintenance of a certain degree of unity (polis), as opposed to Schmitt's antagonism of enemy and friend (polemos), to be an essential aspect of the political (Heller 2000: 258). The hallmark of democracy is the bottom-up constitution of political power by the people and its accountability to the people. Political power represents the people not only ethically (based on the ruler's will and sense of responsibility) or culturally (through similarity in customs and beliefs), but above all legally: the mechanism for the election of representatives is legally regulated and political power must represent the people if it wants to remain in power (Heller 2000: 259).

The people are not a one-dimensional entity, and democracy does not mean the end of socio-political antagonisms. Political competition and conflict, however, take place not between radically alien and hostile political identities but within a certain 'people', i.e. political actors and the public feel a sense of belonging to these people (Mill 1977: 546-547). If the people are to be political subjects/actors, some kind of bond must be formed between its constituent parts. In other words, the precondition for the possibility of democracy [8] is social homogeneity understood as the development of a sense of a certain collective 'we', which can be shaped by various factors.[9] Homogeneity understood in this way stabilizes political dispute and makes it possible to give it the legal form of constitutional rules.

At the third level of the political, political disputes do not disappear but the actors change: in addition to political actors, there are 'neutral' actors (e.g. constitutional courts or central banks). Decisions taken by these new actors can also be seen as political and/or evaluated. At this level, the system remains democratic when it allows broad dissensus without losing the social feeling of belonging to a collective 'we-as-the-people'. The dialectic of democracy lies in the fact that political pluralism (the people as a plurality) simultaneously creates the people as a unity (see Heller 2000: 260): the parties to a political dispute exclude the use of coercion against their opponents and treat discussion and the possibility of agreement as a proper form of political competition. Intra-systemic dissensus is possible on the condition that there is a political consensus on 'we-as-people'. For this reason, the threat to democracy is the weakening of this homogeneous 'we' and the shift from pluralism to polarization. 'The democratic formation of unity ceases to exist when all politically relevant sections of the people no longer recognize themselves in any way in the political unity when they are not able to identify themselves in any way with the symbols and representatives of state' (Heller 2000: 260). The lack of a sense of belonging to the people results in a lack of motivation to follow the rules and, above all, in a tendency to perceive po-

-political opponents as enemies who are not entitled to full rights to participate in political activities and against whom one must defend oneself, thus legitimizing coercion against them. Although the disappearance of the feeling of belonging to a 'collective we' is somehow an obvious threat to democracy, the strenuous attempts to strive for political unity can also cause political alienation. 'Political democracy wants to preserve the equal opportunity of each member of the state to influence the formation of political unity by summoning representatives. But social disparity can make *summum jus* [supreme right] into *summa injuria* [supreme wrong]. Without social homogeneity, the most radical formal equality becomes the most radical inequality, and formal democracy becomes the dictatorship of the ruling class (Heller 2000: 262). The construction of the hegemony of a particular ideology by various means (mass media, schools, cultural artifacts, etc.) makes the dissensus of marginalized social groups or political identities an extra-systemic dissensus. In such a view, the democratic form becomes a tool of domination and the dissensus is a challenge thrown at the political system as a whole. The dialectic of democracy is thus disrupted by both acute polarization and oppressive hegemony.

A distinctive feature of Heller's approach to politics is that it is not detached from its social and ethical context. The constitution of political unity always takes place in some specific context and presupposes that there is a certain set of beliefs constituting the 'we' as a political subject (see Hellller 1963: 222). Democracy is not merely constituted by formal ties, i.e. equal rights of political participation, but by a dialectical awareness of equal belonging to a political 'we', as well as an awareness of the real differences that make dissensus something 'natural' to democracy. The dialectic of democracy means the coexistence of consensus and dissensus within a single political system.

[8] This can be approached in a Kantian way: as an a priori condition for the possibility of the existence/experience of a particular X; see de Maagt 2017.
[9] This could be language, culture or religion, but also specific ideologies expressing, for example, racial superiority or articulating economic interests (see Heller 2000: 261). See Gellner (1983) and the thesis on the indispensability of nationalism for modern capitalism.

One may ask, what is the structure of a moral attitude characterized by the dialectic of homogeneity and plurality, consensus and dissensus?

6. Consensus and the dialectic of liberalism

The liberal conception of the person can be interpreted as a response to the challenges arising from the **dialectical tension between dissensus and consensus.** On the one hand, democracy strives for unity; on the other, dissensus and disagreement constitute its vitality. One could say more: without irreducible disagreement and dissensus, democracy makes no sense since equal rights of political participation and majority rule are a rational political solution above all in the absence of a mutually approved objective criterion of rightness and truth (see Kelsen 1948). Liberal democracy 'stabilizes' the dialectical tension by linking the democratic stagnation of law to the assertion of respect for freedom (Habermas 1994: 84).[10] The guarantee of autonomy and democratic procedure are conceptually linked here: the law owes legitimacy to the procedure that guarantees autonomy. In this way, democracy can be said to realize Kant's general principle of legitimized law: 'Any action is *right* if it can coexist with everyone's freedom following a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom under a universal law' (Kant 1991: AA 230). Autonomy means that the acting individual can undertake an activity following the rights he has given to himself while respecting the autonomy of others. Political rights of participation are meant to ensure that the principle of autonomy is fulfilled at the political level. Autonomy here is a principle that cannot be sacrificed for the sake of other goods (see Baron 2000: 10-13). Both the legislative activity and the constitution itself must meet a condition of legitimacy based on the notion of autonomy. This means that a democratic constitution should be a piece of legislation that has broad moral legitimacy: it should be affirmed given the moral principles held by its citizens.[11]

In other words, a constitution is an expression of the political autonomy of individuals when it is a constitution that citizens would give to themselves, being guided by their professed principles. However, in a pluralist society, the legitimacy of a constitution cannot consist in its simple reliance on a particular ethical doctrine (e.g. the Kantian doctrine mentioned above) since this society is characterized by diversity and disagreement on moral and ethical issues (see Habermas 1994: 85 and Habermas 1996). A dialectical tension thus reappears: political-social diversity has to not only agree on a constitution but also affirm the diversity resulting from the principle of the autonomy of the person. A democratic society should unite without losing diversity.

The question of how to reconcile pluralism with the moral legitimacy of the Constitution is one of the main issues to be answered by political liberalism. In this context, **John Rawls (1996: lviii) distinguishes between three types of conflict**: 'those deriving from citizens' comprehensive doctrines; those from their different status, class position, and occupation, or their ethnicity, gender, and race; and finally, those resulting from the burdens of judgment'. In a well-ordered constitutional state, conflicts of the second type should be resolved at the legislative level. The constitution is to serve as a 'device' to enable reconciliation on these issues. The specific aim of political liberalism is to reduce conflicts of the first type, the subject of which is precisely the fundamental principles of the constitutional state. This type of conflict cannot be eliminated and should not be eliminated if the constitution is to be democratic. Such elimination is also made more difficult by the fact that conflict of the third type, i.e. arising from the burdens of judgment, is, as it were, a permanent feature of the human condition:

[10] The above considerations relate only to the philosophy of liberal democracy and not its practical implementation; on this topic, see, for example, Mounk (2018).
[11] Moral legitimacy is one of the three principles of legitimacy of the constitution (Fallon 2005). Simplifying greatly, legal legitimacy is the conformity of the constitution to the legal norms governing the constitution-making process and sociological legitimacy is the actual acceptance of the constitution by society.

it involves the limitations of human perception, knowledge, and reasoning. Diversity is not an adventitious feature of the political but a constitutive feature of it (see Arendt 1998), while liberal democracy does not mean reconciliation with pluralism but rather its affirmation (see Rawls 1996: 36). It is not, however, an affirmation of pluralism as such but of 'reasonable pluralism'. It cannot be interpreted as merely an expression of differing interests or perspectives but is primarily an expression of 'the original right of human reason, which recognizes no other judge than universal human reason itself, in which everyone has a voice; and since all improvement of which our condition is capable must come from this, such a right is holy, and must not be curtailed' (Kant 1998: A 752/B 780). The institutions of the democratic state allow for the emergence of a plurality of equally reasonable doctrines, which are the product of the free use of reason. A common feature of reasonable doctrines is their consistent and coherent way of answering relevant questions, developing specific hierarchies of values or belonging to a particular tradition of thought, as well as an internal dynamism that causes change (see Rawls 1996: 59). A permanent feature of a democratic society is the multiplicity of 'more or less' [12] reasonable doctrines, none of which can claim to be the sole basis of a democratic constitution, as such a situation would introduce fundamental political inequality and violate the principle of autonomy.

Forcibly imposing a comprehensive reasonable doctrine using political institutions would be unreasonable in the first place. Rawls refers to two characteristics of the moral personality. 'Rational' is the trait of the individual doubling down on considering and judging one's interests, as well as prioritizing and ranking one's goals; 'reasonable' is the capacity to adopt principles and be guided by them in action (see Rawls 1996: 48-50). 'Reasonable', as a person's ability, is intrinsically intersubjective in that principled action not only takes into account the perspectives of others when considering the consequences of particular actions but the principles themselves are adopted through mutual acceptance and a willingness to follow them. Adopting one comprehensive reasonable doctrine as the basis for a constitution might be rational given the particularistic goals of a given political actor, but it would be unreasonable because it does not take into account the point of view of other actors and accepts political inequality. A situation in which one actor decides that his comprehensive doctrine should be reflected in the constitution introduces an asymmetric relationship between the actors, and in this context the requirement for the representatives of other extensive doctrines to accept the constitution is irrelevant: they are to accept what reasonable and autonomous people should not. It is assumed that reasonable citizens adhering to different comprehensive doctrines could not agree that one of them would be the basis for the formulation of the Constitution. In other words, the recognition of pluralism leads to the thesis that there is no comprehensive doctrine that could serve as a justification for a constitution (Rawls 1996: 60-61). A dispute between doctrines cannot be resolved in such a way that one identifies a winner by applying presumed meta-criteria of truthfulness/rightness [13] or that one of the doctrines gains particular popularity in society. Of course, we say 'cannot be', when we want to preserve pluralism and make a possible dissensus an intra-systemic dissensus. To single out one doctrine would mean that the rest of the doctrines stand in opposition to the constitution, which generates an extra-systemic dissensus hostile to the existing political order.

What is the way out of the above situation? The answer to political liberalism is as follows: a democratic constitution should be characterized

[12] A more cautious formulation is relevant because 'for a person enamoured of astrology or New Age religion might fail to have a coherent doctrine, but might yet be prepared to be fully respectful of her fellow citizens as equals. (...) Rawls ought to adopt the ethical account of reasonable comprehensive doctrines, dropping the search for theoretical criteria: an element of perfectionism has entered his account here, which involves a quasi-establishment of some doctrines as the superior ones and others as inferior. There is no need to make such a move, and it undermines central commitments of his theory' (Nussbaum 2011: 7).
[13] Located beyond dispute and transcending pluralism.

by a kind of 'epistemic abstinence' (see Raz 1990), which means that the constitution cannot favor any of the comprehensive reasonable doctrines and, consequently, the doctrine justifying the constitution cannot be comprehensive: it should be a 'minimal moral conception' (see Larmore 1990) expressing principles and values that are acceptable from the point of view of the various reasonable doctrines. **The core principles of the constitution should be subject to overlapping consensus.** It does not resolve political disputes, nor does it diminish intra-system dissensus. Overlapping consensus refers to the constitution, and in particular, to the constitutional essentials: 'Constitutional essentials concern questions about what political rights and liberties, say, reasonably be included in a written constitution, when assuming the constitution may be interpreted by the supreme court, or some similar body' (Rawls, 1996: xlviii, footnote 23). Within an overlapping consensus, the conceptions derived from different viewpoints accept the constitutional essentials as a common reference point: a set of common principles governing the political field. Conceptions of this type constitute, at the same time, a 'family' of conception providing 'argumentative and legitimizing resources' that justify basic constitutional principles. The important point is that the values and principles realized in the constitution neither derive from nor depend on comprehensive doctrines but are instead 'freestanding' and can be advocated independently of discourses and attitudes derived from comprehensive doctrines (see Rawls 2001: 190). Conceptions affirming constitutional essentials are political in the sense that (a) they are not comprehensive doctrines, (b) they refer to the constitution as one element of the basic structure of society and, ultimately, (3) they legitimise a coercive political authority. Consequently, one of the basic moral characteristics of citizens of a liberal democracy would be the ability to prioritize constitutional principles derived from a political conception that justifies constitutional essentials (reasonable), often at the expense of values and goals derived from reasonable comprehensive doctrine or particular interests and preferences (rational). It can be said that the liberal democratic actor guided by reasonableness seeks consensus at the constitutional-essential level, while at the sub-constitutional level he or she engages in a political dispute and articulates his or her particular point of view. **Dissensus is not *a priori* excluded as unreasonable. 'Everyday' political competition takes place in the context of political disagreement and, often, dissensus against a specific legal a specific legal *status quo*** (see Alnes 2016).

7. Disssensus 'in' and 'against' liberal democracy

Political unity in a pluralistic liberal democracy is constituted, according to Rawls' philosophy, as an overlapping consensus (Rawls 2001: 32). The dialectic of democracy is preserved when consensus regarding constitutional essentials not only fails to pacify political disagreement but does not preclude intra-systemic dissensus. The stability of such a political system depends on the sustained and ever-renewing support of the citizens for the principles expressed in the constitution. Citizens functioning in a democratic society should be committed to constitutional principles and institutions (see Rawls 2001: 185). In such a regime, even sharp disagreements do not constitute a destabilising factor. Taking the criterion of impact on stability, one can distinguish between dissensus that is (a) constructive, which results in a change in the legal system that offsets the 'injustice' [14] felt by a certain social group and/or political actor, and (b) destructive dissensus, which results in a weakening of the political-legal system by a social group and/or political actor who does not seek legislative change but a change in the entire system.[15]

[14] 'Justice' in this context is understood as the expression in political discourse and action of certain attitudes, demands or aspirations resulting from a normative account of a given state of affairs. Understood in its negative aspect, it refers to various expressions of feelings of injustice and unfairness, while in its positive aspect it refers to activity aimed at realizing states of affairs considered desirable and appropriate.

[15] It is 'destructive' by adopting the criterion of the stability of the system within which it takes place. This does not mean that it creates nothing new but that it aims for the destruction of a given status quo, even when this is not its ultimate goal but a means of establishing a different political order.

Constructive dissensus ultimately reinforces stability, as the effect of dissensus is to recognize the demands of a particular group and/or actor, which results in an increased attachment to the constitutional system. **Destructive dissensus**, on the other hand, targets the constitutional system itself and seeks to undermine attachment to it. It considers an **overlapping consensus** to be 'illusory or false' and seeks to replace the given *status quo* with another constitutional form.[16]

Constructive dissensus is intra-systemic, while destructive dissensus is extra-systemic. **This distinction leads to the question: how deep can an intra-system dissensus be? What is the boundary whose crossing transforms dissensus into a destructive and extra-systemic phenomenon?** The above question refers to **constitutional dissensus**. At the level of political disputes about legislation and individual governmental policies, the various actors and citizens themselves can make use of arguments drawn from the comprehensive reasonable doctrines, as well as express particular interests and preferences that are important to them. At this level, disputes are resolved through the use of the institutions and procedures contained in the constitution. 'Everyday and normal' disputes (regarding policies and legislation) can turn into 'extraordinary' (constitutional) disputes when the effectiveness of the constitution is challenged in the context of resolving 'everyday' disputes or the value of the constitution itself is undermined. At the same time, it should be noted that not every constitutional dispute is a constitutional dissensus, which is distinguished not only by its sharpness but also by the fact that it is a challenge to the existing constitutional practice and its legitimacy. The constitutional essentials contained in the constitution are not to be understood as absolutely unambiguous elements and the object of unanimous agreement: they may be interpreted in different ways by different 'members of the family of conceptions' affirming constitutional essentials (see Rawls 1997: 773-772, 777-779 footnote). A constructive constitutional dispute is guided by the use of a political vocabulary referring to the values and principles of the constitution. It is used in a way that is independent of comprehensive reasonable doctrines (see the idea of public reason in Rawls 1997: 767 ff.). It can be said to be a kind of language game in which the rival parties should use the vocabulary of a given constitutional tradition and seek to persuade their opponents by providing arguments the opponents might consider valid regardless of the comprehensive doctrines they profess. This type of limitation of a political dispute only applies when the subject matter is constitutionally essential. Constitutional disputes are resolved in the appropriate forms provided for in the respective system, e.g. as a decision of a constitutional court or the result of referenda. In a stable constitutional system, parties conducting a constitutional dispute do not use a vocabulary beyond the 'constitutional language game'. A political actor who rejects the requirement of 'epistemic abstinence' in constitutional disputes and is guided solely by the desire to push through his or her comprehensive reasonable doctrine enters the path toward extra-systemic constitutional dissensus. To impose the primacy of one of the competing doctrines through the constitutional system is to break with the idea of overlapping consensus and, thus, with the affirmation of pluralism. This would be an unreasonable act since it would reject inter-subjective principles: taking into account other points of view and acceptable to others (see Rawls 2001: 183-184). 'Unreasonable' here means refusing to recognize that political opponents have equal political rights and insisting that the imposition of one's comprehensive doctrine is necessary and justified. [17] So it can be said that in a stable democracy, unreasonable (in the above

[16] We are not resolving the nature of destructive dissensus here. It can formulate and pursue a completely different vision of democracy, but it can also be anti-democratic. Similarly, it can formulate and pursue a different vision of constitutionalism ('remain' at the third level of the political), but it can also reject this idea ('return' to the second level of the political).

[17] Thus, by adding the usurpation of the sole right to express the will of the people, J.-W. Müller interprets modern populism (see Müller). In this view, populism is the antithesis of constitutionalism. This position is argued against by M. Tushnet and B. Bugarič (2021) by adopting a 'weaker' definition of populism and showing that it is not always incompatible with constitutionalism.

sense) political actors do not gain support and constitutional disputes are conducted within the framework of a 'constitutional language game'. In contrast, the emergence of actors who reject the 'constitutional language game' and challenge the overlapping consensus is a symptom of instability and a potential threat to the constitutional system.

The phenomenon of extra-systemic and destructive dissensus is dangerous insofar as it signifies the failure of liberal democracy to seek to transform potential forms of dissensus into intra-systemic and constructive dissensus. This is particularly evident in Rawls' concept of civil disobedience. In a properly functioning constitutional state, citizens must obey the law, even when it is, in their view, unjust.

After all, the legislative procedure is not perfect and the outcome may not always be considered right by all. In situations where the burden of injustice is too great, i.e. in situations of actual or potential [18] violations of fundamental constitutional principles and values (see Rawls 1999: 326-327), citizens have the ultimate means of restoring or establishing [19] a state of affairs following the principles and values of the constitution. Civil disobedience is a public, nonviolent, conscientious yet political act contrary to law usually done to bring about a change in the law or policies of the government' (Rawls 1999: 320). It is certainly a form of dissensus, but one oriented towards legal change within the political system. Civil disobedience is firstly a political act. It is motivated and justified by political principles and is directed at the ruling majority [20]. By appealing to commonly shared constitutional principles, citizens performing an act contrary to the law force 'the majority to consider whether it wishes to have its actions construed in this way, or whether, given the common sense of justice, it wishes to acknowledge the legitimate claims of the minority' (Rawls 1999: 321). The assumption here is that a democratic political culture appealing to a certain set of common constitutional principles has developed in a given constitutional order.

An allegation of unequal implementation of constitutional principles would undermine the actual democratic nature of such a regime, and for this reason, the ruling majority may want to restore the state of conformity to the principles of the constitution. Secondly, civil disobedience is a public act. It is a specific form of 'public speech' appealing to common principles and performed in public (Rawls 1999: 321). It is the ultimate means through which a discriminated minority can communicate its claims and demands for the equal realization of constitutional principles. In this way, one breaks the law for the sake of the law or violates the legal dimension of the Constitution for the sake of its moral principles (see Rawls 1999: 338). Civil disobedience 'expresses disobedience to the law within the limits of fidelity, although it is at the outer edge thereof. The law is broken, but fidelity to the law is expressed by the public and nonviolent nature of the act, by the willingness to accept the legal consequences of one's conduct (Rawls 1999: 322). The political motivation (constitutional principles) and purpose (changing the law), as well as the public form of such an action, determine that it is an intra-systemic and constructive dissensus. It does not imply a rejection of the constitutional order but an attachment to it. Actors undertaking such an act of dissensus share an attachment to constitutional principles and call on the majority to implement them. In this sense, it is 'the stabilizing devices of a constitutional system, although by definition an illegal one' (Rawls 1999: 336). For social groups and actors experiencing profound and unconstitutional injustice, it is a tool for restoring constitutional justice.

Assuming that civil disobedience is an extreme case of intra-systemic and (by purpose) constructive dissensus, an ideal type of extra-systemic and destructive dissensus can be

[18] This state of affairs may be brought about by an already enacted law or its announcement (see Rawls 1999: 327-328).
[19] Depending on whether the injustice lies in the failure to implement the principles of the constitution or in the subsequent violation of those principles.
[20] An infringing action motivated by an overall doctrine or vested interest does not constitute civil disobedience.

constructed about it. An actor of extra-systemic dissensus places himself in opposition to a given political system and does not share a commitment to constitutional principles and values. His or her goal is not their better realization but their rejection by society and a change in the moral foundations on which the Constitution is based. This type of dissensus is certainly a political and public act to show that the whole system is unjust and should be rejected. In the extreme, such an actor will perform acts contrary to the law or undertake activities that deconstruct the constitutional order in question. This general type of dissensus can include the action of marginalized social groups, as well as political actors, explicitly or implicitly rejecting the principles of liberal democracy. The motivation of such actors may vary. Simplifying strongly and reducing to extremes, it may be (a) a moral conviction that the current constitutional system is profoundly unjust and cannot be rectified, as well as (b) a rejection of the principles of liberal democracy and a desire to establish a non-democratic and/or illiberal system. The existence of the first type of motivation indicates that the inclusive and integrative function of the constitution has not worked and that there are minority groups experiencing exclusion and inequality. The existence of the second case implies that certain political actors reject the idea of overlapping consensus and seek to establish a coercive political order and/or a constitution based on a comprehensive doctrine. The distinction between these two forms is, of course, abstract: in reality, they can be intertwined. The increase in the social and political rank of movements and actors appealing to these two types of motivation can be interpreted as a symptom of the crisis of liberal democracy. Following Rawls, one can say that if social groups and political actors do not see the point in using intra-systemic forms of disagreement and dissensus, it means that society is broken (see Rawls 1999: 340). Engaging in an act of civil disobedience makes sense when the oppressed minority can appeal to principles shared by the majority: it is an act of 'public speech' addressed to the majority and formulated in the language of shared constitutional principles. If such common principles are lacking, this type of political speech act will be incomprehensible and/or irrelevant to the majority. It also means that an overlapping consensus based on the equality of parties has either ceased to exist or cannot exist at a given stage. And consequently, the constitution that stabilizes democratic competition loses its power to integrate diversity through principles.

8. Democracy: how does it end?

One of the fundamental theses of Plato's political philosophy is that concerning the decline of political systems: the principle of a given system is also the cause of its decline. With the adoption of a given principle as the foundation of a political system, there is a tendency to absolutize and immoderately realize it in various spheres of social life. Such a constitutive principle of democracy is freedom. It leads to a multiplicity of forms of social and individual life and arouses an increasing desire for freedom and self-determination. The democratic man is 'a multifarious man and full of all sorts of characters, beautiful and complex, like the democratic city' (Plato 2005: 561e). Citizens of a democratic state seek pleasure and self-fulfillment. The dependence of the rulers on the ruled makes state policy dependent on public sentiment: 'when a democratic city, a thirst for freedom, happens to get bad cupbearers for its leaders and gets drunk by drinking more than it should of unmixed wine. Then, if the rulers are not very gentle and do not provide plenty of freedom, it punishes them and accuses them of being filthy oligarchs' (Plato 2005: 562d). There is a tendency towards demagoguery (what is nowadays often referred to as 'populism') involving saying what the people 'want to hear' rather than what, to the best of the knowledge of those in power, they 'should hear'. Individual benefit and pleasure gain primacy over the common, and political will is more important than laws.

In a political culture outlined in this way, the most important conflict that arises is between the rich and the poor. The upper classes are accused by the lower classes of seeking to establish an oligarchy, the lower classes are accused by the upper classes of pandering to their wealth. The state of mutual discord is ended by a dictator. He first appears as the people's spokesman and then accumulates power and, in the name of freedom, brings about the establishment of a dictatorship. Plato's tale of degradation can be interpreted in many ways. In the context of the tension of dissensus and consensus, it can be said that it is dangerous for a democracy to absolutize one of these elements. An overemphasis on consensus can lead to radical forms of dissensus and polarization between proponents of consensus and its opponents. **Over-emphasizing the importance of dissensus can make it difficult to see the areas of agreement and cooperation, which can also end in a sharp polarization of 'alien elements'**. Within the polarization, each such element strives for uniformity: either 'you are with us and like us', or 'you are with them and like them'.

Intra-systemic dissensus assumes that there is still some point of reference – constitutional principles – that unites us. The pressure exerted by various minority groups on the majority means that sometimes we have to tell ourselves not 'what we want to hear', but 'what we must'. Extra-systemic dissensus, on the other hand, is a kind of 'conversation breakdown': speech acts cease to reach their addressees or the speakers see that they are not speaking the same language. The constitutional language game breaks down into a game of defenders of the system and a game of attackers of the system. The outcome of these games is uncertain: either the disintegration of society and a political system based on inequality or the realization of the need to establish a new overlapping consensus.

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5. DISSENSUS AND CONSENSUS WITHIN AND BETWEEN THE PARLIAMENTS OF THE EU

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1. Introduction: parliaments as *loci* of dissensus

Parliaments and dissensus are strongly intertwined. Indeed, one could easily argue that a parliamentary institution where opposite views cannot confront each other and, thus, where dissensus is not allowed to emerge – within the limits of the rules and the procedures foreseen at the constitutional level and in the standing orders – cannot properly be considered a democratic representative assembly (Dahl 1972; Palonen 2014). Of course, 'parliaments' are established and work in both authoritarian regimes and 'illiberal democracies' (providing the democratic façade to the regime), but they tend to act as the mouthpiece of the ruling party where minorities and dissensus are silenced (Schuler and Malesky 2014).

By contrast, in constitutional democracies opposition and minorities are granted specific procedural rights in parliamentary procedures (Helms 2008; Rizzoni 2013; Fourmont 2019; Wegmann 2022). Even though the majority party or coalition secures the passage of the bills promoted by the governmental agenda, opposition and minority groups see the possibility of influencing and participating in the decision-making as guaranteed, as well as overseeing the executive's activity (Norton 2008). Of course, the extent to which this happens and with what consequences depends on the dynamics of the democratic system (Strøm 1990), for example, whether we witness a more majoritarian or consensual type of democracy (Lijphart,1999), as well as on the level of polarisation of the party system (Sartori 1976), the presence of anti-system parties and ad hoc remedies against them, typical of 'militant democracies' where the openness to parliamentary dissensus stops when such dissensus could lead to dismantling the democratic system from within (Loewenstein, 1937).

Thus, the functioning of a constitutional democracy entails that **dissensus in parliaments** exists and is channeled through various bodies, for example, both in committees and in the plenary, under different conditions. Moreover, the adoption of a decision – typically by the majority (whereas consensus as a lack of explicit disagreement is much rarer to achieve in parliament) – presupposes political negotiations and the reconciliation of diverging viewpoints to build a 'consensus' (in a-technical terms here). Thus, the consensus in parliament typically derives from the **proceduralisation of disagreement** (Palonen, Morales, and Turkka 2014).

This is the modus operandi of most parliaments in the European Union (EU), including the European Parliament (EP), as '*assembleé deliberante*' working through the formation of large and more or less stable coalitions of political groups (Costa 2001). The EU itself has become a source of dissensus between the political forces represented in the European parliaments (Katz 2008; Brack 2018). The rise of '**constraining dissensus'** post-Maastricht (Hooghe and Marks 2009) and the spread of Euroscepticism over the last three decades have contributed to increasing the rate of dissensus inside the parliaments of the EU and, depending on the level of fragmentation of the political system, might have made the reaching of a political compromise in parliament more difficult.

This development has occurred in parallel with the emergence and institutionalization of forms of transnational cooperation among national parliaments (NPs) and between them and the European Parliament (EP). On the one hand, also thanks to the regulation on parties and foundations at the European level (Regulation no. 2004/3003 first and now Regulation no. 1141/2014 as subsequently modified), political parties across the member states have started to cooperate more closely, including Eurosceptic parties, making it clear that at least on some EU-related issues there is more political harmony with political parties from other EU countries than with fellow parties in the national parliament (Bardi et al. 2014). On the other hand, since the Treaty of Amsterdam, and in particular the protocol annexed to it regarding the role of national parliaments in the EU, forms of inter-parliamentary cooperation are acknowledged and regulated in EU primary law (Articles 9 and 10). And since the Treaty of Lisbon, inter-parliamentary cooperation stands in Article 12 TEU as one of the ways through which national parliaments contribute to the good functioning of the EU democracy (Fasone and Lupo 2016; Rozenberg 2017).

2. The relationship between the parliaments of the EU as a test bench for consensus and dissensus

The EP and NPs are the two institutional pillars of representative democracy in the European Union (Articles 10, 12, and 14 TEU). They are deemed to play a complementary role in the Union's mechanisms of democratic scrutiny and accountability (Curtin 2014; Fasone and Lupo 2016: 1-19; Jancic 2017; Crum 2018). The 'democratic disconnect (Lindseth 2010: 13) between the domestic and supranational levels of parliamentary representation has fostered various mechanisms of cooperation between the parliaments of the Union. Some are well-structured, like the Interparliamentary Conferences, even having a treaty basis; others are regular venues of cooperation, like within the parliamentary dimension of the Council Presidency and the inter-parliamentary

The preferences and interests among NPs and between them and the EP are often misaligned, if not conflicting.

committee meetings organized by the EP; some, finally, are occasional meetings, bilateral or multilateral, including in the framework of specific geographic areas (e.g. the Visegrad group, countries of Southern Europe, and Nordic countries). Parliaments and their delegations meet across Europe almost daily, and the intensity of the collaboration has grown over the years, through the blossoming of new venues of inter-parliamentary cooperation (Fromage 2018).

Yet, the preferences and interests among NPs and between them and the EP are often misaligned, if not conflicting. It is sufficient to recall here the 'state of the art' of the so-called 'early warning mechanism', the procedure involving NPs controlling the respect of the principle of subsidiarity by EU draft legislation in matters of non-exclusive competence: NPs are hardly able to agree, not only on the merits of EU legislative proposals or their political convenience but even on whether the EU has complied with the subsidiarity principle (Granat 2019). The mechanism implicitly presupposes a certain level of cooperation between NPs, as the raising of a 'yellow card' to the Commission requires that the reasoned (negative) opinions on the proposal under review are at least equal to one-third or one fourth – depending on the subject matter – of the overall number of votes assigned to NPs (54, 2 each). Since 2010, the 'early warning mechanism' has been triggered three times, in 2012, 2013, and 2016, [21] in the first case contributing de facto to abandoning the proposal and in the second one paving the way to enhanced cooperation, on the European Public Prosecutor's Office (EPPO).

[21] Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services, COM (2012) 130 final; Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, COM (2013) 0534 final); Proposal for a Directive amending the Posting of Workers Directive, COM (2016) 505.

Some, however, have seen in such (physiological) lack of agreement between NPs regarding EU-policymaking the sign of some potential for politicizing EU policy formation and for fostering a more active role for public opinion. They have proposed that NPs should be granted a more constructive role in EU decision-making, for example, by putting forward legislative proposals following the idea of a 'green card' as an evolution of the political dialogue with the Commission (Jancic 2015), rather than acting as veto players (Kröger and Bellamy 2016).

In the framework of EU policies and decision-making, we can expect that, in principle, the level of salience and politicization of the issues covered by a prospective EU decision (De Wilde 2011) may foster cooperation between the EP and NPs, to the extent that those issues can mobilize public opinion and intercept citizens' interests transnationally (Bellamy and Kröger 2016). Alternatively, it may provide a push for a more conflictual dynamic, for example, if a competence claim in favor of the member states or the EU is likely to arise or if there are sensitive national interests at stake.

As the balance of power between the EP and NPs is not fixed once and for all and largely depends on the Union's competence and on the specific policy field (Mayer 2005; Azoulai 2014), the dynamics of the vertical relationships between the EP and NPs also change accordingly. Three examples can serve to illustrate these unstable relationships.

In **trade policy**, given the exclusive EU domain of action, the EP is in a stronger position than NPs, who indeed have repeatedly sought the support of the EP to re-balance the information asymmetry they suffer from vis-à-vis their national governments. This is not to say that conflicts do not appear, but they often tend to appear on a domestic level, i.e. between each legislature and the respective national government. On some occasions of trade agreements negotiated by the EU, NPs have instead found in the EP a strategic ally to collect information from which they had remained excluded domestically.

This has occurred mostly through interparliamentary committee meetings and through the transmission of documents. Such a dynamic was also confirmed in the negotiation of some comprehensive trade agreements (with a much broader scope than trade policy only) that were concluded as mixed agreements. For example, as NPs were also expected to approve CETA (as well as TTIP) but most of them lagged behind the EP in terms of the sources of information available, they could benefit from the exchange with the EP to be debriefed and access documents (even those that were classified, under specific conditions) (Fasone and Romaniello 2020; Meissner and Rosen 2021). At the same time, however, especially for NPs the qualification of **international agreements** concluded by the EU as mixed agreements or Union-only agreements makes a huge difference in terms of involvement, as in the latter case their role is likely to be bypassed altogether, their approval not being required for the entry into force. Provided that there are salient issues on the table (e.g. investment disputes or climate standards), this may lead to an increase in inter-institutional conflict in a horizontal (i.e. legislatures vs executives) or vertical dimension (i.e. member states vs the EU).

A recent EU practice aiming to prevent deadlocks and troubles in the ratification points in this direction, on the one hand, with the decision to conclude the EU-UK Trade and Cooperation Agreement as an EU-only agreement (Eckes and Leino-Sandberg 2022). On the other hand, the EU chose to split the agreement into two separate treaties (an option also discussed concerning the EU-Mercosur free trade agreement). For instance, with Singapore and Vietnam distinguish between the proper trade agreement concluded by the Union and a side agreement covering areas of mixed competencies and requiring the approval of NPs. In the event of such a split, the EU's decision is likely to trigger contestation by NPs and a conflict of interest between them and the EP.
By contrast, in the field of **CFSP** and **CSDP** the relationships among NPs and between the EP and

NPs have traditionally been quite conflictual. For example, from the first meeting in 2012, the EP and NPs (and some NPs amongst themselves) had very divergent views on the design, aim, and scope of action of the Interparliamentary Conference on CFSP and CSDP, and in particular on the role that the EP could have played in that context, in light of the nature of the competence at stake, being predominantly in the hands of member states. As a consequence, the development of interparliamentary cooperation in this area has been evocatively described as a 'battlefield' (Herranz Surralés 2014; Raube and Wouters 2017). However, with the 'settlement' and gradual institutionalization of interparliamentary cooperation in CFSP and CSDP, tensions have been appeased (Herranz Surralés 2022). The cooperation has thus become more consensual, both in the framework of the Interparliamentary Conference and on selected policy issues, such as the controversial creation of the European Defence Fund and, now, the reaction to the war in Ukraine. On the latter, perhaps except for the Hungarian Parliament, all NPs and the EP have taken a similar stance in terms of pro-Ukrainian positioning at the institutional level, but disagreement can be detected within each parliament at the level of political parties and groups for what concerns, for example, the delivery of weapons to Ukraine.

Another field in which cooperation between parliaments has been quite tense has been that of **economic governance**, especially in the aftermath of the Eurozone crisis. Here, dissensus has arisen on multiple levels: over the intensity and form the cooperation should have taken, with some parliaments being in favor of the strengthening of the Interparliamentary Conference on Stability, Cooperation, and Governance of the EMU (Article 13 TSCG) or, as per the French position, claiming the setting up of a new venue of cooperation reinforcing the decision-making role of NPs specifically against the EP (Hennette-Vauchez et al. 2019); other parliaments, such as the EP and the German and Italian parliaments, instead, were willing to see the Interparliamentary Conference simply as a forum for the exchange of information and best practices (Cooper 2016). The dissensus among parliaments also followed national interests, thereby creating clusters of parliaments (e.g. within vs outside the Eurozone; debtor vs creditor countries) and transnational party lines, with MEPs and MPs rallying in support of a pro-austerity front or, instead, advocating for more flexibility in the fiscal rules. Interestingly, in the field of economic governance, there have also been attempts at fostering transnational representation in domestic decision-making. For example, studies have pointed out that when debating EMU-related measures, a few German MPs highlighted the need to also take into account the difficult position of the Irish citizens under the rescue program and the EU-wide implications of their decisions on other member states (Kinski 2020; Kinski and Crum 2020).

At times, **interparliamentary conflicts** are on display both between NPs and between some of these and the EP, and this is due to fundamental constitutional objections (more or less grounded) put forward by some member states against new instruments, as occurred in the previously mentioned case of the EPPO (Article 86 TFEU), still one of the very few cases of enhanced cooperation. In other circumstances, while the EP has pushed for a deepening of the integration and the adoption of new tools, NPs have remained almost silent, despite the salience of the issues at stake, such as with the draft regulation on the rule of law conditionality (Article 322 TFEU), where very few opinions – none of them reasoned – were delivered by NPs both within and outside of the political dialogue.[22] In this case, NPs have most likely preferred to hide behind the positions of their national governments.

The path taken by interparliamentary cooperation in the EU is not developing either in favor of a more consensual approach or of increasing dissensus.

[22] See the opinions collected in the IPEX database on the Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, COM (2018) 234.

Some issues are more divisive, especially if national interests are at stake or when the EP puts forward claims to strengthen its authority and powers, whereas NPs are keen to resist. A crucial role of mediation is played by the European political parties and groups that meet and coordinate their actions ahead of most multilateral interparliamentary meetings (Brack and Deruelle 2016). Indeed, sometimes the dissensus does not emerge along institutional lines, i.e. between parliaments, but rather along party lines, and in the past national oppositions have even been overrepresented in some national parliamentary delegations (Bartolucci and Lupo 2022).

3. In between sincere, 'conflictual' and destructive cooperation: some critical remarks

Despite the tension and the dissensus emerging from time to time in the framework of interparliamentary cooperation, there is an overarching principle under which such interparliamentary relationships should be framed, regardless of the specific competence and the issues at stake: the principle of sincere cooperation (Article 4(3) TEU). Indeed, this principle requires domestic and EU institutions, including parliaments at any level of government, to assist each other in carrying out the tasks that derive from the treaties, 'in full mutual respect' (on this principle, see Klamert 2014).

This is why, notwithstanding the confrontational dynamic often underlying the relationship between the EP and NPs and the relationships amongst NPs, in particular in terms of the procedures and organization of the interparliamentary venues (Crum 2020), the value of vertical (and horizontal) interparliamentary cooperation is never put into question by the same institution (on the development of this argument elsewhere, see Fasone 2019).[23]

Such a dynamic seems to recall the categories of **agonistic pluralism** and, especially, of **'conflictual consensus'** that Chantal Mouffe (2000; 2005) has used to de-

-scribe the functioning of pluralist democracies, notions that have already been adapted to studying the relationships among other institutional actors in the EU beyond parliaments, namely between the Court of Justice of the EU and national judges (Martinico 2022). Indeed, the many parliaments of Europe are deemed to have common values and aims underpinning their relationship. The EP and NPs are expected to share a common symbolic framework and to respect the same values of 'human dignity, freedom, democracy, equality, the rule of law and respect for human rights' (Article 2 TEU), as well as similar functions and the same constituents. Both are ultimately accountable to the same citizen-voters, regardless of whether they wear the national or the European 'hat'.

This is why, drawing on Chantal Mouffe's elaboration of **'conflictual consensus',** we can refer to the relationships amongst the many parliaments of the Union as a case of 'conflictual cooperation (Fasone 2019: 8 ff.). Indeed, moving from the common premises that see the EP and NPs as allies in the promotion of fundamental values and the interests of European citizens, for the sake of EU democratic legitimacy there is then ample space for disagreement between the EP and NPs and among NPs on how to concretely direct and organize interparliamentary cooperation in the absence of an ultimate ordering principle settling their relationships. The loose level of regulation of interparliamentary cooperation is also instrumental to allowing political dissensus, if any, to emerge.

However, such a normative understanding of the interparliamentary relationships in the EU risks being dismantled by the more or less visible disobedience of certain NPs and the respective constitutional systems vis-à-vis the foundational values of democracy and the rule of law.

[23] Even though the many problems and limits of interparliamentary cooperation, starting from its small institutional impact, have been clearly outlined by scholars (see, for example, Hefftler and Gattermann,2015).

Adherence and loyalty to those values are indeed the pre-condition for effective interparliamentary cooperation contributing to the good functioning of the EU (Article 12 TEU). The distortion of the electoral competition, the silencing of free media, and the systematic marginalization of the opposition and the minorities in some parliaments, especially in Eastern Europe,[24] undermines the credibility of those parliamentary institutions as places where dissensus is regulated and channeled to ensure that pluralism and the effectiveness of decision-making are properly balanced. Under these circumstances, in the worst scenario we may even reach a stage where even if the formal 'infrastructures' of interparliamentary cooperation de facto remain in place, the sharing of common values has gone and, thus, there is such an existential conflict between legislatures that the substance of the cooperation becomes either meaningless or destructive.

Despite the attempt of the EP to bring the issue of rule of law backsliding to the fore and to include it on the agenda of interparliamentary conferences and meetings, NPs have been extremely reluctant to engage in a serious discussion of the matter, which is now quite a divisive issue (Schininà 2020). As a consequence, the central question of the dissensus over the rule of law has been deliberately overlooked in interparliamentary cooperation, except for two Conference of Parliamentary Committees for European Union Affairs (COSAC) bi-annual reports.[25] Relatedly, NPs have also shied away from engaging with the early warning mechanism on the draft regulation on the 'rule of law conditionality',[26] as demonstrated by the lack of reasoned opinions on the proposal (Coman 2022: 211) despite its nature and scope being harshly contested both at the domestic and the EU level within the Council and the EP (Coman 2022: 212).

It should also be considered, however, that at least since 2020 a problem in fostering a real discussion in the various interparliamentary ven has derived from the size of the parliamentary delegations.

Even where the delegations can be composed of up to six members, such as for COSAC, typically, fewer MPs participate per delegation. When just one to three MPs are part of the delegation,[27] it becomes difficult to include opposition and minority parties as well or to ensure an effective representation of the various positions along the national political spectrum, including both pro-integrationists and Eurosceptics (and this applies to Hungary as well as to Italy and other countries).

4. Conclusion

EU law regulates and values interparliamentary cooperation in the Union. Yet, by no means does this imply that the relationships between NPs and between them and the EP are purely cooperative. Tensions, dissensus, and, from time to time, conflicts are likely to emerge. While this contribution has attempted to briefly map the developing relationships between parliaments in the EU across various policy areas in the context of consensus and dissensus, without any attempt at systematization, the analysis reveals hints of some recurrent patterns to be tested through further research. First, the nature of the competence affected matters, and specifically, whether it is an exclusive EU competence, a concurrent competence, or a newly emerging field of coordination. In general, the less integrated an area is, the more dissensus is likely to emerge when the EU seeks to regulate the subject matter.

[24] In the meantime, within the Visegrad Group interparliamentary cooperation has intensified considerably and has become more structured.
[25] 25th COSAC Bi-annual Report and Annexes 2016 and 37th COSAC Bi-annual Report 2022 and Annex, available here: https://secure.ipex.eu/IPEXL-WEB/conferences/cosac/static/8a8629a882f20f030182f3d8df56007d
[26] It was the original version of the proposal – Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States COM (2018) 324 final – that was subject to the subsidiarity scrutiny, before its content was substantially altered in 2020.
[27] Source: list of participants available on the website of the EU Interparliamentary Information Exchange: www.ipex.eu

Second, the timeframe is significant: new tools and procedures are more inclined to trigger dissensus, whereas processes of institutionalization over time can help solve tensions and conflicts between parliaments. Third, the salience of a certain issue in the public debate may either increase the level of interparliamentary dissensus (for example, when politicization is on the rise), can support the search for compromise positions, or can leave NPs indifferent, perhaps simply because they let their governments speak and intervene at the EU level while they take a step back.

This picture, however, cannot ignore that the starting point of interparliamentary cooperation in the EU is dealing with democratic legislatures that are meant to 'domesticate' dissensus while protecting the positions and contributions of those in opposition and minorities as the basis for parliamentary deliberation. The majority rule is followed, but at the same time, it is constrained. If this assumption is put in danger, as it is in the case of the present rule-of-law backsliding, then there cannot be sincere and constructive cooperation amongst the parliaments of the Union. Indeed, the relationship between liberal and illiberal parliaments is not between equal institutions fulfilling similar functions and contributing to the proper functioning of the EU, as per Article 12 TEU, and to the values of Article 2 TEU.

Further investigation is needed, however, to conceptualize the illiberal turn of NPs in the specific EU context and, on a practical level, to reflect on and elaborate strategies by the EP and by NPs to collaborate with the democratic opposition and minorities, or what is left of them in illiberal democracies.

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6. DISSENSUS IN EUROPE: THE EXAMPLE OF CLIMATE PROTESTS

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1. Introduction

We have justified reason to feel anxiety about the future on a burning planet. The concern about the mismatch between the overwhelmingly clear science and lack of drastic public climate action increasingly leads climate protesters to break the law as a form of civil disobedience (Politico, 2 May 2023) [28]. In service of the common good, i.e. without pursuit of an individual interest, they commit peaceful but illegal acts of protest. They aim to draw attention to the widespread failures of public institutions. These are the same institutions which they are asked to trust as citizens. These protests have been multiplying and are an illustrative example of the confrontation of 'ideas' or 'ideologies' that some consider the essence of democracy and others classify as hindering constructive consensual political will formation (Mouffe 2016; Schmidt 2019).

One widespread means of drawing attention to the climate emergency is to temporarily block traffic junctions [29]. Recent examples come from the Netherlands, Germany, and the United Kingdom. In all three countries, road-blocking at least potentially constitutes an illegal act that is punishable under criminal law. These illegal acts of protest are also prosecuted in practice. Other recent **climate actions** include throwing soup at museum pieces, interrupting football games and tennis matches, shutting down petrol stations, disabling SUVs, blocking coal-fired power stations, and taking down paintings of the President of the French Republic.

Last Generation, a German group of climate activists, reported in November 2022 that 340 fee notices amounting to €65,070 have been imposed in response to their actions.[30] In some cases, such actions lead to serious criminal charges, such as coercion ('Nötigung').[31] In Munich, Germany, for example, in two instances courts held that an act of road blocking was not justified by the right of resistance regulated in the Basic Law (Article 20 (4) GG) because the right to resist presupposes that the constitutional order can no longer be adequately protected by the state. In addition, the act was not justified by a justifiable state of necessity according to section 34 of the Criminal Code because the accused had milder means of achieving his goal – of influencing the opinion-forming process – at his disposal and was not justified on the grounds of 'civil disobedience'.[32] **Embracing the view that the essence of democracy is the confrontation of ideas**, this paper focuses on confrontations that take place at least partially within public institutions, namely courts. It reflects on the role of courts in these confrontations and how they could make them productive for democracy.

[28] https://www.politico.eu/article/climate-change-global-warming-earth-activists-have-a-new-target-civilians/?utm_source=emailandutm_medium=alertandutm_campaign=Watch%20out%20if%20you%20drive%20an%20SUV.%20Climate%20activists%20are%20coming%20for%20you.andutm_source=POLITICO.EUandutm_campaign=7ee5dcd2a6-EMAIL_CAMPAIGN_2023_05_02_07_50andutm_medium=emailandutm_term=0_10959edeb5-7ee5dcd2a6-%5BLIST_EMAIL_ID%5D.
[29] In my contribution, I focus on road blocking.
[30] https://www.morgenpost.de/politik/article236996403/letzte-generation-mitglieder-finanzierung-strafen-aktivisten.html.
[31] Amtsgeicht München, 16.09.2022 – 1034 Ds 113 Js 124163/22 jug; confirmed by the Bayerischen Obersten Landesgerichts on 21/04/2023, 205 StRR 63/23. Amtsgericht Tiergarten on 30/08/2022 – 422
Cs 231 Js1831/22 (11/22) Jug. Different: Amtsgericht Tiergarten on 5/10/2022 – (303 Cs) 237 Js 2450/22 (202/22).
[32] Ibid.

This raises questions such as **Are illegal acts of climate protest an expression of constructive dissensus? Are they morally justifiable as civil disobedience?** What is the role of law and the courts when confronted with dissensus? How can courts contribute to keeping dissensus constructive rather than turning it destructive? Does it matter for dissensus/civil disobedience whether public authorities or individuals are targeted?

The paper is structured as follows. First, I introduce the concept of dissensus in line with this collection of think pieces. Second, I define **civil disobedience** as one of **constructive dissensus**. Third, I discuss the state's role in framing the distinction between constructive and destructive dissensus. Finally, I focus on the case of the prosecution of climate protestor David Nixon. This case illustrates how judges criminalise protestors' actions and deprive democracy of their constructive contribution to democratic willformation.

2. Dissensus

Democracy is built on a pluralism of ideas and, some argue, the confrontation of ideologies (Dahl 1989). Both contestation and opposition are unavoidable and even form the very essence of democracy (Coman and Brack 2023). ***Dissensus* is here understood to be different in nature from opposition and contestation in that it is a confrontation of very different conceptions of what is 'a good life', the most basic understanding of matters of justice** (Waldron 1999). Following Coman and Brack's contribution in this working paper, it is broadly defined as 'the expression of social, political and legal conflicts that take place concomitantly in different institutional and non-institutional arenas (parliamentary, constitutional, technocratic and expert arenas and the public sphere), driven by political, social and legal actors (including state and non-state actors) *seeking to maintain, replace or restructure liberal democracy*' (Coman and Brack 2023).

Climate protests fall into this definition as they aim to restructure liberal democracy in its current reality. Their direct purpose is to influence public opinion, with the longer-term purpose of triggering a fundamental change in the current understanding of pollution as being covered by liberal rights, i.e. that actions that cause extraordinarily high emissions are an exercise of individual freedom rights (e.g. flying (in private jets); driving SUVs). They seek restrictions that prohibit these actions.

The definition allows for the possibility of seeing (certain forms of) dissensus as a constructive, generative intervention capable of correcting the very flaws of liberal democracy (see Dolghin in this Working Paper, referring to Rancière 2010). This is a clear break with the '**consensus**' culture that has widely been propagated as the basis for political legitimacy (Dryzek and Niemeyer 2006; see also Eckes et al., forthcoming). Seeing dissensus not only as a possibility but also as potential for democratic legitimacy implies taking power relations seriously. It acknowledges that in democracy, marginalised ideologies and groups exist and can contribute to legitimacy. The potential of dissensus is in line with Chantal Mouffe's warning that 'the real threat to democracy' is 'to negate the ineradicable character of antagonism and aim at a universal rational consensus' (1999, mentioned in Coman and Brack 2023), as well as Christoph Möller's (2013) conclusion that '[t]he democratic process depends on a consensus on the procedure, but also on dissident on the merits. The significance of conflicts for a democracy is sometimes underestimated. But it is obvious that the whole democratic process would be useless under the condition of perpetual consensus'.

In this paper, I engage with legal conflicts, namely illegal acts of climate protest. These acts of climate protest may qualify as acts of civil disobedience. If accepted as such, they are an expression of dissensus that is legally accepted to strengthen democracy.

In the context of the climate emergency, the discrepancy between the talk and action of public bodies is widely documented [33] and is also acknowledged by mainstream media outlets.[34] Already in 2018, the International Panel on Climate Change (IPCC) concluded that 'civil society is to a great extent the only reliable motor for driving institutions to change at the pace required'.[35] With the increasing impacts of climate change and insufficient institutional change, the likelihood that civil society resorts to illegal (rather than only legal) acts of protest expressing dissensus and committing acts at least potentially qualifying as civil disobedience, is increasing.

3. Civil disobedience

In *A Theory of Justice*, Rawls (1999: 319) developed a theory of civil disobedience 'designed only for the special case of a nearly just society, one that is well-ordered for the most part but in which some serious violations of justice nevertheless do occur'. It requires the disobedient to accept the legitimacy of the state institutions (Rawls 1999: 319) and commit a public, nonviolent, conscientious yet political act contrary to law usually done to bring about a change in the law or policies of the government' (Rawls 1999: 320). More could be said, but for reasons of simplicity, I follow this understanding of **civil disobedience**. For Rawls, civil disobedience requires that the case of grave injustice is well identified; other potentially successful means of influencing public opinion must be exhausted, and the act of protest should not endanger the constitutional order. A person might see herself as having an obligation to exercise civil disobedience where she believes that the conflict between justice and the law is too stark to be accepted. Some authors have convincingly argued that in a liberal-democratic state that has a morally justified claim to political authority, citizens have a moral right to carry out suitably constrained civil disobedience (Raz 1979; Lefkowitz 2007). This argument is based on the intrinsic, i.e. non-instrumental, value of autonomous agency. Other considerations outweigh the general duty to obey the law. The reasonable and sincerely held belief and, importantly, the purpose of advocating a change in law or policy are necessary conditions to justify that civil disobedience is a form of participation, as we will see in the next section. The purpose of advocating a change in law or policy excludes attempts to topple the legal order or government, i.e. revolution (Lefkowitz 2007: 205). It also requires that civil disobedience is an act of public communication expressing a suggestion for a change to political leaders and fellow citizens.

Civil disobedience is also a form of participation in decision-making and, as such, serves the double purpose of avoiding political domination or alienation. When citizens exercise civil disobedience, they often already act upon a sense of alienation. When they act in contestation of the majority opinion and consciously accept the ensuing civil or criminal judicial process against them, they reopen a deliberative process in the public sphere.

Participation serves several different purposes (Stirling 2006; Lafont 2020). Three purposes can be distinguished. The substantive purpose is to contribute to the quality of decision-making. It has an epistemic value in that the participation of those affected improves the policymakers' understanding of the problem. Besides leading to greater acceptance of policies by those who participated in the adoption process, the instrumental purpose is to foster public trust and ownership. The normative purpose is that participation is a democratic right.

By recognizing civil disobedience as a form of participation, one accepts that the legal means for contesting the outcome of the collective decision-making process, i.e. laws or policies, may not always be sufficient. Contestation may take too long. Citizens may be unaware or misinformed. Considerable or even irreversible harm may take place. In such cases, civil disobedience offers an intense method of expressing the sincerity of the beliefs of a minority of citizens.

[33] Climate action tracker: Home | Climate Action Tracker.
[34] EU must speed up emissions cuts to meet net zero climate target, says report | Financial Times (ft.com).
[35] IPCC, 'Global Warming of 1.5 C' (SR 2018), 352.

In line with participatory democracy theory, understanding civil disobedience as participation also emphasises the objective of tackling systemic inequalities that do not allow all parts of society to enjoy the same say in policymaking (Elstub 2018: 190). Conceptually, participatory democracy theory challenges the understanding of the state as a neutral structure that can exist as separate from civil society and its deeply unequal power relations (Pateman 1985: 172; Lafont 2020). A state reproduces the power structures of society. In this reading, participation serves as an alternative channel through which to influence the collective decision-making that determines the public course of action. Only acts that do not serve the disobedient's self-interest can qualify as aiming for communication rather than personal gain.

This participatory process is triggered by the publicity and communicative nature of an act capable of attracting public opinion to the disobedient's actions and publicly explaining them, e.g. at the protest, on social media and to the media. The ensuing judicial process is a different and – at least potentially – alternative opportunity to attract publicity and, in addition, an opportunity to have the epistemic merits of their argumentation and justification evaluated by an independent authority bound by public reason.

The law and courts are central to framing dissensus and in drawing the line between constructive and destructive dissensus.

The state exercises its monopoly of force by criminally prosecuting climate protestors. Like no other area of law, criminal law gives judges the power to define in exceptionally strong terms what is illegal by identifying an act as sufficiently unworthy such that it justifies criminal punishment. The law and courts are central to framing dissensus and in drawing the line between constructive and destructive dissensus.

4. States framing constructive and destructive dissensus

The dialectic of democracy means the coexistence of consensus and dissensus within a single political system (Włoch 2023). Civil disobedience is constitutionally recognized as a form of *constructive* dissensus: a form of participation in decision-making that fends against alienation from the political process. By its illegality, civil disobedience is right on the dividing line between constructive and destructive dissensus. One could go as far as saying that an illegal act, including civil disobedience, is prima facie connected with the presumption of illegitimacy and, hence, destructive dissensus, a presumption that can be rebutted in the process of evaluating the illegal act by considering the conditions of civil disobedience.[36]

Usually, judges assess a factual situation *ex-post*, from the perspective of the law, considering what they deem to be legally relevant and disregarding what they deem as legally irrelevant. In the judicial process, the judge has the interpretational powers to determine what is legally relevant/irrelevant. By extension, this plays a role (e.g. in the courtroom and through media coverage) in shaping what is seen as legitimate/illegitimate by the broader public. However, the framing of the communication during the legal process and to the broader public may emphasize different aspects or even rely on different arguments (Keller and Bornemann 2021).

Habermas (1986: 106) concludes that 'Civil disobedience draws its dignity from this lofty claim to legitimacy of the democratic constitutional state. When state attorneys and judges do not respect this dignity, when they prosecute the disobedient as an ordinary criminal and punish him with the usual sentences, they succumb to an authoritarian legalism'. **Civil disobedience** is a reminder of the legal system's limitations in achieving justice.

[36] See above for these conditions.

In a liberal democracy with separated powers, judges have an important role in creating, perpetuating, and containing the areas of conflict where law and politics try to dominate each other. Civil disobedience challenges both. In the context of the reporting on the protests against the stationing of NATO rockets, Habermas speaks of a 'the law is the law' mentality. This is also the mentality with which illegal acts of climate protest are received in 2023. Public opinion, the media, and politicians take a very critical stance.[37] They express their disapproval and reprobation. Civil disobedience is breaking the law. Law benefits from a presumption not only of legality but also of legitimacy. Civil disobedience challenges this presumption of legitimacy. Those sincerely convinced that the law is unjust break it to effect a change in the law. The role of the law and judges is to make this constructive dissensus, which is aimed at change rather than revolution, productive for the democratic space. The role of the law and the judge is to allow participation by the disobedient and facilitate an exchange on the public communication of their conviction, while at the same time upholding the legal order and hence taking action to end the illegal actions. This requires them to act in line with liberal-democratic principles and respect the autonomous agency of those committing civil disobedience, even if they find them guilty of illegal conduct.

In the context of criminal prosecution for illegal acts of climate protest, it is worth focusing on the case of David Nixon [38] as it is illustrative of judicial power that can restrict political participation and suppress the underlying legitimizing reasons for civil disobedience.

5. The case of David Nixon

David Nixon, a 36-year-old caretaker, was prosecuted for forming a human roadblock on a major traffic junction in London on 25 October 2021, to protest insufficient public climate action. He argued that he had already used all other legal means to persuade people of the urgency of the climate emergency (The Guardian, 7 February 2023). Nixon said 'I see myself as a good member of society, a good person, who doesn't know what to do' (ibid.).

His action formed part of Insulate Britain's campaign. About 30 others participated. David Nixon was brought to a jury trial at Inner London Crown Court. He was found guilty of causing a public nuisance and was jailed; however, he publicly announced that he would continue his protests upon release.[39]

In several cases, juries had previously found certain illegal acts of climate protest justified on other-than-legal grounds. These juries decided to acquit climate protestors even though their motivation did not qualify as a legal justification for their actions. In other words, evaluating – as juries do – the motivation of the protestors without legal training and considering their conscience, they reasoned outside of the legal framing of what could constitute an illegal but legitimate act of civil disobedience.

During the trial, the presiding judge, Judge Silas Reid, prohibited David Nixon from mentioning the climate emergency or fuel poverty as his motivation for the traffic obstruction, classifying his motivation as legally irrelevant and hence denying him the argument of justification. This deprived David of the chance that the jury might be convinced by the legitimacy of his actions considering his motivation and decide not to punish him. Nixon said that [t]he rule of law would not survive the consequences of climate breakdown and by not taking that into account, judges were failing in their function to keep people safe (The Guardian, 7 February 2023).

[37] For an overview focused on Germany: Ist die "Letzte Generation" eine kriminelle Vereinigung? (deutschlandfunk.de; reporting the critical public opinion: Museum climate protests spark debate on activism tactics – DW – 10/28/2022; Drivers threaten Insulate Britain activists in Essex protests | Environmental activism | The Guardian; UK politician arguing for crack down: Climate activists crossed the line with roadblocks, says minister | Environmental activism | The Guardian.

[38]https://www.theguardian.com/environment/2023/feb/07/insulate-britain-activist-david-nixon-jailed-for-eight-weeks-for-contempt-of-court.

[39] https://www.barnsleychronicle.com/article/25139/climate-change-campaigner-is-jailed#:~:text=David%20Nixon%2C%2036%2C%20was%20found,Britain%27s%20campaign%20of%20civil%20resistance.

More importantly, however, he was deprived of the opportunity to allow the jury, representing the public, to see his act through his eyes – to make his deeply held conviction, for which is willing to break the law and endure punishment, public. He was also denied drawing public attention to the cause of his actions during the trial. This prevented engagement with the views that the disobedient act communicated and limited the exchange to its illegality.

Denying David Nixon the opportunity to share his motivation also led to punishment rather than a penalty. Nixon himself told Judge Reid that he found the inability to tell the jury why he had taken part in the protest 'soul-destroying' (The Guardian, 7 February 2023). Based on the distinction offered by David Lefkowitz (2007: 218), punishment is a way of expressing 'attitudes of resentment and indignation' and 'judgments of disapproval and reprobation', while the penalty lacks symbolic significance of this sort. Those committing civil disobedience willingly accept the costs that come with the illegality of their act. This cost ensures their sincerity and rules out illegal acts that are not based on a deep conviction of the need for change. Hence, the state is in its right to impose a penalty, but it cannot justifiably connect to those costs the expressive element of reprobation (punishment) (Lefkowitz 2007: 223).

Protesting the delegitimization of his actions, David Nixon disobeyed the judge's instruction not to mention the climate crisis as his motivation. He was sentenced to eight weeks of detention for contempt of court [40] as punishment for protesting the judicially imposed delegitimization of his actions. The judge attempted to make Nixon's illegal acts illegitimate through judicial power. David Nixon's case demonstrates the judge's power to suppress in the individual case law's ability to reflect on where legality and legitimacy are not aligned and why.

Prima facie, it seems that if the judge's position were followed more broadly it would deprive the law of its reflective potential, which is a crucial element to

The judge attempted to make Nixon's illegal acts illegitimate through judicial power.

justifying the general assumption that illegality is an indication of illegitimacy and, importantly, that legality benefits from a presumption of legitimacy. Nixon mentioned the protection of the rule of law against the climate emergency as the motivation for his actions. He aimed for change through participation, intending to protect the common good.

However, Judge Silas Reid went further than denying David Nixon the opportunity to exercise civil disobedience and criminalizing his actions by isolating them from their motive.[41] He silenced Nixon's protest in court. Judge Reid's order that jurors must not consider the defendant's beliefs because they are not relevant to the question of guilt or innocence is under appeal.

In the meantime, Judge Reid took action against those who protested against his silencing orders by raising signs outside of the courthouse by saying to the jurors 'You have an absolute right to acquit a defendant according to your conscience'. He ordered one of the court protestors to appear for contempt of court for attempting to influence the jury. When those voicing concern about the procedure and holding signs multiplied, Judge Reid did not take further action against them.[42] It appears that the democratic space was resilient enough to prevail against judicial power exercised to curtail its robustness by silencing constructive dissensus.

[40] https://www.opendemocracy.net/en/activists-jailed-for-seven-weeks-for-defying-ban-on-mentioning-climate-crisis/.

[41] As he did in several other cases, see: https://www.theguardian.com/uk-news/2023/apr/04/climate-activist-trudi-warner-held-sign-telling-jurors-act-conscience-charged.

[42] https://planb.earth/wp-content/uploads/2023/05/PR-Judge-Reid-defeated.pdf.

6. Conclusion

The case of David Nixon highlights **the role of judges and the law in the dissensus expressed through acts of civil disobedience by climate protestors**. A judge who deprives the disobedient of the opportunity to communicate their motives within the procedural constraints of the trial demeans them to ordinary criminals who act out of self-interest rather than civil duty.

When judges criminalize political actions by shutting down the public's ability to engage with their claim to reasonableness and justification, they deprive democracy of the self-correcting potential that forms part of the basis for the law's claim to legitimacy. Rather than protecting democracy, this damages the robustness of the democratic space in which, under the above-described conditions, illegal action can make a valuable and justified contribution to democratic will formation.

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7. CONSTITUTIONAL DISSENSUS AS CONSTITUTIONAL DECONSTRUCTION? THE POLISH CASE

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1. Introduction

One of the significant features of the constitutional state is the stabilization of political power and the reduction of the costs of changing it: the constitution regulates the manner and limits of the exercise of political power, while individual political actors can realize a variety of political agendas within it. **Competition** occurs within the framework of rules recognized by political actors, leading to the recognition of the legitimacy of the outcome of political competition. Political change is normal and in no way touches the constitutional level. This situation can certainly be facilitated by the programmatic proximity of the main political parties, i.e. when they are center-right or center-left. The political dispute is conducted between opponents who mutually recognize the right to political participation. Furthermore, there is political consensus on some issues (e.g. economic or security issues). In such a context, political stability can even be regarded as a threat to the viability of democracy. Too much stability can lead to stagnation and the lack of real debate and a viable political alternative. The situation may change when the main actors see themselves as a real threat and the field for inter-party consensus diminishes radically. **Political polarisation** sharpens the debate and leads to political choices that are not illusory: political actors want and pursue different policies, which gives citizens the feeling that the act of voting for one party is indeed a choice of a particular political vision. Constitutionalism assumes that this type of polarisation is not deep and thus that political actors will be united by their acceptance of the Constitution and its fundamental values: political pluralism, individual rights, or the mechanisms of the rule of law. Political change can be significant under such conditions while remaining within constitutional rules. Political dissensus is intra-systemic and does not cause systemic crises.

The simple model outlined above does not apply to the description of the political change in Poland after 2015. The arduous period of building a democratic state in Poland was interrupted in 2015 following the so-called 'hostile takeover of the Constitution and constitutional order'. The subject of this article is the analysis of the constitutional views characteristic of the process involving the amendment of the existing Constitution using ordinary laws and the arbitrary change in its application, referred to as the 'good change', initiated in 2015. The parliamentary elections then produced a majority sufficient to enact laws but not to amend the Constitution, which was required to realize the majority's intentions. It therefore became necessary for the then-parliamentary majority to take control of the Constitutional Court and the judiciary to exclude the blocking of unconstitutional amendments intended to be introduced by ordinary laws. Implementing this intention set in motion a sequence of interrelated violations of the Constitution, referred to as the 'constitutional crisis'.

As Ryszard Piotrowski (2022) rightly points out, the attitude of those in power towards the Constitution in force is an important determinant of the transformations that co-create the practice of governance referred to as 'good change'. This notion found its application in 2015 in the electoral propaganda of Andrzej Duda, then a candidate for President of the Republic of Poland. Never used previously, it was then used as the slogan of the United Right in the post-presidential election campaign for the Sejm and Senate (Piotrowski 2022: 351).

The objective of the analysis that can enable the reconstruction of the constitutionalism of the 'good change' is, first and foremost, the systemic practice that has caused a systemic crisis, which is already a European dimension (Sadurski 2019). The specificity of this crisis lies in the creation of conditions under which the premise for preserving the legal order is the acceptance of lawlessness. This applies in particular to the consequences of depriving the National Council of the Judiciary of its constitutional identity, due to politicians' election of this Council's judicial component. As a result, the status of the judges appointed with the participation of the Council, and thus also of the judges of the Extraordinary Control and Public Affairs Chamber of the Supreme Court establishing the validity of parliamentary and presidential elections, becomes questionable. Questioning the legitimacy of the illegitimate National Council of the Judiciary could undermine the legitimacy of the state's authorities and sovereignty. In addition, questioning the legitimacy of the decisions of the Constitutional Court, which lacks a constitutional identity, could destabilize the legal relations based on these decisions. According to the Supreme Court, it is not possible 'to accept such a ruling, which was made as a consequence of a state of violation of the Constitution of the Republic of Poland', due to the lack of duly elected judges in the composition of the Court, because 'the Supreme Court would accept the existence of a constitutional tort and the effectiveness of a ruling that aimed to protect the state caused by such a tort (this could be described as the protection of "constitutional fencing")'.

However, the acceptance of lawlessness is necessary to sustain the legal order in the state. The state abhors a vacuum. Today, the Court is part of a democratic state of law whose constitutional identity is also a subject to a 'good change'. This is an obvious consequence of the slowly but systematically progressing phenomenon of the 'extinction of the rule of law' and the slow so-called 'taming of lawlessness' (Piotrowski 2022: 355-358). **In the case of post-2015 Poland, we can observe a process of deconstruction of constitutionalism**. At the same time, it is impossible (at the current stage of political development) to state that we are dealing with an attempt to build some new form of constitutionalism or a paradigm shift from legal constitutionalism to political constitutionalism (Kustra-Rogatka 2023: 25-58).

'The law is there to serve us. A law that does not serve the nation is lawlessness.'

It is noteworthy that the constitutional views characteristic of supporters of the 'good change' often have as their basis ignoring the Basic Law if this is useful for the ruling majority, recognizing that it is not constrained by the Constitution, even as the supreme law, because 'The law is an important thing, but the law is not sacred (...) Above the law is the good of the nation. If the law disturbs this good, we must not regard it as something we cannot violate or change (...) The law is there to serve us. A law that does not serve the nation is lawlessness.' The arbitrary definition of this good belongs to the elected majority, but not even to the majority of voters. This assumption, which is realized in political practice and lies at the heart of the Polish constitutional crisis, undermines the sense of any constitutional law, the source of which is the existence of a community, because it excludes from the community both the losing minority and those who did not vote. The constitutional crisis we are currently experiencing consists, to a large extent, of depriving the parliament of the ability to define the common good in the process of dialogue,

imposing a majority definition by limiting debate, and depriving the minority of the possibility of initiating legislative work, or replacing parliament through the majority-dependent Constitutional Court acting as the de facto legislator (Piotrowski 2022: 357-358).

Applied by the government majority, the deconstruction of a constitution is a thorough reinterpretation of the text and a change in political practice that is both a break with previous practice and an emphasis on continuity. The deconstructing political actor presents his or her practice as 'constitutional', albeit different from the existing practice, e.g. better reflecting the true values of the constitution or its deeper meaning. The purposes of deconstruction can be various: (a) **constructive,** when it improves the functioning of institutions (institutional aspect) or when it expands individual rights and freedoms (social aspect); (b) **destructive**, when it leads to institutional dysfunction (institutional aspect) or when it increases the freedom to exercise political power and/or reduces the standard of protection of rights (social aspect). Deconstruction can thus fall within the scope of (a) intra-systemic **dissensus** when it aims to increase the positive potential (however defined) of the constitution in the institutional and/or social (law-individual) aspect or (b) extra-systemic dissensus when it aims to change the existing sense of the constitution comprehensively or bring about a state of constitutional facade: transforming the sense of the operation of institutions and/or lowering the standard of protection of rights and freedoms (Włoch and Serowaniec 2023).

The 2015 political change in Poland has neither resulted in a formal constitutional change nor a complete breakdown of the state's institutional structure. From a purely formal point of view, the constitutional text is the same: Poland still has a standard liberal-democratic constitution. It implements the model of legal constitutionalism by establishing a constitutional court (the Constitutional Tribunal) that is the 'instance of last word' in constitutional matters. Here, we limit ourselves to this aspect of constitutional deconstruction. During the period of constitutional change and until the establishment of the Constitu-

-tion in 1997, the Tribunal played an important system-forming role, as it was through its jurisprudence (among other things) that the standards of the constitutional state were introduced. After 1997, the strong position of the Constitutional Tribunal and, not infrequently, its adjudicatory activism were subjected to criticism (e.g. the 1997 abortion ruling, rulings on religious issues strongly supporting the dominant religion in Poland); however, none of the main political actors questioned its constitutional competence and the legality of its judgments. After the Law and Justice Party and its coalition partners won a parliamentary majority in 2015, there was a so-called process of 'packing' the the Constitutional Tribunal with people closely connected to the ruling party. This was done not only by filling vacant seats but also by annulling the resolution of the Sejm regarding the election of five members of the Constitutional Tribunal. As a result, the composition of the Tribunal changed rapidly and there are considerable constitutional doubts about three judges with regard to whether they were correctly appointed. The Tribunal still holds a systemically high position and is still the 'court of last word' on constitutional issues. In fact, the Tribunal's jurisprudential activity has decreased significantly and the rulings and their justifications support the political line of the parliamentary majority.

As Wojciech Sadurski rightly points out, the constitutional views characteristic of the 'good change' are a specific constitutional decisionism, allowing the Constitution to be arbitrarily disavowed and, consequently, the ignoring of its provisions or giving them an anti-constitutional meaning. 'Good change' is in fact an amendment of the existing Constitution, carried out – if it cannot be done otherwise (and it cannot be done otherwise due to the lack of the required majority as a result of the outcome of the elections) – without changing the text, i.e. through an interpretation that leads to a new meaning being given to the text of the Constitution using the ordinary laws reflecting it and through a change in constitutional practice (Sadurski 2018). However, the lack of the majority required to amend the Constitution does not limit the constitutionalism of the 'good change', and this is done through interpretive treatments and,

if necessary, appropriate persuasive measures to maintain the majority required to pass laws. The generality of the Constitution makes it necessary to determine the meaning of its text, which is often ambiguous, surprising the interpreter with gaps and inconsistencies. A constitution – even the most detailed one – requires interpretation, without which its application is impossible. This makes the Constitution dependent on the interpreter; however, he may follow the principle that everything said in the Constitution will be used against it (Garlicki 2019: 141-149). This kind of interpretation, deserving the name of an anti-constitutional interpretation, is made in the name of the primacy of politics over the Constitution and consists of taking advantage of the provisions of the Constitution and their inconsistency or lack of regulation, to justify the constitutional legitimacy of actions that are devoid of this property without this procedure. The anti-constitutional interpretation of Polish Basic Law thus results from the bad faith of the interpreter, connected to his conviction about the provisional character of the constitutional regulation, which does not originate from him, is alien to him, and, therefore, can be violated. The systematic dismantling of the rule of law in Poland, without officially amending the Constitution, was made possible precisely using this particular interpretative technique (Krygier, Czarnota, and Sadurski 2022). The deconstruction of the Constitutional Tribunal by linking the powers of judicial review of legislation (binding interpretation of the constitution) to the political will of the ruling party is particularly evident in matters of great political significance that generate constitutional disputes, such as in matters related to the reform of the judiciary and the competence of supranational institutions to examine the state of the rule of law in Poland.

When analyzing the most glaring cases of applying this anti-constitutional technique of interpreting the Polish Constitution, it is worth referring to the statements made by Mirosław Granat. He points out that the first symptom of the 'revolution' in interpreting the Constitution was the stunning in-

-interpretation of the constitutional provisions concerning the Constitutional Tribunal itself following the October 2015 elections. According to Article 190(1) of the Constitution, 'judgments of the Constitutional Tribunal shall have the force of general application and shall be final'. In contrast, Article 190(2) requires the prime minister to publish the Tribunal's judgments immediately. Both of these provisions have been reinterpreted to allow the government to control the judgments of the Constitutional Court. Thus, the new interpretation of the former provision, sometimes figuratively referred to as the 'interpretation on the stairs' (because it was promulgated on the steps of the Constitutional Court building), stated that judgments of the Constitutional Court are not always final and conclusive because the Constitution does not specify what the finality of judgments is and how this should be understood. Meanwhile, the latter provision has been interpreted as legalizing the government's alleged right to review Court judgments. In particular, it suggested that the prime minister must ensure that the text submitted for publication meets the legal requirements of the judgment and does not contain errors affecting its content. Consequently, the publication of judgments of the Constitutional Tribunal is not a simple technical act of transmitting the text received from the President of the Constitutional Tribunal to the publishing body. Instead, the government upheld this interpretation until the end of 2016, i.e. all judicial positions in the Court were filled with government loyalists. Therefore, the point-by-point interpretation was used in 2015-2016 to allow the government to take control of the Constitutional Court (Granat 2023).

Another example of the application of interpretation is the Act of 8 December 2017 regarding the National Council of the Judiciary. The Council plays an extremely important role as it guards the courts' and judges' independence (Article 186(1) of the Constitution). In particular, it identifies candidates for judges of common courts, whom the president then appoints. Its impartiality is therefore crucial. Article 187 of the Constitution stipulates that the Council consists of 25 persons (15 judges and 10 other

members), with a mixed composition of representatives of all three branches of government. The majority are representatives of the judiciary, who, until 2017, were elected by the judges themselves. Article 187 also stipulates that the role of the Sejm – the lower chamber of the bicameral Polish Parliament – is limited to the election of 4 deputies (the senate elects two senators, the president appoints 1 person). However, the parliamentary majority interpreted Article 187 to mean that, as of 2017, all 15 judges are elected by the Sejm and not by other judges, which aligns with the Constitution. This overturned the 30-year-old constitutional precedent that each branch elects only representatives of its branch to the Council. It also unlawfully shortened the constitutional term of office of elected Council members to four years.

As M. Granat rightly pointed out, in 2022 the newly constituted Supreme Court, in one of its rulings on this interpretation, stated that the National Council of the Judiciary created according to the provisions of the 2017 Act 'is not the same as a constitutional body whose composition and method of election is regulated by the Constitution of the Republic of Poland, in particular Article 187(1)'. He further noted that the procedure for appointing judges to the Council predates the 1997 Constitution. It was agreed upon in the 1989 Round Table Agreements and preserved in subsequent laws on the National Council of the Judiciary, so that 'it was clear to everyone' that the judicial community elected its members. There are no grounds for assuming that the composition and method of election of the National Council of the Judiciary has been shaped in the Constitution in a manner different from the previous construction of this body over almost 30 years (Supreme Court resolution of 2 June 2022, I KZP, OSNK 2022/6/22, LEX no. 3348360). As a result, the Supreme Court rejected the new interpretation of Article 187. However, its position has been ignored by the Sejm, which continues to elect judges to the Council (Granat 2023).

Euroscepticism in the jurisprudence of the **Constitutional Court** is, in turn, already directly linked to the supranational dimension of the rule of law dispute, a key element of which is the assessment of the legislative changes concerning the judiciary enacted after the United Right took power in 2015. First, the **Eurosceptic narrative** was woven into the justification of judgments formally concerning domestic law but directly related to the supranational dimension of the rule of law crisis. These are the judgment of April 20th, 2020 in the U 2/20 case and the order of April 21st, 2020 in the Kpt 1/20 case, both of which sought to block the national implementation of the CJEU judgment of November 19th, 2019. In practice, both rulings sought to delegitimize the Supreme Court's resolution of January 23rd, 2020, and indirectly block the implementation of the CJEU judgment of November 19th, 2019 (Witkowski, Witkowska-Chrzczonowicz and Serowaniec 2021: 106-134). The second stage of the Eurosceptic turn in the jurisprudence of the Constitutional Court began with the resolution of cases directly relating to EU law. These include two judgments – P 7/20 of July 14th, 2021, and K 3/21 of October 7th, 2021 – both of which contradict the previous jurisprudence of the Constitutional Tribunal on matters related to Poland's EU membership and radically change the meaning of European integration in Polish constitutionalism (Serowaniec and Jachimowicz, 2023: 55-68). In both of the judgments mentioned above, the Constitutional Court found the norms of primary EU law to be incompatible with the Constitution to a large extent. The rulings issued by the Constitutional Tribunal in the last three years create a new anti-EU line of jurisprudence, which takes as its starting point the divergence of constitutional and EU standards, the absence of an obligation to interpret national laws in a pro-EU manner, and a confrontational attitude towards the CJEU, its jurisprudence and EU law. The apparent 'Eurosceptic' (or, rather, anti-EU) turn in the jurisprudence of the CJEU in recent years should therefore be analyzed taking into account the political context in the sense outlined above. This implies, firstly, the need to consider whether we are still dealing with a constitutional court or a so-called 'inverted court' that serves as a tool for politicians to denormalise the Constitution and is linked to disregarding constitutional limitations. Secondly, when dealing with a body that has de facto ceased to perform its constitutionally defined function, one has to wonder what formal status its rulings have in

matters related to EU membership and, consequently, whether they constitute the European constitutional acquis. The example of the Constitutional Court's recent anti-EU rulings brilliantly demonstrates how the executive uses a politicized constitutional court to legitimize political decisions (Kustra-Rogatka 2022: 185-187).

These examples illustrate the distinctive features of the anti-constitutional interpretation. The first is its anti-systemicity, which contradicts the long-standing and established understanding of the provision and its practical application. Another feature of anti-constitutional interpretation is the preference for the linguistic method of interpretation over teleological and functional methods. Here, linguistic interpretation does not have the usual legal meaning but, rather, emphasizes the ambiguity of words in everyday language (e.g. 'finality'). While the linguistic method is indispensable in interpreting the law, it must be complemented by other methods to avoid its misuse. Many examples can be given of the abuse of the linguistic method of interpretation. For example, in March 2020, during the COVID-19 outbreak, the government made a surprising interpretation of Article 232 of the Constitution (which sets out the conditions for the government to impose a state of disaster) that relied solely on the linguistic method. The government interpreted this provision to justify refraining from imposing a state of emergency that would prevent the government from holding the scheduled presidential election. Ultimately, the government imposed no emergency measures and the presidential election occurred. This illustrates the usefulness of punctuated interpretation, which 'allows' the interpreter to freely select solutions from other legal systems: on the one hand, legislation implementing a particular interpretation is enacted, and on the other hand, the government selects comparative examples that support its interpretation. The third feature of anti-constitutional interpretation is related to its subject matter. It is applied to particularly important provisions, i.e. those that define the 'critical infrastructure' of the judiciary or the state system. For example, the interpretation of Article 187 has served to undermine the independence of the judiciary, and the interpretation of Art. 190 has served to incapacitate the Constitutional Court and the interpretation of Article 232 has been used to avoid introducing extraordinary measures. These interpretations have paved the way for enacting laws fraught with serious allegations of unconstitutionality, e.g. the law on the National Council of the Judiciary or the so-called remedial laws concerning the Constitutional Court in 2015-2016. Finally, anti-constitutional interpretation obscures the picture of key constitutional provisions. It spreads a kind of interpretive 'fog', meaning that 'all interpretations' of a given constitutional provision are possible or 'come into play' (Granat 2023).

On the one hand, legislation implementing a particular interpretation is enacted, and on the other, the government selects comparative examples that support its interpretation.

All this is followed by a phenomenon of decomposition of the legislative process by taking over the hitherto exclusive competencies of parliament in the area of enacting laws of the rank of a statute through the usurping of the right to 'decree', the issuing of various regulations (only formally implementing but in reality exceeding the framework of existing authorizations in ad hoc laws passed under shortened legislative procedures, with abuse of parliamentary club discipline and ruthless enforcement, bending parliamentary customs to current political needs). An extreme example of this is the cynical change in the understanding of the institution of the resumption of voting, which is used to make new attempts to vote indefinitely on issues that did not receive sufficient approval in earlier rounds of voting in the chamber but are important from the point of view of the legislative calculations of those in power (Serowaniec and Witkowski 2020: 150-177). Representatives of the ruling formation are exercising their right to speak in various forums of the Sejm 'without any procedure' or 'outside the debate procedure'.

This is a blatant testament to the exploitation of the domination of the pro-government majority, the political instrumentalization of the law-making process, with a disregard for democratic legislative standards, and the restriction of the parliamentary opposition, in particular through arbitrarily introduced formal restrictions (Wyrzykowski 2018: 3-21).

In practice, the constitutionalism inherent in a democratic rule of law, assuming the limitation of power by law, has been replaced in Poland by constitutional decisionism, which reflects the principle of the primacy of politics over law. Applying this principle in constitutional practice became possible due to parliamentary and presidential elections allowing for the subordination of the legislative and executive powers to one political orientation and its leaders. This allowed for the anti-constitutional aspirations of the majority and its government to take control of the Constitutional Court, as well as the legislature, the National Council of the Judiciary, the Supreme Court, the judiciary, and those public institutions whose functioning independent of the majority's decision-making center could weaken its systemic omnipotence – excluded by the Constitution but realized in practice. This process was accompanied by a fundamental limitation of the opposition's role in legislation violating the rules of rational law-making. Thus, in Poland the constitution has step by step become everything that those who have the power to decide on the constitution consider to be the constitution (Piotrowski 2022: 351-353).

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8. DISSENSUS ON LIBERAL DEMOCRACY: POLITICAL PARTIES AT THE NATIONAL AND EUROPEAN LEVELS

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1. Introduction

Political parties have been the key institutions for the aggregation, articulation, and representation of citizens' interests in representative democracies for more than half a century. While at the beginning of their existence in the 19th century, political parties were associated with elitist groups or cadres, they have gradually shifted towards representing the masses and have thus become part of the democratic process, functioning as the transmission belt between the state and society (Duverger 1954; Sartori 1976; Katz and Mair 1994; Dalton and Wattenberg 2000; Scarrow, Webb and Poguntke 2017). **The strong embeddedness of political parties in democracy does not mean that there is an ideological consensus among them towards liberal democracy.** On the contrary, over time there has been a broad contestation of liberal democratic ideas and ideals. The following provides an **overview of the current dissensus over liberal democracy** in Europe at both the national and supranational levels.

A conceptual clarification of the key term '**liberal democracy**' is required, however. We use the **minimalist definition** of democracy, according to which it is a mechanism of selecting representatives in competitive elections that are guided by rules respected by all competitors and by citizens (Schumpeter 1950; Linz and Stepan 1996; Przeworski et al. 2000). Liberal democratic systems are built on a key liberal notion according to which **individual liberty is supreme and must be protected by institutions.** They are characterized by a plurality of conflicting interests that are regulated by **commonly agreed political institutions**, values, the rule of law, and the protection of rights and freedoms (Brown 2003; Pappas 2019: 2-3).

In the 20th century, the formation and development of political parties in Western European countries was based on **various approaches to liberal democracy**. Political party formation happened either along the lines described by the classic theory of cleavages, or they emerged as single-issue parties aiming to represent specific segments of the electorate (Lipset and Rokkan 1967; Poguntke 1987; Gunther and Diamond 2003). The same applied to countries in Eastern Europe, where in 1989-1990, following the breakdown of authoritarian regimes and single-party systems, the emerging parties shared the values of political pluralism and transition to liberal democracy (van Biezen 2003; Millard 2004). The different competing ideologies, reflected in traditional party families or newer species of parties (Ware 1996; Gunther and Diamond 2003), **either provide alternative variants within the realm of liberal democracy or engage in a critique of liberal democracy.** These two broad approaches overlap with the distinction between **mainstream and fringe parties,** in which the former seeks to provide functional alternatives to liberal democracy while the latter contests liberal democracy (Gherghina and Fagan 2021).

On the one hand, **mainstream parties seek to improve the functioning of liberal democracy** by addressing issues that they find problematic. For example, social democrats traditionally emphasize social welfare and a redistributive type of economy, while liberals favor a market economy approach with minimal state involvement. The conservatives seek a more traditional and restrictive society, while social democrats and liberals are more inclusive (e.g. being pro-minority, including migrants, religious or sexual preferences). The changing political, social, and economic environment makes these parties **adapt** and sometimes change their policy positions (Fagerholm 2016).

Mainstream parties seek to improve the functioning of liberal democracy by addressing issues that they find problematic.

This is also possible because these **parties agree with the general principles of liberal democracy** and contestation occurs concerning specific issues that can be improved.

On the other hand, **fringe political parties** – at the periphery of the political spectrum – engage in a **strong attack on liberal democracy** (***hard dissensus***), both from the **left** and from the **right** of the political spectrum. This is an internal challenge in which political actors from within the system distinguish **between democracy and liberalism**. They do not aim for corrections/ improvements of liberal democracy but for its replacement. Radical left (communists and their successors), radical right (nationalists), and populist (that either combine some characteristics of the radical left and right or position themselves close to one of the two extremes) political parties launch a fierce critique of liberal democracy. For more than two decades, their criticism has targeted the **failure of liberal democracy** to ensure the progress of society in several ways (Mudde 2007; March 2011; Pirro 2015) that we structure into **four main of dissensus** in the following section. Radical and populist parties propose **alternative models to liberal democracy** (Mișcoiu 2012).

For example, populists support the illiberal democracy (Pappas 2019) that is visible in several contemporary societies.

2. Four main areas of hard dissensus

The **first** area of dissensus is about the **legitimacy of decision-makers**. The mainstream political parties argue that political institutions are **responsible for making decisions on behalf of the people** through the process of representation. They claim the legitimacy of political power in light of their continuous electoral support and access to government office. The radical right and radical left **contest the idea of multiple political representations** and want to replace the institutions with **more authoritarian and centralized forms of decision-making**. For example, the radical left advocates for alternative power structures that require major redistribution from political elites to citizens (March 2011). **Populists** contest the idea of institutions and argue that **sovereignty rests with the people who should govern**. They attack the mainstream parties as corrupt, elitist, and detached from voters (Mudde and Kaltwasser 2013; Pappas 2019). By considering political institutions redundant, the radical and populist parties attack the principle of checks and balances and place **institutions below individual interests**. This line of reasoning fuels the **Eurosceptic** beliefs cultivated by these parties: the **European Union is not a legitimate decision-maker** because it is an institution **far removed from citizens** that disregards popular sovereignty.

The **second** consensus is about the **homogeneity** and **uniformity** of preferences in society. The political parties favorable to liberal democracy support the pluralism of opinions in society, which results in electoral support for different political actors, including extremists and populists. The extremists do not take much issue with the heterogeneous nature of the population – one exception is the identity/nationalist argument of radical parties – but **emphasize the importance of being represented by one political party** (theirs) that can ensure efficient governance.

They express **issue priorities** along economic (radical left) or identity (radical right) lines to illustrate the importance of having a **united voice**. **Populist** political parties advocate the **homogeneous nature of the people,** with one set of interests and values, one judgment and one will (Müller 2016; Hawkins et al. 2019).

The **third** dissensus refers to the **promotion of division and polarisation.** Mainstream parties hold the view that political conflict and debate can be beneficial for society as long as it occurs within the realm of the democratic game. Disagreements over policies and actions are the usual characteristics of electoral politics in both established and new democracies (Dalton and Wattenberg 2000; Webb and White 2007). Conflict occurs as a result of diversity, which is common in societies with plural interests. Liberal democratic practices are oriented towards compromises that can accommodate multiple requests and solve conflicts. Radical and populist parties support ongoing conflicts because they see their opponents as the embodiment of evil and portray themselves as relentless fighters against people's enemies. **Radical left** parties advocate the existence of a **class fight** between ordinary citizens and wealthy elites. The **radical right** parties pursue an identity conflict that aims to keep external elements (i.e. foreigners) away from society. **Populists** pursue a moral conflict in society between the **virtuous people and the elites who are corrupt**, self-seeking, and conspiring against citizens (Müller 2016; Mudde 2017; Norris and Inglehart 2019).

The **fourth** dissensus is the **tyranny of the majority**. One of the key ideas surrounding democratic liberalism from its early days is how to avoid the tyranny of the majority (Mill 1861; de Tocqueville 2009). Democratic institutions were generally established to protect citizens against the tyrannical concentration of power and to protect groups of citizens (i.e. minorities) against the tyrannical use of power by other groups. Specific democratic arrangements were thought up and applied in practice to accommodate the demands of minority groups (Lijphart 1977).

Radical and populist parties are **insensitive to minority groups** and consider a **unitary group of people as an uncompromised majority.** They support whatever stands for the majority in terms of social status, nationality, or morality standards. For example, **populist** rhetoric tries to convince a constructed majority that liberal democracy gives rise to a **tyranny of minorities** (Fournier 2019). These are the foundations on which they justify **anti-rule of law** claims and, to some extent, **Euroscepticism**.

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9. DEVIL, ADVOCATE, WATCHDOG AND WHISTLE-BLOWER – HOW THINK TANKS CAN SHAPE THE EU DEBATE

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1. Introduction

Amidst growing dissensus in the public sphere, EU think tanks can play a crucial role in helping to shape the public debate on EU policymaking. Think tanks set the agenda on topics and along dimensions that are still missing or could be adjusted and interpret what happens to citizens as a result of political and policy developments (Bertram and Hoffmann 2020). Through their power of contextualization in the media, by publishing papers, and by organizing debates, they can also elaborate on the evidence and argumentation behind new political and policy decisions.

In today's Europe, dissensus (sensu Coman 2022) – the existence of disagreement in the public sphere – is growing (Coman, Behr, and Beyer 2023). In the post-truth era, some parts of the population moved away from traditional media and conspiracy theories progressively challenged the public sphere. Some people detach themselves from what they call 'the elite'. Against this backdrop, this paper reviews how think tanks relate to a representative and pluralistic democratic model. Moreover, is the role think tanks play changing as the public sphere is, arguably, becoming more segmented (Newman 2023)?

This piece focuses on think tanks that engage in EU politics and policy. We argue that it is remarkable that in a time when European integration is contested in political and public debates, most EU think tanks discuss rather than oppose EU policy developments (Boucher et al. 2006). Several aspects of EU think tanks are taken into consideration. First, various ways to categorize think tanks are discussed. Second, their general roles are reviewed. Third, examples are given of how think tanks have used their role to impact the EU amidst a public sphere that is increasingly characterized by dissensus.

2. Drawing the think tank landscape

With a large number of think tanks, it is sometimes hard to see the forest for the trees. So what kind of think tanks can be recognized? By no means claiming to be a complete typology, three important criteria to differentiate EU think tanks are political affiliation, geographic focus, and funding.

First, political affiliation differs from one think tank to another (Boucher et al. 2006). Politically independent think tanks include university institutes such as the Centre for European Studies and Comparative Politics (SciencePo) and Friends of Europe. On the other hand, politically affiliated think tanks include the Martens Center (EPP) and the Friedrich Ebert Foundation (SPD). EUISS is an EU agency that is part of the European External Action Service. While politically independent and affiliated think tanks may sometimes operate similarly, the intellectual freedom of the latter is most likely more restricted to the related political stream. Furthermore, the question of think tank neutrality or independence is also relevant to the thin line between think tanks and public affairs offices, where one sometimes operates as the other.

Geographic orientation and localization distinguish (pan-European) think tanks, with the main seat of nationally based think tanks focusing on Europe – either exclusively or as part of a broader orientation – being in Brussels. In the latter category, we see organizations such as the Clingendael Institute and the Italian, Polish, and Swedish Institutes of International Affairs. Brussels-based pan-European think tanks include Bruegel, Carnegie Europe and CEPS. Proximity to the EU institutions helps pan-European think tanks gain swift access to inside information and dynamics. However, some examples do not have their main seat in Brussels, such as ECFR and the Jacques Delors Institute.

Finally, a think tank's position is arguably also influenced by the origins of its funding (Boucher et al. 2006). Lines are thin between think tanks supported by the government or parliament, the private sector, and foundations. Moreover, think tanks often try to obtain funds from as broad a combination of sources as possible. In addition, the difference between non-profit and for-profit think tanks should be mentioned, as this can influence an organization's working methods and initial goals.

While there are multiple categories of think tanks, we should not forget to mention the role of consortia. Several umbrella organizations host a variety of think tanks as members and associate members. Such fora and networks include TEPSA, ETTG, and various Horizon projects that bring together universities and think tanks to address contemporary research questions relevant to EU policymaking. Often, their objective is also to enhance the impact of think tanks

3. Watchdogs amidst fragmenting societies

According to Boucher, EU think tanks sit between public opinion and political decision-making. From that position, the primary role of think tanks is to safeguard debates on relevant policy and political developments that take place in the EU.

Think tanks primarily give impetus to public debate through evidence-based argumentation. This includes publications and the organization of online events. Furthermore, taking on the authority of experts in their field, think tanks also feed public debate via their media contributions. Through all of these activities, think tanks can shape the public debate in general or alter the direction of more specific policies.

The thought leadership of think tanks can be leveraged by their convening power. Some think tanks, such as GLOBSEC, specialize in high-profile events where politicians, senior representatives of the private sector, and influential thinkers get together to discuss contemporary policy questions. Politicians – in the case of this year's GLOBSEC Bratislava Forum, Presidents Macron, and von der Leyen – use these conferences to pitch new ideas in speeches and test the waters with broader audiences. Other such conveners in Europe include the Munich Security Conference, the Paris Peace Forum, and the Warsaw Security Forum, which have the networks and capacity to bring together major actors, including top-notch representatives of the think tank community. This convening power allows think tank organizations to bring together bright minds and to hold the pen for the outlining of events and invitations.

Depending on their type and topical focus, think tanks contribute to the EU debate differently. However, what they often have in common is their connecting of the national and EU debates. In their Berlaymont Paper of 2012, Missiroli, Ioannides, and Therace (2012) argued that EU think tanks are 'the closest thing to a fledgling common European public sphere', albeit a selective one. Think tanks, they argue, are not accessible to all.

In the ideal(used) situation, think tanks safeguard the EU debate in the public sphere by playing the role of a disinformation watchdog amidst a fragmenting society.

In a playing field with civil society actors, lobbyists, and MEPs, think tanks tend to be the more neutral actors. As such, they can safeguard the objectivity of the public domain. The extent to which think tank experts can truly honor this role depends on the quality of their expertise and their ability to speak freely and without concern for the interests of funders and political stakeholders.

4. Crises offer momentum for influence

Not everyone recognizes this watchdog or safeguarding role of think tanks. The evolving public sphere sees some people turning away from the so-called elite and political 'establishment' (Newman 2023). For these people, think tanks are likely part of that elite. In part, the alleged selective accessibility of think tanks contributes to this perception.

With the position of think tanks firmly between the people and the political establishment, how come an overwhelming majority of think tanks present a neutral or positive perspective of the EU (Boucher et al. 2006)? Apart from some Eurosceptic exceptions, the position of EU think tanks vis-à-vis the EU is usually content-focused.

Remarkably, most EU think tanks discuss rather than oppose EU policy developments while European integration is being contested in the political and public debates. Brexit saw the 'EU departure' of the Eurosceptic think tank Open Europe. Other think tanks located in the UK, such as the Centre for European Reform and Chatham House continue to analyse EU affairs from the outside. Simultaneously, new Eurosceptic think tanks have entered the arena, such as the Hungarian government-loyal MCC Brussels.

For the population segment that did not turn away, EU think tanks can be impactful in several ways. Besides considering think tanks as independent players and amplifiers of objectiveness in the public debate, they can also have the means to be influential themselves.

Think tanks have the ability to set the (political) agenda by raising topics and policies they believe deserve attention.

On the one hand, think tanks can set the (political) agenda by raising topics and policies they believe deserve attention. On the other hand, taken seriously by the public and by policymakers as experts in their fields, think tanks can shed light on current affairs with their interpretation when asked for context in the media. Expert interpretations in the media are important because, with their facts-based knowledge and experience, they enable people to be better informed.

By providing their contextualisation, think tanks can seriously influence the public debate. Emerging crises often give momentum to such influence. The Eurozone and COVID-19 crises are just two events that increased institutional and popular demand for evidence-based expert knowledge (Coman 2019; Newman 2023). The war in Ukraine is another example of a crisis in which the public expects neutral experts to inform them to shape their opinion (NPO Radio 1 2023). Various crises have increased the demand for expert views in the EU. Whether it be policymakers needing qualitative insights, journalists seeking background information, or people seeking clarification of significant events impacting their everyday lives, think tank experts can play a vital role in informing and shaping the public debate.

5. Flagging issues and spreading the word during the COVID-19 crisis

During the early stages of the COVID-19 pandemic, think tanks highlighted the rising nationalistic approaches to the spread of the virus. In 2016, Clingendael, among others, had already warned of the absence of internationally coherent approaches to a potential pandemic (Van Schaik and Van de Pas 2017).

Calling for more collective action, Elcano stated on March 20th, 2020, that more intergovernmental cooperation could have saved more lives (Toygür 2020). EU governments were criticized for their chaotic handling of measures – varying from member state to member state – in their attempts to tackle the crisis individually. The only coordinated approach was the closure of Schengen borders (which CEPS assessed partly unlawfully) as member states ran to protect national public health and industries (Carrera and Ngo Chun Luk 2020). Similarly, SWP wrote that the absence/delay of a coordinated EU response 'reinforced the national sovereignty', creating gaps between traditional EU coalitions (Lang and von Ondorza 2020).

While other experts warned that the EU ought to have more power to fight pandemics in the first place, think tanks raised the need for integration and the bridging of gaps early on (De Ruijter et al. 2020). The way forward was European cooperation, not coronationalism (Van Schaik and Van de Pas 2020). In a CEPS Commentary, it was argued that in the first phase of the COVID-19 crisis member states were primarily inward-looking and took decisions unilaterally, focusing on crisis management at home. Written in April 2020, the authors warned that the emerging financial and economic threats called for European crisis management (Russack and Blockmans 2020).

As the pandemic moved into this new phase, EU member states began cooperating more intensively. While various individual measures continued, the July 2020 European Council agreed on an EU budget-and-recovery deal. EU member states eventually also agreed to jointly purchase vaccines (European Commission 2020; Herszenhorn et al. 2020). Among others, FIIA recognized the shift from a lack of European cooperation at the start of the pandemic to an eventual common EU crisis navigation (Iso-Markku and Helwig 2020). An important lesson, according to Institut Montaigne, was that existing instruments were 'surprisingly flexible, and by and large fit for purpose' (Duclos and de Fougières 2020).

Think tanks were not the only actors highlighting the EU's shortcomings regarding the nationalistic approach and flagging the need for more cohesion. However, these examples illustrate the role of think tanks in raising issues they deem alarming and in sharing their analyses of the EU's role and performance to broader audiences. As an expert voice in the public debate, criticism or stimulation from think tanks is valuable.

6. Bridging the gap

Think tanks can constructively contribute to the EU debate in a changing public sphere and amidst emerging crises. Examples of Eurosceptic think tanks are few. With a generally neutral or positive EU approach, most think tanks continue to hold a firm position between the public and the political establishment.

However, in the current post-truth era, conspiracy theories are on the rise and more people are looking for information sources confirming their pre-existing viewpoints. While portions of the population detach themselves from the 'political elite' and think tanks, other parts of the population may still value the expertise of think tanks. They may even demand more of such in-depth analyses and expertise. It is not an easy job being devil, advocate, watchdog and whistle-blower all in one. More research is needed (for instance, in the form of surveys) to allow for a more comprehensive understanding of the position of think tanks in a European public sphere that is characterised by dissensus.

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10. DISSENSUS: RECENT DYNAMICS IN THE EUROPEAN CULTURAL SPACE

'There is politics because the common is divided.' (Jacques Rancière 2011)

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1. Liberal democracy in the cultural field

In recent decades, exhibitions, performances, and museum displays have increasingly reflected on topics such as human rights, the rule of law, equality and dignity, the processual nature of democracy, and political representation in liberal democracy (Enwezor 2004). Arts and aesthetics were instrumental in rethinking global standards of democracy in the mid-20th century, as Charlotte Gould argues when referring to the contested publicness proper to the cultural space (Gould 2018; Smith 2021). Nevertheless, more recently museums, cultural centers, and diverse cultural sectors have taken center stage in cultivating liberal democratic principles such as participation, diversity, and the representation of minority groups, and in supporting work on the accountability of governments, institutions, and instruments of power in the democratic space (Pittas 2023). With the critical spaces where the wider public can disentangle, understand, and analyze injustice and inequality in current politics proper to contemporary art, the social and economic dimensions (for instance, the capitalist structures of power influencing knowledge production) of contemporary (liberal) democracy is often a topic of debate within these institutions (Jahnsen 2019). Philanthropy, museum sponsorship, and even labor rights have often been investigated and reflected upon in contemporary art productions (Bağcıoğlu 2016). There are frequent reflections on the processes of democracies, with alternative parliamentary formats or participatory and grassroots decision-making formats emerging, such as Jonas Staal's alternative parliament in Rojava in 2015, which looked for alternatives to the geopolitics triggered by the Syrian conflict.

There has been a constant effort to open institutions that generate the history and heritage of modern democracies to more complex investigations of accounts of power. The new-found European awareness concerning the records and traces of colonialism in heritage collections and museums is perhaps a salient example of recent reflections on the knowledge structures created by keepers of 'national identity' such as museums (Bergeron and Rivet 2021). The provenance of collections and institutional funding, and the knowledge produced in these spaces, are scrutinized and even challenged as the liberal norms, values, and moral dimensions dominating the ordering of heritage, the mission of cultural institutions in society and their production, and indeed the crafting of cultural policy are questioned (Sethi et al. 2021).

Cultural actors, whether institutions or stakeholders are part of the ecosystem that defines the liberal democratic space and cultivates a 'grammar' of liberalism and implicitly liberal values (tolerance, sovereignty, freedom) (Fedirko et al. 2021). Reflections on the role of individuals in society, their cultivation of the self in the spirit of (liberal) democracy, and the position of the contemporary individual in the liberal democratic space are increasingly tied in with practices of collective memory, heritage, and representations of political identities in the arts. Not surprisingly, the recent rise of ideologies contesting the notions of liberal democracy and consensus has also affected the cultural space.

Some recent cultural politics in Poland have started to promote 'correct' cultural values. An Artistic Freedom Report published in late 2022 reports governmental infringements on the system of cultural funding and a de facto 'censorship' when it comes to topics and subjects that make it out of exhibition halls (Sethi et al. 2021: 19.) Polish values, 'identity', overt Catholic discourses and the avoidance of notions of diversity and left-wing views have defined official lines of discourse. This policy also has had legal implications. The Blasphemy Law (a specific article of the 1997 legal code) has been increasingly used, leading to several indictments of artists using their work to protest conservative social norms or exclusionary messages disseminated through PiS notions of 'family' and 'identity' (Sethi et al. 2021: 27). There is a specific opposition and conflict around the usage of gender narratives that promote diversity, used by artists and (still) independent institutions to promote debate and chastised by the government as damaging. The number of arrests among members of civil society on these grounds has increased (ibid). Similarly, the Defamation Law and the Holocaust Law are two legal instruments widely used to prevent public expression contesting any notion of Polish 'identity', including the primacy of martyrdom and the suffering of Poles during the Second World War (Clarke and Duber 2020).

The management of these cultural institutions is also interfered with and restricted along party lines. From Hungary's Orbán regime to Brazil's Bolsonaro government, illiberal political actors intend to construct a conservative alternative to what they see as individualism that rejects duty towards the community or a state construct and respond with 'solutions that are majoritarian, nation-centric or sovereigntist, favoring traditional hierarchies and cultural homogeneity' (Laruelle 2022: 306). In doing so, they strongly rely on 'culture' rather than politics (Laruelle 2022: 320). This short contribution considers **how more current illiberal/anti-liberal positions in the cultural space deal with dissensus and the role of cultural policy in illiberal discourses.**

Illiberal political actors intend to construct a conservative alternative to what they see as individualism that rejects duty towards the community.

2. Contestations

Recently, the artistic approach of the Ujazdowski Castle Centre for Contemporary Art came under scrutiny for projects that question 'family values' and generally refer to gender politics, gender and feminism, and many such projects have been cancelled (Gawkowski 2022). Instead, the newly appointed management, in line with the ideological narrative of the government, decided to support projects focusing on family values or what it considers to be economic groups that are underrepresented due to the 'leftist' tendencies of institutions. Responses to these actions have been varied. Some individuals have continued their public acts of defiance, despite the apparent backlash and substantial protests in Warsaw and several other cities against interference attempts and changing management (Human Rights First, 2018).

In Poland, the Second World War Museum project has been increasingly contested by the PiS government due to its anti-Polish, anti-national stance. Similarly, the new Holocaust Museum in Budapest, founded by Viktor Orbán's Fidesz government, continues to portray exceptionalism and the rights of the majority against the minority (Than 2018). Museums such as these emphasise nativist perspectives, those who support the majority against the minority, and argue that these have been neglected in the past. Often, cultural policies that denounce multiculturalism and 'cultural relativism' persist in the defining of an authoritarian spectre behind liberal norms or values. However, substantial steps that are not in line with PiS have also been taken by political authorities, for instance, when setting up di-

-verse alternatives in cities not run by PiS-affiliated politicians.

Illiberal politicians are versed in the appropriation of cultural languages, whether the language of 'culture wars', 'national values', or cultural policy. As Luca Kristof (2019) argues, in Hungary these conservative agendas and exclusionary interpretations of democracy also translate into an inherently ideological system of patronage of the arts. 'Culture' becomes an essential alternative to politics in the agendas of the new conservative alternatives to liberal democracy because it can meet the demands of a unifying and leveling field where the consumption of indirect messages is critical (Laruelle 2022). The notion that voices that had previously been stifled by the liberal establishment can now be heard is a critical message of actors who contest the liberal. Their promises of participation, inclusion, and equality entail a renewed attention to the dimension of culture, heritage, and memory politics that is just as intense as the pressure they exert on the rule of law or parliamentary processes. For instance, they operate with notions of 'threats' to the majority from the minority now at the core of cultural policies; cultural minorities such as the Roma population and new immigrant groups are no longer welcomed as representations in the public space. Instead, these are deemed 'external' to the national fabric and are construed as such whenever they emerge. Other externals are Islam, 'gender ideology', and communism (Bonet and Zamorano 2021).

3. Dissensus or consensus?

The cultural space works with *dissensus* as an integral dimension, according to much of the aesthetic practice of the last century. It is a specific type of dissensus that Jacques Rancière saw as introducing new subjects and heterogeneous objects into the field of perception. Reorienting the available perceptual space and disrupting forms of belonging, dissensus is not institutional overthrow but the demonstration of a type of impropriety that disrupts identity and reveals the gap between those who can speak and those who cannot, between those who have power and those who do not. In effect, it is about political participation and not division:

Dissensus is not a confrontation between interests or opinions. It is the demonstration (manifestation) of a gap in the sensible itself. Political demonstration makes visible that which had no reason to be seen; it places one world in another, for instance, the world where the factory is a public space in that it is considered private or the world where workers speak extensively about the community in that where their voices are mere cries expressing pain (Rancière 2019: 38).

According to Rancière, dissensus is about making the invisible equality that renders social distinction visible and making the inaudible speech of those who are rejected audible. This allows for a different sharing of the sensible. In this context, Rancière sees dissensus as lying at the heart of politics since the latter consists of an activity that redraws the frame within which everyday objects are determined. To him, 'dissensus' can be a generative concept that can also help correct the very flaws of liberal democracy. It is a project of making imbalances apparent rather than overthrowing the entire system. It is this potential of dissensus over culture and heritage that often triggers difficulties among liberals and is presented as a leveling social dynamic.

However, as tempting as it is to allocate this exclusively to regimes that are illiberal or antiliberal, looking back one can see how intimations between heritage, culture, and the ideas of shared values and notions of belonging have been gradually growing in this direction of distrust towards dissensus over the past decade, and particularly in European liberal practices of culture, contributing to the consolidation of some the narratives we associate with a backlash against liberal democracy. Conversely, it is essential to note that this dynamic is increasingly similar to actions and discourses on the fringes of the far right. In Italy, for instance, the Brothers of Italy's 'Culture and Beauty: our Renaissance' culture program declares that the arts and culture have strategic points.

A similar context is evident in Israel, where the now defunct 'Loyalty in Culture' Law, which would have conditioned funds on proving loyalty to the government's discourses, could intervene to quell any project questioning a narrow definition of national identity (Israeli Artists Burn Art).

4. Earlier roots of discontent

Indeed, there are older roots to how heritage and the cultural space more broadly contribute to discourses contradicting liberal principles. A recent example is the use of 'Europe' and European values in the way heritage, memory politics, and heritage preservation. In effect, one of the most fraught dimensions of Europe in the last two decades has been its heritage and identity policy, which also sits at the center of the European 'way of life' (Kaiser 2015). This debate has had many iterations, but the most contested began as the 'common' idea of European heritage and history emerged around 2005. Then, the Second World War and the Holocaust were professed by European policy and many EU actors to be shared histories across Europe, the remembrance and recollection of which should invite a responsible attitude towards the excesses of the political space (Rigney 2012; Assmann 2013; Kaiser 2020: 65-96). With time, sites of former political violence – often the locations of acts of resistance against national socialism and the plight of victims of the Second World War – have acquired a European or global status of 'heritage' (Buchanan 2010). Other cultural landmarks, spaces of remembrance, or cultural goods symbolic of the victory over totalitarian oppression have been earmarked as generative spaces in Europe's creation and the EU's success (Lähdesmäki et al. 2020).

As remembrance – and precisely the remembrance of shared histories of suffering – came to the fore, the issue of heritage became relevant. In the early days of the debate on European politics of memory, the intention was to find consensus among states and citizens across the continent in understanding what brings them together. There were extensive debates about the locus of the experience of the communist regimes in defining the European space, which also conveyed how many of the ideas of European values were compounded with nationalist, often xenophobic tones (Kucia 2016). The reality showed that new notions had emerged that were not leading to consensus. Instead, they led to morally opposing positions. In 2007-2008, the flurry of debates about the equating of victims of national socialism and those of communism brought to the fore a diverse invocation of ideas of 'genocide', victimhood, and past persecutions that were tied in with a sense of belonging to Europe. Many of these debates started to be concerned with heritage and shared notions of the past. There were positions of exceptionalism being formulated that specifically targeted ideational notions of democracy. Since the beginning of the 2000s, these have caused numerous conversations about the inequality of the representation of the heritage of solidarity against the communist regimes, the denial or silencing of the Holocaust, and, in general, a 'competition' of victims that triggered nationalism and exclusion (Baer Sznaider 2018; Laarse 2019).

Despite this lack of consensus, sites conveying the violence of state socialist and communist regimes have been awarded the European Heritage Label in the last decade. The remembrance of Eastern popular mobilization and opposition is presented as a bulwark for the EU's political construction in the Brussels-based House of European History Museum exhibitions.[43] Indeed, with time a 'policy narrative' emerged about a shared past sufferance that makes societies more aware of the liberal 'progress' in acknowledging past histories.[44] Apart from the crusade against anything that contests the conservative iterations of political

[43] Some of those added are the Pan-European Picnic Memorial Park in Sopron, Hungary (2013), the historic Gdańsk Shipyard in Poland (2014) and Sighet Memorial in Romania (2017). Equally relevant are research funding programmes rolled out by the EU; one interesting example is the 'European Remembrance' within the CERV (Citizens, Equality, Rights and Values) Programmes, focusing on 'resistance' and the Holocaust. See https://ec.europa.eu/info/departments/justice-and-consumers/justice-and-consumers-funding-tenders/funding-programmes/citizens-equality-rights-and-values-programme_en.

[44] Here I use the term policy narrative defined as 'stories (scenarios and arguments) which underwrite and stabilise the assumptions for policymaking in situations that persist with many unknowns, a high degree of interdependence, and little, if any, agreement' (Roe 1994: 34).

spaces, governments also try to control a narrative of past histories and, particularly, past atrocities, which lend themselves well to ideas of persecution, danger, and historical oppression by the 'West'. This type of message in cultural policy backs the crusade to give voices to those who have been ignored. There is also something to be said about the role of commemorations and memory politics in how these support central themes of the political messages. Political actors in Central and Eastern Europe focus, for instance, on 1989 and the perceived sense of failure of that particular historical event, which in more normative liberal cultural constructs has always been shrouded in a narrative of triumph (Betts 2019). Similarly, 1968 is often invoked as a time of false positivism, which has affected the understanding of liberal democracy since then (Ost 2019).

It is important to emphasize that the **Europeanisation** dimension has also directly contributed to the restrictive sphere of debate we are witnessing today in some of the countries discussed. Around 2007 in Poland, the government broadened public support towards the cultural sector, augmenting the cultural budget by 22% during the first year and creating new museums and institutions (including the Polish History Museum in Warsaw), and defended the promotion of traditional catholic values and morals through the implementation of cultural policies (Ilczuk and Nowak 2012). The government also revitalized the national heritage. Part of this initiative related to religious icons of Christianism, such as the restoration of Wilanow Palace or the Lazienki Royal Palace; other actions involved cross-government or more transversal initiatives, such as the European Solidarity Centre. This development in state expenditure for culture, which contrasts heavily with the previously limited cultural investment of the nineties, was facilitated by the Polish accession to the EU in 2004 and intensified over the following decade (Szulborska-Łukaszewicz 2016).

In these cases, how Europe is interpreted has triggered a debate on how the European canon is imagined: mainly limited to civilizational narratives and to dimensions of heritage that uphold essentialist views of those narratives. There are notions of identity in how this heritage is designed to reinforce (often Christian) group dimensions without necessarily taking into account the exclusion of other groups. Institutions such as Europa Nostra are visible guardians of 'European' heritage, but they do so in specific terms, cultivating aspects of Christian, medieval history, or traditional crafts. A look at the prize winners of the Europa Nostra Cultural Heritage Awards reveals a focus on the Christian dimension of European consensus.

5. Dissensus and new contestations

However, **the recent rise of illiberal and anti-liberal politics has made visible a different angle to this balancing potential of dissensus**. Arguably, as Rodney Harrison (2015) contends, heritage has a future: 'We could almost say that the "new heritage" has nothing to do with the past, but it is a form of "futurology", as the past is imagined and imagined about the future. This future angle is tempting for all political actors. Indeed, museums and heritage – still dominant constructs in understanding notions of identity and society building – represent cultural assets related to transformative ideas that unite societies. It is vital to note that those contesting liberal democracy do not turn away from newer paradigms such as 'world heritage' or European heritage. Instead, they appropriate this shared mutual understanding that breaks this heritage away from nations and political regimes to find a common denominator that appeals to cultural and political geographies (Coombe and Weiss 2010). In doing so, they perpetuate longer histories of exclusion, omittance, and appropriation. Some current illiberal and anti-liberal regimes have constructed cultural agendas on this generative dimension of dissensus, contesting the regimes of representation and visibility.

It is useful, then, to look at these new iterations. When coining the term illiberalism, Fareed

Zakaria (1997) pointed out that contestations do not happen by overt antidemocratic expressions or by challenging institutions. There is an intention to aggrandize institutions without necessarily challenging economic politics. Instead, they take on the mission and promise to change institutions.

In this direction, new narratives specifically focus on institutional decline and the need to strengthen these institutions in light of the decline. The intention here is to show that since these institutions have been weakened by the context so far, the role of the new alternatives to liberal democracy is to strengthen them. Although they are no longer exclusively about a nation or the histories and heritage of certain groups of ethnicities, heritage, and cultural production are used to construct a new institutional environment and hence reorient to a status narrative.

It seems that we are witnessing a statist revival: the strengthening of the state and the need for a strong state that should extol the virtues of the community (defined in exclusionary terms) seems to be a more valuable instrument than anti-institutionalism. It fostered revisionism in the management of culture and revalorized the Catholic tradition. From then on, different models were implemented, reflecting the debate between EU enthusiasts and EU skeptics around the potential effects that the country's integration into the EU might have on the Polish national identity, a debate oscillating between liberal-conservative and pro-European positions (Neumayer 2008).

There is also something to say about narratives primarily targeting homogenization and how homogenization can aid and respond to the lack of consensus. The issues with gender politics have been widely reported, but there are broader narratives that support and enable these to occur. One of these is a nostalgic outlook on the fabric of the nation, which has been disrupted by recent contestations. However, this is not only about the gender debate or any idea of purity. This same agenda has been reflected in Orbán's political agenda and actions; these policies integrate national culture and heritage into a discourse of confrontation: the elite against the people. With this purpose in mind, other antagonisms between 'the people' on the one hand and groups considered to be anti-Catholic or 'anti-national' on the other are demarcated and instrumentalized. The 'pureness' of the national culture and specific popular repertories are therefore contrasted against different forms of what are considered expressions of moral and ideological corruption, including but not limited to Islam, the culture of the elite, and the EU project.

Cultural policy is often associated with modernity as a mix of Enlightenment ideas, nation-building, and a state that caters to its citizens. Interestingly, the dispute about whom to defend it is an essential dimension of policy and practice. In Sweden, for instance, the Sweden Democrats have been elected based on a solid discourse about culture and how this can 'defend' the gains of the democracy of the 1970s and the 1980s. The implicit notion is that a more robust national identity and building would benefit all. It supports defining 'Swedishness' with investments in archaeology, cultural heritage, and patrons to contemporary art (Nilsson 2022). These investments not only implicitly try to limit the attention to 'other' cultures, but also seemingly impose consensus on a sector that has been too critical. However, although the observation has been that multiculturalism threatens the shared values that constitute Sweden's cultural community, this is not necessarily new. Cultural politics in Sweden in the 1980s – at the height of their most liberal iterations – was already focusing on the representation of the majority that could 'integrate' the new minorities. These cultural politics cultivate a 'return' to seemingly self-evident and unproblematic ideals by encouraging people to distance themselves from established political ideals such as gender equality and equity.

This type of paternalistic intervention is also visible in the illiberal dynamics today. For instance, at the height of the anti-Soros campaigns in Hungary, the government was openly taking sides which might have seemed surprising.

Orbán began speaking more about the need to fight anti-Semitism and justified his policies against refugees in part by invoking the need to protect Hungarian Jews from attacks by Muslim immigrants.

6. Conclusion

This brief overview of the role of cultural actors in new regimes that contest liberal democracy shows their political centrality. Furthermore, dimensions of dissensus are integral to conveying political messages and even tend to normalize and mainstream messages of illiberal or antiliberal narratives. These seem to intervene in a more extended genealogy of contestations of liberal democracy, which provides them with legitimacy and visibility.

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