Are There Populist Constitutional Heuristics? Some Tentative Answers, and Their Implications for a Research Project

LEONARDO **PIERDOMINICI**
University of Bologna, Italy.
E-mail: leonardo.pierdominici@unibo.it

ABSTRACT

This article engages with the research agenda of the CLEAR project by questioning whether contemporary populist and sovereigntist movements articulate a genuine alternative model of constitutionalism and the rule of law. It argues that populist constitutional discourse does not generate novel conceptual categories, but instead advances a constitutional counter-narrative based on the instrumental reinterpretation of established constitutional concepts. Drawing on comparative constitutional analysis and theories of autocratic legalism and abusive constitutional borrowing, the paper shows how notions such as sovereignty, democracy, and majority rule are strategically simplified and hollowed out. In this perspective, populism exploits the cognitive and normative complexity of the rule of law highlighted by CLEAR, not to replace it, but to subordinate it to decisionist logics. The article concludes that the key analytical task lies in contrasting the normative density of the rule of law with its populist distortions rather than in searching for an autonomous populist constitutional theory.

Il contributo si confronta con l'agenda di ricerca del progetto CLEAR e si propone di verificare se i movimenti populisti e sovranisti contemporanei effettivamente elaborino un autentico modello alternativo di costituzionalismo e di *rule of law*. La tesi sostenuta è che il discorso costituzionale populista non produca nuove categorie concettuali, ma si configuri piuttosto come una contro-narrazione costituzionale fondata sulla manipolazione e sulla reinterpretazione strumentale di concetti già consolidati nel lessico del costituzionalismo. Attraverso il ricorso all'analisi costituzionale comparata e alle teorie dell'*autocratic legalism* e dell'*abusive constitutional borrowing*, il saggio mostra come nozioni quali sovranità, democrazia e governo della maggioranza vengano sistematicamente semplificate e private della loro densità normativa. In questa prospettiva, il populismo non mira a sostituire il modello della *rule of law*, bensì ne sfrutta la complessità cognitiva e normativa per assoggettarlo a logiche decisioniste. Si conclude pertanto che la principale sfida consista non tanto nel ricercare una teoria costituzionale populista autonoma, quanto piuttosto nel confronto critico tra la densità normativa della *rule of law* e le sue distorsioni populiste.

KEYWORDS

Rule of law, populist constitutionalism, autocratic legalism, constitutional discourse, normative density

Stato di diritto, costituzionalismo populista, legalismo autocratico, discorso costituzionale, densità normativa

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1. *Introduction*

The research hypothesis underpinning the CLEAR project is both original and intellectually compelling. CLEAR seeks to explore – also through empirical methods – the conceptual structure of the rule of law as an ideal, contrasted with an alternative model of constitutional organization that the same proponents broadly describe as "decisionist", "sovereigntist", "populist". The core hypothesis is that the rule of law constitutes a cognitively demanding and normatively dense construct, far more complex to comprehend and operationalize than models focused primarily on decisionism, in which concerns for legal guarantees and constraints are relegated to the background.

To rigorously test this hypothesis, however, it is necessary to undertake a theoretical reconstruction of the key conceptual pillars underpinning this alternative, "decisionist" paradigm. It is precisely at this juncture that the CLEAR project intersects with my own research.

Together with Giuseppe Martinico, I co-edited a volume in 2023 entitled *Miserie del sovranismo giuridico. Il valore aggiunto del costituzionalismo europeo* ("The Poverty of Legal Sovereigntism: The Added Value of European Constitutionalism")[1]. The book sought to address what we termed the "poverty of legal sovereigntism" in its various dimensions. We critiqued what we termed "legal sovereigntism" for its reductionist and instrumental strategy aimed at hollowing out European constitutional values; for its confinement to a purely destructive posture (*pars destruens* with no *pars construens*); and for its epistemological limitations.

The researchers affiliated with CLEAR, many of whom are legal philosophers, expressed particular interest in this latter dimension. They asked whether our inquiry had succeeded in identifying any new, distinctive conceptual categories generated by legal sovereigntism as a coherent alternative to traditional constitutionalism.

As a contribution to their important project, I offer here some tentative answers to that question, grounded in my perspective as a comparative public lawyer. My answers indicate a diversity of disciplinary approaches, which is very interesting from a methodological point of view and for future research. My answers also underscore the value of methodological pluralism and disciplinary cross-fertilization – an aspect that, in itself, adds significant depth to the CLEAR initiative.

2. *Sovereigntist Legal Theory: Specific New Concepts or Instrumentalization?*

It is both natural and intellectually stimulating that legal philosophers direct their inquiries toward the identification of new legal conceptual frameworks. In this regard, comparative lawyers too have their own propensities: they may also be considered theorists, albeit with a marked incli-

* Thanks are due to the conveners of the conference "Rule of Law: in Books, in Minds. Concepts of the Rule of Law: Empirical and Analytical Research", held in Bologna on July 7-8, 2025, as well as to the anonymous reviewers, all of whom provided valuable feedback, comments, and suggestions.

[1] Martinico, Pierdominici 2023.

nation toward more empirically grounded research based on the observation of political doctrinal trends in different legal orders. Indeed, the approach taken in *Miserie del sovranismo giuridico* to examine sovereigntist and populist legal thought within the context of European constitutionalism was, in this sense, empirical in nature. And as we will see, this orientation aligns closely with recent trends in comparative public law scholarship across global academic communities.

One of the arguments advanced in that book was the following: there is no such thing as a sovereigntist and populist theory of the constitution; on the opposite, there is a strong tendency towards a constitutional counter-narrative advanced by sovereigntists and populists, based on their instrumental manipulation of the categories of constitutionalism.

The same argument was refined and further exposed by Martinico himself in other works[2].

How is it possible, in this respect, to write "on the opposite"? Can we truly describe, in this perspective, such constitutional counter-narrative as an "opposite" phenomenon to a true sovereigntist and populist constitutional theory?

In my view, it is surely possible – particularly when considering the lack of conceptual innovation involved. Sovereigntist and populist discourse does not generate a novel vocabulary of constitutional theory. Instead, it engages in a strategic appropriation and reconfiguration of pre-existing constitutional concepts. These actors neither replace nor significantly develop new conceptual tools; rather, they rely on established constitutional language, which they manipulate – sometimes hollowing out its meaning from within – while preserving its external form.

This is not merely a theoretical observation; it reflects a deliberate strategic posture, as recognized by a growing body of scholarship examining the complex relationship between constitutionalism and populism.

Earlier approaches in public law scholarship often portrayed the relationship between populism and constitutionalism in starkly antagonistic terms[3]. More recently, however, the academic conversation has evolved considerably, giving rise to more nuanced and analytically sophisticated interpretations. Within this shifting landscape, a number of scholars have argued that populism – though operating within certain limits – appropriates the normative and institutional architecture of constitutionalism itself, deploying it to destabilize and recalibrate the legal and value-based hierarchies that underpin constitutional democracies[4].

This dynamic becomes particularly evident in the tension between the principle of popular sovereignty and other foundational elements of constitutional orders – such as the same adherence to the rule of law, the separation of powers, and the protection of minority rights. Populist movements frequently redefine democracy in reductive terms, equating it with unqualified majority rule and deploying it as a "trump card" to subordinate or displace other core constitutional principles[5].

Giuseppe Martinico wrote of two strategies followed by sovereigntists and populists: mimetism and parasitism[6].

I find his theories particularly relevant for our purposes here.

He employs the notion of *mimetism* to describe the capacity of certain political movements to cloak themselves in the language of constitutionalism, all the while reconfiguring it for instrumental purposes. It refers to a strategic posture adopted by populist actors who, rather than directly opposing constitutional texts, endeavour to project an appearance of compliance, thereby

[2] Martinico 2021.

[3] Corrias 2016, 6: «*Constitutional theorists have not devoted a lot of attention to the phenomenon of populism [...] There may be two interpretations of this silence. Either constitutional theory has nothing to say about populism, in which case the silence is justified, or constitutional theory does have something to say, in which case the silence is unjustified and (potentially) problematic*».

[4] See for instance Tushnet, Bugarič 2021, Sajó 2021, Krygier et al. 2022.

[5] Rosanvallon 2020.

[6] Martinico 2021.

securing a veneer of constitutional legitimacy. This approach lends credence to analytical frameworks that reject a rigidly binary or antagonistic conception of the populism-constitutionalism relationship. Put differently, populists seek to appropriate the vocabulary and symbolic authority of constitutionalism while concurrently advancing a divergent interpretive paradigm[7].

A notable and well-known illustration of this strategy can be found in the speech delivered by then-Prime Minister Giuseppe Conte at the United Nations on 26 September 2018: «When someone accuses us of sovereigntism and populism, I always like to remind them that sovereignty and the people are both evoked in Article 1 of the Italian Constitution, and it is precisely in that provision that I interpret the concept of sovereignty and its exercise by the people. This approach does not alter Italy's traditional position within the international community and, consequently, vis-à-vis the United Nations. Security, the defence of peace and the values that best uphold it, the promotion of development and human rights are goals that we share and intend to pursue with courage and conviction, both nationally and globally». This excerpt offers a clear example of an effort to legitimise populist and sovereigntist rhetoric by appealing to constitutional principles. At the same time, it is essential to highlight the selective – and arguably tendentious – invocation of Article 1 of the Italian Constitution. Conspicuously omitted, perhaps intentionally, is the second clause of the provision, which famously stipulates that popular sovereignty must be exercised "in the forms and within the limits" established by the Constitution itself. In other words, in the populist-sovereigntist perspective, general concepts remain and are re-interpreted; constitutional "forms and limits" fade away.

Populist rhetoric tends to rely on such reductive notion of democracy, which populists equate exclusively with majority rule: the popular will is elevated as the sole, absolute, and unchallengeable source of political and legal legitimacy, immune to mediation or institutional constraint. The society is portrayed as divided between a morally virtuous "majority" and a delegitimised "other" (corrupt elites): and the democracy becomes a "trump card", invoked to override all competing constitutional norms and principles. These discursive patterns are rooted in a monolithic conception of the majority, construed not only as numerically dominant but also as possessing inherent moral superiority. As astutely observed: «*Populists combine anti-elitism with the belief that they possess a superior understanding of what it means to be a true citizen of their nation*»[8].

These insights echo prior reflections on how populist actors strategically appropriate constitutional categories in the service of crafting an alternative constitutional narrative.

A paradigmatic case is that of Hungary, where the notion of democracy has been intentionally severed from its liberal roots, resulting in the emergence of the counter-concept – often characterised as an oxymoron – of "illiberal democracy". As widely acknowledged, Viktor Orbán and his party, Fidesz, have undertaken a sweeping transformation of Hungary's constitutional framework, consolidating an illiberal regime in which the Constitutional Court, once an independent arbiter, now largely mirrors the government's political agenda[9].

It is worth attending to the language employed by Prime Minister Orbán in a 2014 speech:

> «Honourable Ladies and Gentlemen, in order to be able to do this in 2010, and especially these days, we needed to courageously state a sentence, a sentence that, similar to the ones enumerated here, was considered to be a sacrilege in the liberal world order. We needed to state that a democracy is not necessarily liberal. Just because something is not liberal, it still can be a democracy. Moreover, it could be and needed to be expressed, that probably societies founded upon the principle of the liberal way to organize a state will not be able to sustain their world-competitiveness in the following years, and more likely they will suffer a setback, unless they will be able to substantially reform themselves».

7 Martinico 2021 16 ff.

8 Marchlewska et al. 2018.

9 Halmai 2024.

Once again, we observe the reinterpretation – if not outright distortion – of a foundational tenet of constitutionalism: the concept of democracy. In this context, democracy is reimagined in ways that serve to construct and legitimise an alternative constitutional narrative. The explicit repudiation of liberal constitutionalism evident in such discourse is inextricably tied to a broader process of conceptual erosion – a systematic strategy adopted by populist governments to hollow out core constitutional categories from within.

This semantic and normative distortion supports what Martinico has termed the second strategic modality of populists in power: *parasitism*[10].

As articulated by other scholars as well[11], parasitism captures the ability of populist actors to reconfigure the normative infrastructure of constitutional democracies by manipulating democratic procedures to subvert their foundational values. In this framework, democracy is no longer one principle within a constellation of constitutional commitments – such as the rule of law, the respect for individual rights, the protection of minorities – but is elevated to a hegemonic value, equated with unqualified majority rule and deployed to override competing principles.

Constitutionalism has the majority rule as a basic principle. But "majority" is not an obvious concept as it can seem. This is demonstrated by famous cases such as the 1995 referendum on the independence of Quebec, the 2006 Montenegrin independence referendum, the 2016 United Kingdom European Union membership referendum, in which the criteria for the composition and identification of majorities and the rise of a "clear majority" were heavily debated.

Treating "the majority" as an objective or politically neutral standard, upon which to base decisions of foundational constitutional importance, is a fallacy. In robust democratic systems, certain domains are intentionally insulated from the authority of transient political majorities. This principle is enshrined in many constitutional orders through the entrenchment of fundamental rights, which are rendered impervious to amendment even by supermajorities, thereby safeguarding them from majoritarian encroachment.

But in sovereigntist and populist theories, majority becomes just a self-evident arithmetical concept, with no further complication.

Finally, it must be observed that the same concept of sovereignty is part and parcel of the constitutional counter-narrative advanced by sovereigntists and populists; and it is a primary object of their instrumental manipulation of the categories of constitutionalism.

The concept of sovereignty occupies a well-established place in the theoretical repertoire of constitutional law and political theory. It is linked to the idea of the existence, in every legal order, of a supreme authority: so that, internally, sovereignty entails hierarchy within a state, and, in the external sense, it entails autonomy of every state vis-à-vis the others.

This broadly framed definition necessitates historical contextualization. In the aftermath of the Treaty of Westphalia, it bore a specific significance, which has since evolved considerably by the close of the twentieth century. As is frequently observed, no contemporary state can be deemed sovereign in the manner states were understood to be prior to the Second World War[12]. The rise of transnational governance frameworks and institutions, the entrenchment of a globalized economic order, and the advent of supranational entities characterized by shared sovereignty – such as the European Union – have all contributed to a marked attenuation of the classical notion of state sovereignty. The protracted historical trajectory that culminated in the establishment of a global order predicated upon sovereign nation-states reached its denouement with the catastrophic excesses of the Second World War, which rendered apparent the imperative of imposing certain constraints on state sovereignty as a means of averting future atrocities and systemic injustices.

[10] Martinico 2021, 19 ff.

[11] Urbinati 1998, Fournier 2019.

[12] MacCormick 1999.

This development bore significant implications in a technical-constitutional sense. The principle of openness emerged as a foundational element of contemporary constitutional frameworks, as a codification of the need for multilateralism. By "openness" one refers to a constitutionally enshrined disposition of receptivity – *Freundlichkeit* – towards legal norms and sources which, from a formal standpoint, originate outside the domestic legal order and are not the direct product of national institutions and the democratic will of the people as expressed through national mechanisms of law-making[13].

Sovereignism purports to forget all this, through the untimely rediscovery of an exaggeratedly rigid interpretation of autonomy connected to sovereignty.

As Ferrajoli put it, sovereigntism may be defined as «the assertion of national and popular sovereignty against the subordination of politics to international, and specifically European, constraints»[14]. In its more recent legal articulation, this assertion challenges the idea that domestic law could be subordinated to supranational and international legal orders.

Sovereigntists seek to "take back control" from transnational governance groups and multilateral agreements, restoring the pre-Second World War "closed" idea of sovereignty.

This has a lot to do with populist stances as well – and in fact, although populism and sovereigntism are distinct categories, they exhibit a significant degree of overlap, as captured by those scholars who have coined the term "PopSovism"[15].

In this vein, a common denominator among populist and sovereigntist perspectives is the portrayal of the European Union as the epitome of a homogenizing global order that allegedly threatens national cultural values (according to proponents of right-wing "identitarian" sovereigntism)[16] or the very existence of the state and social justice (according to advocates of left-wing, *soi disant* "democratic" sovereigntism)[17], by constraining political choices and limiting the space for social conflict.

But sovereigntists now have as an object of controversy any international institution, for example the European Court of Human Rights[18] or the World Health Organization[19].

And what is relevant, they do so by claiming to be champions of a "true" Europe, which they contrast with the European Union or the Council of Europe[20], and of true "sovereignty", meant as a mere shield with instrumental obliteration of the principle of openness which is now typical of constitutionalism after the Second World War.

This illustrates that, in doing so, they always re-employ, by bending them, old concepts, without ever forging new ones.

3. *Abusive Constitutional Borrowing, Autocratic Legalism and the Rule of Law*

The phenomenon I am hinting at forms part of a broader and increasingly visible trend in comparative constitutionalism: the subversion of liberal democratic frameworks through the instrumental use of constitutional forms. Far from representing an outright rejection of constitutionalism, this development exemplifies its appropriation and distortion from within. Two theoretical

[13] Carrozza 2007.

[14] Ferrajoli 2019, 1: «*"Sovranismo" è un neologismo entrato di recente nel lessico del dibattito politico. Designa una specifica versione del nazionalismo legata al suo nesso con il populismo. Grosso modo si intende di solito, con questa espressione, la rivendicazione della sovranità nazionale e popolare contro la dipendenza della politica da vincoli internazionali e specificamente europei*».

[15] De Spiegeleire et al. 2017.

[16] See e.g. Becchi 2019.

[17] See e.g. Somma 2020.

[18] Bindman 2015.

[19] Cislaghi 2025.

[20] Becchi 2019.

constructs – *abusive constitutional borrowing* and *autocratic legalism* – have emerged as particularly useful in capturing the legalistic mechanics of contemporary democratic decay.

They are crucial for understanding our main argument as well: no new conceptual arsenal, just manipulation of the traditional one.

Though analytically distinct, *abusive constitutional borrowing* and *autocratic legalism* often converge in practice, revealing how illiberal actors strategically redeploy constitutional norms to consolidate power while preserving the outward appearance of legality.

The concept of *abusive constitutional borrowing* has garnered growing scholarly attention for its ability to explain how authoritarian-minded governments selectively adopt and manipulate foreign constitutional norms, institutions, or practices not to advance the values these instruments were designed to serve, but to undermine them. As articulated by scholars such as Rosalind Dixon and David Landau[21], this phenomenon entails the appropriation of constitutional devices from other jurisdictions – rights catalogues, judicial models, or structural arrangements – decontextualised from their normative frameworks and repurposed to legitimise illiberal governance. It represents an instrumentalization of comparative constitutionalism, and a paradox of modern constitutionalism in general: the deployment of democratic mechanisms in service of authoritarian objectives. Abusive borrowing operates not in defiance of legality, but through its simulation – drawing legitimacy from the very language and forms that, under liberal readings, were meant to constrain power.

Closely related yet conceptually broader is Kim Lane Scheppele's influential theory of *autocratic legalism*[22]. This term captures the process by which elected leaders exploit their democratic mandates to incrementally erode liberal institutions through formally legal means. Unlike traditional coups or blatant constitutional ruptures, autocratic legalism relies on legislative majorities, constitutional amendments, and judicial restructuring to entrench executive dominance. It highlights the transition from rule-breaking to rule-repurposing: rather than abolishing legal systems, illiberal regimes hollow them out, co-opting legality to give an air of procedural legitimacy to measures that would, under normal democratic conditions, be deemed incompatible with the rule of law. Importantly, autocratic legalism underscores the capacity of the law not only to constrain but to enable authoritarianism, particularly when wielded by actors intent on subverting its liberal spirit.

Despite their theoretical distinctions, the two frameworks are deeply interconnected. *Abusive constitutional borrowing* can be understood as one of the principal techniques through which *autocratic legalism* operates. The former offers a taxonomy of external referents used to justify illiberal reforms; the latter describes the broader strategic logic by which legality itself becomes a tool of repression. In both cases, the language of constitutionalism is retained while its substance is transformed. This mimetic strategy – a sort of constitutional simulacrum – creates a dual challenge: it not only destabilises domestic liberal institutions but also renders external critique more difficult. When illiberal regimes dress authoritarian consolidation in the garments of legality and comparative legitimacy, distinguishing genuine reform from democratic erosion becomes a complex hermeneutic task.

Concrete examples of this dual phenomenon abound, particularly in the post-communist states of Central and Eastern Europe. Hungary under Viktor Orbán is, again, a paradigmatic case. Following a decisive electoral victory in 2010, the Fidesz party enacted the 2011 Fundamental Law, a new constitution drafted without meaningful opposition input. Though procedurally valid, the new constitutional architecture embedded ideologically charged provisions and significantly curtailed institutional independence[23]. Justified through appeals to national identity and sovereignty,

[21] Dixon, Landau 2021.

[22] Scheppele 2018.

[23] Scheppele 2018 549 ff.; see also Panov 2020.

and drawing on selective elements of American and German constitutional practice[24], the document served to consolidate power while preserving the external features of a constitutional democracy. Institutional reforms soon followed: the Constitutional Court was expanded and packed with loyalists, its jurisdiction restricted, and its jurisprudence effectively annulled. Each move was undertaken through legal mechanisms and defended with reference to comparative models, yet the cumulative effect was a profound erosion of constitutional checks.

Poland offers a closely related, if contextually distinct, illustration[25]. Since gaining power in 2015, the Law and Justice Party (PiS) has systematically transformed the Polish constitutional landscape. Citing democratic legitimacy and comparative examples, the government refused to publish binding Constitutional Tribunal decisions, reappointed judges in violation of established procedures, and created a Disciplinary Chamber to oversee judicial conduct – later found to be incompatible with EU law. These changes were framed as necessary correctives to past dysfunctions but in reality operated as instruments of executive control. Again, the legitimacy of constitutional borrowing was weaponised: by selectively invoking foreign precedents, the government obscured the regressive nature of its reforms and insulated itself from both domestic and international scrutiny. Still, it formally preserved prima-facie adherence to the rule of law: so that, paradoxically, the current government has its own problems in restoring substantial rule of law by formally having to breaching it, in doing so[26].

Turkey under Recep Tayyip Erdoğan provides a further, albeit more overt, manifestation of this phenomenon. In the aftermath of the 2016 coup attempt, the Turkish government declared a state of emergency and issued thousands of emergency decrees, many of which were subsequently legalised through constitutional amendments approved by referendum in 2017. These changes dismantled the parliamentary system and concentrated power in the presidency. While framed in legalistic terms and formally enacted, the reforms effectively eliminated meaningful opposition, curtailed judicial independence, and stifled civil society[27].

In all these cases, the core dynamic is the same: the constitutional form is preserved, even formally emphasised, while its liberal-democratic content is steadily dismantled.

A shared feature across European jurisdictions is the deployment of *constitutional identity discourse* to justify illiberal transformation. Invoking Article 4(2) of the Treaty on European Union, which affirms the EU's obligation to respect Member States' national identities, governments in Hungary and Poland have defended their actions as expressions of sovereignty and cultural authenticity[28]. In this framing, liberal norms are recast as external impositions, and constitutional borrowing becomes an act of resistance rather than alignment. The result is a distorted version of pluralism, one in which the universality of democratic principles is denied in favour of parochial reinterpretations – further complicating the task of legal and normative critique. In any case, such deployment is the mirror of the instrumental practice I am describing and criticizing.

From a theoretical perspective, these developments challenge the foundational assumptions of comparative constitutional law. The optimism that once accompanied constitutional transplants -based on the belief in a shared grammar of democratic governance – has given way to a more sober recognition of constitutional mimicry and manipulation. The Eastern European experience reveals that the origins or formal features of a constitutional institution are no guarantee of its democratic function. Norms can be emptied of content and repurposed in ways that betray their original intent. In this context, legal analysis must move beyond formalism and adopt a more context-sensitive, historically grounded, and normatively engaged approach.

[24] See on the instrumental appropriation of foreign doctrinal constitutional concepts Kelemen, Pech 2019.
[25] Scheppele 2018, 552 ff.; see also Panov 2020.
[26] Farkas, Kádár 2023.
[27] O'Donohue 2023.
[28] Faraguna 2017.

What is required is not merely a taxonomy of violations but a deeper understanding of how power operates through law[29].

In conclusion, *abusive constitutional borrowing* and *autocratic legalism* represent two interlocking dimensions of a broader authoritarian strategy: the internal colonisation of constitutionalism. Through the selective invocation of comparative norms and the formal observance of legal procedures, illiberal regimes manufacture legitimacy while dismantling liberal democracy. Recognising this dynamic is a first step. Responding to it requires new analytic tools, stronger normative commitments, and a rethinking of the very premises upon which comparative constitutionalism is built. The challenge is not only to defend constitutionalism against its enemies, but to discern its true allies among those who speak its language.

4. *As a conclusion*

In light of the considerations outlined above, I reaffirm the view that there is no such thing as a sovereigntist or populist theory of the constitution. On the contrary, what emerges is a pronounced tendency toward a constitutional counter-narrative advanced by sovereigntist and populist actors, grounded in their strategic manipulation of the categories of constitutionalism. Legal sovereigntism does not generate novel or distinctive conceptual categories that could serve as a coherent alternative to traditional constitutionalism. Contemporary populist and sovereigntist movements aim to subvert liberal-democratic frameworks through the instrumental appropriation of constitutional forms, gradually eroding liberal institutions by means that are formally legal.

Other authors have argued that this approach would amount to an autonomous, albeit "implicit"[30], theory. In my view, however, this is not the case insofar as the strategy clearly consists in keeping the arguments within the semantic framework of liberal constitutionalism, while simultaneously reconfiguring or rearranging its terms in such a way as to transform their substantive content. We are thus confronted with an «*idéologie peu substantielle*»[31], that is, a «*thin-centered ideology*»[32], lacking a «*solide corps de doctrine, de textes fondateurs et d'auteurs de reference*», and with no «*philosophie globale, fournissaient du sens, offraient une vision du monde*»[33].

My notations are not intended to suggest that the CLEAR project lacks legitimate or valuable research objectives. On the contrary, its inception is both timely and intellectually stimulating. Nevertheless, I recommend that the project consider, within its research agenda, certain implications arising from the comparative analysis briefly discussed above.

It is indeed both relevant and meaningful to compare the conceptual structure of the rule of law – understood as a normative ideal. with alternative models of constitutional organization characterized as "decisionist", "sovereigntist", or "populist". However, the search for foundational conceptual pillars underpinning such alternative paradigms may prove frustrating. A more productive approach would be to contrast traditional constitutional concepts with the distorted reinterpretations that sovereigntist and populist movements seek to impose upon them.

Such a comparison would aptly illustrate the core hypothesis of the CLEAR project: namely, that the rule of law constitutes a cognitively demanding and normatively rich construct – one that is significantly more complex to grasp and operationalize than paradigms grounded in decisionism. As I have endeavored to show, the so-called "new" interpretations of key concepts such as sovereignty, majority, people, and democracy are in fact instrumental oversimplifications of their

[29] Scheppele 2018, 581 ff.

[30] Corrias 2016, 7: «*It seems as if constitutional theory has not taken the (often implicit) constitutional tenets of populism seriously*».

[31] Lazar 2025, 30.

[32] Mudde, Rovira Kaltwasser 2017, 19.

[33] Lazar 2025, 31.

classical meanings. It is therefore possible to argue that sovereigntist and populist actors exploit the very complexity of the traditional rule of law – its intellectual and normative density – not to propose an alternative conceptual framework, but rather to promote a simplified and reductionist one.

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