Reversing Authoritarianism in the EU: Transformative Politics and the Role of Opposition

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Abstract:

This chapter argues that reverting or preventing democratic and rule of law backsliding can only succeed as the result of a multi-level strategy involving 'transformative politics' as well as 'transformative constitutionalism.' Our chapter is divided into four sections. In the first part (section II), we suggest that both transformative strategies need the identification of what Claus Offe has called 'agents of transformation,' institutional and political forces capable to motivate and direct such transformations. In the second part (section III), we draw on a comparative analysis with Latin America to examine the role that oppositions and political parties have played in the quest for democratization and/or prevention of further autocratization, and we argue that opposition coordination and use of institutional strategies are key to defy incumbent autocrats. In the final part (section IV), we explore the double pincer strategy – political and constitutional, national and supranational. Here, we emphasize that to restore constitutional democracy in EU countries that have experienced democratic backsliding also involves advancing a more egalitarian and democratic EU model for the long run.

Keywords: Transformative strategies; Agents of transformation; Role of institutions, parties, and oppositions; EU as a safeguard; Social dimension; Inter-institutional dialogue

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I. Introduction

Democratic decline has been a notable trend in the past two decades, with several countries having been experiencing setbacks in their democratic institutions and practices. Across the world, voters have looked to populist candidates – both from the left and right – hoping they would readily fix their economic, social, and political anxieties. Unlike in other processes of democratic decay, in recent years, executives who erode democracy do so after winning what counts as free, though not always fully fair elections, and not after violent turnovers. Even in countries where democracy had been 'the only game in town' for several decades, such as Hungary, Poland or Venezuela, authoritarian incumbents used institutions built under democracy to erode it from within.

The COVID-19 pandemic has exacerbated the situation in some regions, with countries using illiberal or outright authoritarian emergency measures that violated human rights and/or undermined accountability.[3] This has had the double effect of reinforcing a general trend in democratic systems towards supremacy of the executive over the legislative and offering arguments to aspiring autocrats to follow the same path by eroding civil liberties and the rule of law, restricting freedom of speech and of the press, repressing civil society and imposing barriers on opposition parties.[4] This may have also added to the general dissatisfaction with traditional political institutions, and the shortcomings of globalization to deliver tangible benefits for all ordinary citizens, thus pushing voters to elect leaders with a 'populist' message, even centrist ones, who promise to solve complex problems rapidly and with scant regard for established constitutional values and procedures.

Europe has not been exempted from this trend. In countries such as Denmark, France, Germany, Spain, Sweden, and Italy, far-right parties who promise to curb immigration, limit the rights and freedoms of a liberal democratic society to a smaller group of citizens,[5] and protect a narrow and inward-looking view of national sovereignty, have been gaining ground

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3 V-Dem, 'Pandemic Backsliding: Democracy Nine Months into the Covid-19 Pandemic', 2020, https://www.v-dem.net/media/publications/v-dem_policybrief-26_201214_v3 1.pdf.

4 See, for instance, Kim Lane Scheppele, 'How Vitkor Orbán Wins', *Journal of Democracy* 33 (2022), 45–61.

5 Jasper Theodor Kauth and Desmond King, 'Illiberalism', *European Journal of Sociology* 61 (2020), 365–405.

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for a while. Inside and outside the office, these parties mobilize using exclusionary, xenophobic, and racist rhetoric to polarise societies. The drivers of electing far-right parties seem twofold: on the one hand, voters have elected illiberal parties to safeguard exclusionary values; on the other, they have sided with these parties because of their tolerance for authoritarian and autocratic practices.[6] There are other countries, such as Poland or Hungary, where rightist parties have already eroded democracy. Despite these countries having signed up to the main constitutional values underpinning the European Union, their constitutional order has openly and progressively challenged those very same constitutional principles.

To what extent can opponents in Member States experiencing democratic and constitutional backsliding prepare for a transition back to a consolidated constitutional and democratic order? Which strategies can opposition parties pursue to reverse authoritarianism? Can a robust democratic culture across the European space be bolstered? Our chapter addresses some of these questions in the following way. In the first section, we argue that a potential transition, or a reversion of the authoritarian turn, would have to take place on different arenas and at different levels. To be effective, the re-establishment or consolidation of democratic constitutional order must involve political and legal-constitutional changes. Accordingly, this requires 'transformative politics' as well as 'transformative constitutionalism.' It is important for these strategies to operate on both terrains and to be interactive in their action. Moreover, particularly in the EU context, these transformative strategies can be played at both national and supranational levels in a way in which the latter can be harnessed to produce and facilitate the necessary transformation in the Member States. The capacity of the EU institutional system to prevent or to help correct constitutional involution in the Member States is what Claus Offe has described as one of the ideally inspiring reasons of the EU project, or what he calls its '*mission civilisatrice interne*'. In other words, European integration may work as 'a precautionary safeguard against de-civilizing tendencies' that may undermine long-established standards of civil and human rights.[7] For this to take place, however, the combination of the political and legal-constitutional levels is essential.

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6   Milan W. Svolik et al., 'In Europe, Democracy Erodes from the Right', Journal of Democracy 34 (2023), 5–20.
7   Claus Offe, *Europe Entrapped* (Cambridge: Polity Press 2015), 63–64.

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The second section looks more at the role of leadership, more specifically at democratic elites, in their quest for democratization and/or prevention of further autocratization. Scholarship on oppositions in Africa, Asia, Central and Eastern Europe, or Latin America has consistently shown that oppositions can be capable of exercising an active role in terms of mobilization, organization, and offering alternative narratives, challenging authoritarian regimes. Moreover, scholars have argued that the type of strategies they choose or linkages to civil society or international allies they build can define their probabilities for success or failure in producing regime change. Here, we draw on comparative analysis from contemporary Latin America and Eastern Europe to argue that opposition coordination is crucial to i) defy authoritarian incumbents and ii) govern after their victory. Past and recent developments show that when opposition parties coordinate formally (i.e. internal decision-making and conflict resolution mechanisms, joint program, unitary candidate) and mobilize peacefully. In this way, can slow down further autocratization, but also, crucially, develop strategies, policies, and institutional changes that are effective once they dislodge autocrats from power.

In our third section, we look at both the social and institutional problems that transformative strategies need to address to be effective in the European context. On the one hand, we look at society's expectations from democratization processes, and how economic inequality and unmet expectations from previous transitions or political and economic integration may have favored the recent authoritarian turn. We argue that paying close attention to the conditions that favoured democratic backsliding in Hungary and Poland in the first place may also help counteract similar tendencies in other EU Member States. On the other hand, we explore the double pincer strategy – political and constitutional, national and supranational – that can be effectively pursued within the EU context, paying particular attention to which transformative strategies are best suited to the different territorial levels given the present EU constitutional architecture. Ultimately, the objective of these strategies is not only to develop successful social, political, and cultural strategies to restore an acceptable form of constitutional democracy in those countries that have most been affected by the current authoritarian turn but also that of fostering a more egalitarian and democratic EU in the long run.

The chapter concludes by highlighting that a constitutional democracy founded on liberal and egalitarian values is not something that can be forever legally enshrined. In contrast, it requires that democratic partisan

elites and civil society constantly renew their commitment and will toward democratic politics, the rule of law, and the fundamental constitutional principles underlying the Union.

II. Reversing the Authoritarian Turn: Transition 2.0 and Transformative Strategies

The present volume is meant to address the problem of the 'transition' back to a constitutional order, particularly in countries such as Poland and Hungary, an order congruent with the general principles to which all EU Member States have subscribed to. These principles are summarised in Art. 2 TEU, expressing the EU's and its Member States' fundamental values on which participation in this community of states is presupposed. The importance of these values as part of the Union's institutional and policy-making fabric has been emphasized by the judgments of the CJEU of 16 February 2022 in the two cases of *Hungary v Parliament and Council* (C-156/21) and *Poland v Parliament and Council* (C-157/21). The judgements support the idea of a general conditionality regime that applies to the EU budget in relation to breaches of rule of law principle. This, arguably, gives the EU institutions concrete power to challenge such breaches and a material incentive for Member States to take fundamental principles seriously.

There are, of course, different ways of interpreting these values and a certain latitude in the way in which different national regimes implement them locally. Moreover, there are fundamental disputes on whether the Union itself, its constitutional architecture, and its structural policies reflect such values. But, leaving aside these more general problems about the nature and scope of the EU and varieties of constitutionalism, there is a general agreement that countries like Hungary and Poland have, in the last decade or so, taking a turn towards what Victor Orbán himself has described as an 'illiberal state', based on a constitutional order that challenges some of those values, if not as a matter of principle, at least in practice.[8] The object of the volume is, therefore, to imagine how a 'transition' back to a recognizable

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8 Elisabeth Bakke and Nick Sitter, 'The EU's Enfants Terribles: Democratic Backsliding in Central Europe since 2010', Perspectives on Politics 20 (2022), 22–37; R. Daniel Kelemen, 'The European Union's Authoritarian Equilibrium', Journal of European Public Policy 27(2020), 481–499; Lenka Buštíková and Petra Guasti 'The Illiberal Turn or Swerve in Central Europe?', Politics and Governance 5 (2017), 166–76.

constitutional democracy can be engineered in such countries. Given that in the case of Hungary and Poland, there was a recent transition from Soviet-type regimes to constitutional democracies broadly of a European kind, it is tempting to think of this as a 'second' transition and find similarities and differences with the previous one.[9]

To imagine such a 'transition', it may be important to have some clarity about several points. First, what kind of constitutional order is currently in place in those countries, or how and how much they have diverged from the standard principles of constitutional democracy we aim to re-establish? In other words, transition *from what*? Secondly, social, political, and constitutional orders are never fixed in time; they are in a state of permanent transition, so to speak, that makes it possible to produce and reproduce the kind of relations that underpin a particular order. Actors interested in crafting a transition towards a determined objective need to know not only the kind of new order they wish to establish but also how to do so. In other words, who are the *agents* of transformation?[10] In the rest of this section, we address these two issues, even though we do not pretend to solve them here.

1. Transition from what?

There is no consensus in political science literature on how to define emerging non-democratic regimes across the world that are 'in-between' fully democratic and fully authoritarian regime types. Some scholarship refers to them as mixed regimes, hybrid regimes, or electoral authoritarian regimes, be they competitive or hegemonic.[11] These definitions, however, are often constructed by negative rather positive definitions, risking to provide little content on what these regimes are or how they operate. One way of getting to the substance of these regimes is to see how their definition has become part of different debates centering on separate features – democratic, constitutional, social – of these regimes.

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9 For a discussion of some of the qualitative differences between Transition 1.0 and Transition 2.0, see Jirí Pribán's contribution to this volume.

10 See Offe (n. 7), 56–60.

11 See Valerie Bunce and Sharon L. Wolchik, *Defeating Authoritarian Leaders in Post-communist Countries* (Cambridge: Cambridge University Press, 2011); Steven Levitsky and Lucan Way, *Competitive Authoritarianism: Hybrid Regimes after the Cold War* (New York, Cambridge: Cambridge University Press, 2010); Thomas Carothers, 'The End of the Transition Paradigm', Journal of Democracy 13 (2002), 5–21.

Several debates merge in the assessment of the parlous state of 21st-century constitutional democracy. There is a long-standing discussion about the 'crisis' of democracy and its retrenchment, or 'rollback' in the last 20 years.[12] Such a debate started by the end of the first decade of the 21st century, as there was increasing disappointment with the promises of democratisation. After several successive waves of democratisation, culminating with the Arab Spring, its almost irresistible tide seemed to alt and go into reverse. This version of the 'rollback' of democracy was primarily seen in geographical terms, emphasising the international retreat of democracy. In parallel, there was a debate about the quality of democracy, which was concerned with the deterioration of democratic governance. This was in part a debate about the 'hollowing out' of the main representative institutions of democracy,[13] which no longer guaranteed a 'space of engagement' between citizens and governing elites; and partly a debate on what Colin Crouch[14] has called post-democracy, a system where the formal institutions of democracy still work, but only as a façade, since political power and decisions are in the hand of small economic-political elites, and where politics is kept within the iron cage of neo-liberal ideology. The EU itself has not escaped such criticism, and of course, there has been a long-standing discussion about its 'democratic deficit' since before Maastricht.[15]

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12 Larry Diamond, 'The democratic rollback: the resurgence of the predatory state', Foreign Affairs 87 (2008), 36–48; see also, Global Policy Journal, Special Issue: 'Changing the European Debate: A Rollback of Democracy' (2015).

13 Peter Mair, *Ruling the Void: The hollowing of western democracy* (London: Verso 2013).

14 Colin Crouch, *Post-democracy* (Cambridge: Polity Press 2004).

15 The debate on the democratic deficit has punctuated the formation of the European Union since the mid-1990s, if not earlier. As suggested by Domenico Majone long ago, 'Arguments about Europe's democratic deficit are really arguments about the nature and ultimate goals of the integration process' ('Europe's 'Democratic Deficit': The Question of Standards', JCMS 4 (1998), 5–28 (5). The literature on the 'democratic deficit' is therefore huge. Here, only a few, very selective, examples: Andreas Føllesdal and Simon Hix, 'Why there is a Democratic Deficit in the European Union. A Response to Majone and Moravcsik', JCMS 44 (2006), 533–562; Andrew Moravcsik, 'In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union', JCMS 40 (2002), 603–624; Richard Bellamy and Dario Castiglione, *From Maastricht to Brexit: Democracy, Constitutionalism and Citizenship in the EU* (London, New York: Rowan & Littlefield 2019), Part V 'The Democratic Deficit'; Vivienne A. Schmidt, 'Democracy and legitimacy in the European Union revisited: Input, output and 'throughput', Political Studies 61 (2013), 2–22; Kalypso Nicolaïdis, 'European Democracy and Its Crisis', JCMS 51 (2013), 351–369.

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Related to the debates about modern democracy as a mere 'formal shell' one finds discussions about the 'delegative' twist that democracy has taken particularly in Latin American democracies,[16] where the democratic mandate is understood to delegate power to a strong leader without clear forms of intermediation, control, and accountability. This is not exclusively a Latin American phenomenon since it harks back to old discussions about plebiscitary democracy or to debates about presidential and parliamentarian forms of democracies. In more recent times, many of the problems raised about these debates on the internal erosion of democracy have re-emerged in connection to new waves of populist politics in Europe. On the one hand, many of these new populist parties and movements have embraced the rhetoric of popular democracy and the will of the people. On the other, their politics has often become associated with right-wing and exclusionary, and anti-universalist ideas of the political community, an anti-pluralist conception of the people, and a delegative-charismatic idea of leadership, which is dismissive of the need for checks and balances and the protective role that intermediate institutions play in constitutional democracies.

Most of these debates referred to the effectiveness of its institutions; in other words, they raised issues about democratic disempowerment and political autonomy in so far as the political system seemed increasingly unable to perform its democratic functions; important decisions tended to become exogenous to the democratic process; and everyday life was increasingly dominated by system-decisions escaping the control of individuals and groups. On the other hand, more recent discussions about the so-called 'democratic backsliding' in the European context raise issues about the regression in the very formal structure of constitutional democracy in terms of separation and balance of powers, rule of law, and personal autonomy. What is at stake is not just the substance of democratic decision-making but also the formal context for democratic decision-making. In other words, democratic backsliding is eroding the constitutional order of a democratic society and entrenching instead a different kind of constitutional order,

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16 Guillermo A. O'Donnell, 'Delegative Democracy', *Journal of Democracy* 5 (1994), 55–69.

which is not more 'authoritarian' in relative terms, but embodies a different constitutional regime.[17]

We do not aim to categorize Hungary or Poland's current constitutional order from scratch, nor do we make any claims about whether such order will prove durable or may even become a model for other EU Member States where governments with similar ideologies may come to power. This is something not so far-fetched, given the new governments in Italy and Sweden and the long-feared possibility that Le Pen may win the presidency in France. But it appears important to see which of the different aspects of the debates mentioned above are relevant and/or specific to these countries. Wojciech Sadurski,[18] for instance, has identified three main aspects in what he calls the Polish 'constitutional breakdown'. These have resulted in what he calls the 'anti-constitutional populist backsliding' nature of the current Polish regime: anti-constitutional, because the de-facto exercise of power eludes the formal constitution; populist, because the constitutional change is propped up by social and political mobilisation of a populist kind, and backsliding because there has been a deterioration of the quality of democracy. Sadurski rightly argues that his description mainly fits the Polish case because there are important social, political, and cultural differences between this and the Hungarian case. Yet, we partly follow Sadurski's analysis, identifying a few distinctive features that may apply more generically to both the Polish and Hungarian cases and that may also be relevant to developments in other European countries where democracy has a more established pedigree.

In brief, we can characterize the recent evolution of these constitutional regimes along three lines. i) With the erosion of political autonomy by the occupation of power of executive regimes of a majoritarian kind that have progressively colonised both intermediate institutions and important parts of civil society (media, for instance), thus weakening the principle of balance and division of powers and threatening political pluralism. ii) With the erosion of personal autonomy by the attack against social and cultural pluralism and a new version of what Ernst Frankel called the 'dual state,'[19]

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17 See Mark Tushnet, 'Authoritarian Constitutionalism', Cornell L Rev. 100 (2015), 391–462. Tushnet argues, with reference to Singapore, that it is possible to consider some authoritarian regimes as having a thin, basic rule-of-law type of constitutional order.

18 Wojciech Sadurski, *Poland's Constitutional Breakdown* (Oxford: Oxford University Press 2019).

19 Ernst Fraenkel, *The Dual State* (New York: Octagon 1969); Mark Tushnet considers the possibility that one of the characters of 'illiberal constitutionalism' is that of a

or certain aspects of what Hermann Heller labeled 'liberal authoritarianism' – a kind of state that emerged in several European countries in the first part of the 20th century.[20] Such erosion is based on the return of exclusivist and ethnocultural ideas of the political community, mainly aimed against immigrants and minority cultures, and intended to stop or revert new and more diverse conceptions of lifestyles and the rights that come with such recognition. Finally, iii) with what Sadurski calls the 'populist' element of social mobilisation. It is worth recalling that this is based on a populist and narrowly sovereignist conception of democracy rather than on a rejection of democracy. Such rejection characterised fascist regimes in the 20th century. These regimes presented similar threats to political and personal autonomy to those indicated above, but used clear anti-democratic rhetoric, and rejected a rule-of-law state altogether, developing more racially based and totalitarian conceptions of the state. In the present cases, personal and political autonomy is instead threatened by appeals to a majoritarian vision of democracy based on an anti-pluralist conception of the 'will of the people' and on the undermining of the balance between trust and distrust that is essential in a constitutional democracy aimed to build social cohesion but to be vigilant on the exercise of power.[21]

As we said, we think it is important to have an understanding of the nature of these regimes in order to start thinking about transformative strategies. Moreover, the elements we have identified suggest that, although these may be important for defining the constitutional involution in Hungary and Poland, they are also present, though to different degrees, in other European countries. The problem we are facing is not just one of transition back to an established constitutional democracy, but also one that involves rethinking and consolidating constitutional democracy across Europe.

'dual state', even though he suggests that such a kind of constitutionalism may not be sufficiently stable, 'The Possibility of Illiberal Constitutionalism', Fla. L. Rev. 69, 1367–1384 (1376–1377).

20 Hermann Heller, 'Liberal Authoritarianism?', ELJ 21 (2015), 295–301; originally published in German in 1933 in vol. 44 of Die Neue Rundschau (289–298).

21 See on this issue Gábor Attila Tóth, 'Breaking the Equilibrium: From Distrust of Representative Government to an Authoritarian Executive', Wash. L. Rev. 28 (2019), 317–348.

2. The Agents of transformation

It is at this stage that we may introduce the second problem to which we referred at the start of this section, that of *agency*. In order to address this, we need to consider an important distinction, the one between the political and the legal-constitutional level in the way in which constitutional democracies work. If the transformation we have in mind is mainly intended as the establishment or the re-establishment of a constitutional order that reflects general principles such as those indicated in Art. 2 TEU -human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities- it may seem, *prima facie*, that this involves a constitutional transformation that precedes and frames politics, and that the instruments and discourses that we need to mobilise should be, in the first instance, those of a legal-constitutional character. This would seem an entirely plausible strategy in the case of Hungary and Poland, countries that not only have in the recent past experienced an autonomous transition from a more authoritarian regime, which was propped up from outside, to a more democratic and constitutional regime; but also because they have freely adhered to the European Union and to its funding values as formally established by Art. 2 TEU. Although paths out of (electoral) authoritarianism are typically uncertain as they can come about in different ways and can lead to various outcomes -transitions do not necessarily imply democratisation- in the EU, we should not expect the same levels of unpredictability. A transition 2.0 in the EU is, to a large extent, pre-defined as states have the obligation to comply with the Union's values.[22]

Within such a context, one can reasonably apply the logic of 'transformative constitutionalism'. This is usefully articulated by Armin von Bogdandy and Luke Dimitrios Spieker[23] as being mainly intended to overcome 'systemic deficiencies' and to rely on the courts as important – though not the only – actors that may mobilise the values of an already established constitutional document to correct such deficiencies.[24] It is important to note that Bogdandy and Spieker stress how the transformative jurisprudence of

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22 See Hilliol and Schröder's contributions in this volume.

23 Armin von Bogdandy and Luke Dimitrios Spieker, 'Transformative Constitutionalism in Luxembourg: How the Court can support Democratic Transitions', Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2022–14, 25 June 2022; but see also their contribution to this volume.

24 von Bogdandy and Spieker (n. 23).

the relevant courts cannot be seen in isolation, but it operates within a horizontal institutional structure where its place and action acquires recognition, and in conjunction with other agents that contribute to the success of transformative constitutionalism. Moreover, it is important that the values advocated in the constitutional document can be mobilised within an appropriate jurisprudential logic within which they can become justiciable and effective in correcting systemic deficiencies. Nonetheless, for them, court activism remains meaningful to such a strategy, and transformative constitutionalism might be an engine of transformation.

In its way, the logic of transformative constitutionalism is quite compelling. The question to be addressed, however, is one of effective 'agency'. This is a topic discussed a few years ago by Claus Offe in his book on *Europe Entrapped*.[25] There he identifies this as the central problem that faced the EU at the time of the monetary and financial crisis. But we can extend his argument to the problem of democratic backsliding in particular Member States. What Offe argued was that in order to address the crisis, Europe needed to solve the problem of agency by finding adequate 'social and political forces, inspiring ideas, or sufficiently resourceful actors'. There is no doubt that 'transformative constitutionalism' can point to the CJEU, and in some respect to the ECHR, as 'resourceful actors'. It can also suggest that there are social and political forces that may support the action of the Court. But can the appeal to the constitutional values enshrined in Art. 2 TEU provide those 'inspiring ideas' that can mobilise the public or at least have their support? The role of values as part of the mobilising factors in the European integration project is indeed one of the issues that Offe deals with in his book, and it may be useful to look at it.

Offe identifies seven *finalitées* that are often given as grounds for 'Europe as a 'project' intrinsically worth pursuing'.[26] He mentions 7, but the last one is of a more pragmatic nature. The others, in the order in which he discusses them, are (1) peace; (2) economic prosperity and social inclusion; (3) democratic and accountable government; (4) 'soft power' within the international system; (5) diversity of cultures and traditions; and (6) what Offe calls the EU's '*mission civilisatrice interne*.[27] It is probably worth concentrating on the last one, which seems closer to the kind of values that

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25 Offe (n. 7).
26 Offe (n. 7), 61–80.
27 Offe (n. 7), 63.

transformative constitutionalism would appeal to in the case of Hungary and Poland.

He points out how European integration may be looked at as 'a precautionary safeguard against de-civilizing tendencies' undermining long-established standards of civil and human rights. Contrary to the experience in other parts of the world – as in the re-normalisation of the idea of torture in the United States during the Bush Jr presidency – Offe argues that in Europe, such regression and the ensuing violations of rights 'could not go undetected and unsanctioned,' an achievement 'that cannot be lightly dismissed.' Nonetheless, Offe thinks that the rather 'negative' character of this 'prevention' function is insufficient as a ground for mobilising popular support for the EU. One could raise other doubts about Europe's self-immunisation capacity against de-civilizing tendencies by asking, for instance, whether this is truly the case; and, if so, whether the safeguards come more from the public cultures and institutions of the Member States than from the Union itself. Hungary and Poland appear to be ideal cases in this context. On the one hand, this is an example of how the Union may fulfil the self-reflexive capacity that Offe identifies by providing members states with some external reminder of the kind of standards of rights and democratic organisation that they have committed to as part of their membership in the EU. On the other hand, the fact that the action taken by the European institutions has not been able to prevent fully, even though it has arguably delayed and made more difficult, the evolution of the Hungarian and Polish regimes towards more authoritarian and autocratic forms is indicative of the relatively low capacity for social and political mobilisation that the European institutions have when trying to take sanctions against one of the Member States. This confirms that the Union's *mission civilisatrice interne* is not fully effective, ultimately depending on the robustness of the democratic and civil-rights culture of the Member States.[28]

If this is true, one must assume that 'transformative constitutionalism', on its own, is incapable of mobilising and motivating the kind of action required to correct and transform profound constitutional deficiencies. Any profound and durable transformation needs what we call 'transformative politics.' To understand such politics, we need to avoid some common misconceptions. Politics is often considered a mere fight for power and sectori-

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28 The recent demonstrations in Israel against the constitutional law reforms of the Netanyahu government show the importance of civic mobilisation against democratic backsliding.

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al advantage through factional divisions and low forms of compromise. On those occasions when a broader, more constitutive, and transformative view of politics is acknowledged, this tends to be identified with an unrealistic and idealised form of high-minded rational deliberation. By contrast, politics is always a mixture of high and low politics. It is this way of conceiving and practising politics that is often concealed and underestimated as part of motivating and legitimating processes of social transformation. But we think that it is only by appealing to this two-faced view of politics and of its transformative capacities, as well as to other transformative forces in society, such as the power of a vibrant constitutional culture or the autonomous capacities of civil society, that profound changes can happen and be made durable.

Offe's discussion of the Union's *mission civilisatrice interne* points to another distinction that is important in the way in which we think of constitutional transformation in a more interconnected world, and this is between the national and the international and supranational levels. This is particularly true for the EU, where one can argue that the European space has reached a high level of social and institutional interconnectedness and constitutionalisation (even though the nature of this process remains contested). But the interrelation between these two levels also takes place in cases where there is no such a level of integration, like Latin American cases, where the IACtHR has played a similar role to that played by the CJEU, and in some respect of the ECtHR, in supporting and bolstering some processes of democratic constitutionalisation. As we argue in the rest of this paper, it is by paying close attention to the interconnection between the political and constitutional dimensions, on the one hand, and the national and international on the other, that it is possible to pursue a transformative process aimed at reverting the current authoritarian turn. Before looking at the European context in particular, we would like to discuss some important features of transformative politics through a comparison with similar processes in the Latin American context.

III. Opposition Politics in Authoritarian Contexts – Strategies and Coalitions

How do democratic oppositions or newly elected governments sustainably revert authoritarianism? Among other factors, comparative research on

oppositions has so far argued that building inclusive movements between civil society groups and political parties to participate in elections as well as peaceful protests and moderate international pressure are key to enabling transitions to democracy.[29] Even unpopular autocrats may remain in office when the oppositions fail to effectively organise and coordinate their actions. Therefore, it is essential to pay attention to the dilemmas oppositions encounter as well as the window of opportunity available to them as they challenge authoritarian regimes.

Around the world, political oppositions and newly elected democratic governments have faced a series of challenges when trying to revert authoritarianism. Military dictatorships in the past century were marked by a legacy of utter violence and repression, which traumatised and paralyzed societies, including opposition actors. Nonetheless, grass-roots movements, opposition coordination, collective action, as well as favourable international factors, including the collapse of authoritarian regimes in Southern Europe, such as Spain and Portugal, facilitated important transitions to democracy in the region from the mid-70s onwards.[30] The collapse of the Soviet Union as well as successful participation in elections of a previously organised opposition, also allowed for democratisation processes to occur in Eastern Europe. However, these democratisation processes implied in general terms an improvement in the respect for human rights, adoption of formal democratic procedures, and some institution-building, they did not prevent further irruptions of authoritarian practices altogether. For example, in Central and Eastern Europe unmet expectations of prosperity and governance fuelled dissatisfaction with democratic institutions in the 1990s and 2000s.[31] Over the past decades, Latin America has also under-

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29 Laura Gamboa, *Resisting Backsliding: Opposition Strategies against the Erosion of Democracy* (Cambridge: Cambridge University Press, 2022); Valerie Bunce and Sharon L. Wolchik, *Defeating Authoritarian Leaders in Postcommunist Countries* (Cambridge: Cambridge University Press, 2011).

30 Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 2014); Ruth Berins Collier, *Paths toward Democracy: The Working Class and Elites in Western Europe and South America* (Cambridge: Cambridge University Press, 1999); Guillermo A. O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule. Tentative Conclusions about Uncertain Democracies* (Baltimoreand London: Johns Hopkins University Press 1986).

31 Kiran Auerbach and Bilyana Petrova, 'Authoritarian or Simply Disillusioned? Explaining Democratic Skepticism in Central and Eastern Europe', Political Behavior 44 (2022), 1959–1983.

gone different transitions to democracy and back to authoritarianism. It is therefore a region that offers key insights into the variables that explain the rise and fall of democracies and/or autocracies.

1. Experiences from Latin America

From the 1980s onwards, a series of drastic market reforms to address economic instability, including fiscal austerity, privatisation of public enterprises, removal of regulations and control, incentivizing foreign trade, dismissal of government employees, were put in place. These measures contributed to limiting the quality of democracy. Neoliberal policies imposed reduced government responsiveness to its constituents and their capacity to implement beneficial socio-economic reforms as incumbent administrations were vulnerable to the economic interests of domestic and foreign investors. As a result, citizens began to disregard political parties and disengage from politics.[32] In the late 1990s, political party systems were crumbling across a more democratic region. Unresponsive political parties, corruption scandals, inequality, and poverty, next to economic instability, paved the way for the so-called 'pink tide,' a wave of left-wing candidates who got elected to office. While some of these governments' policies and performance can be attributed to the moderate democratic left (Lula's Brazil), others are defined as 'contestatory left' (Correa's Ecuador, Morales's Bolivia), and yet others belong to the radical authoritarian left (Chávez and Maduro's Venezuela, Ortega's Nicaragua).[33] In the latter two sets of countries, incumbents began -to varying degrees- to purge key institutions, such as the judiciary, electoral authorities, media, and civil society organisations, making it difficult for opposition groups to gain a foothold over time.

In two out of these four cases, Bolivia and Ecuador, we have observed, even if briefly, incumbent turnover, while in Nicaragua and Venezuela, we have not, so far. Existing research on Bolivia and Ecuador argues that moderate strategies, including participating in elections and peaceful protests, enabled the opposition to mobilise citizens in their favour. In

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32 Kurt Weyland, 'Neoliberalism and Democracy in Latin America: A Mixed Record', Latin American Politics and Society 46 (2004), 135–157.

33 Raúl L. Madrid, Wendy Hunter and Kurt Weyland, 'The Policies and Performance of the Contestatory and Moderate Left' in: Kurt Weyland, Raúl L. Madrid and Wendy Hunter (eds), *Leftist Governments in Latin America: Successes and Shortcomings* (Cambridge: Cambridge University Press, 2010), 140–180.

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the 2021 elections in Ecuador, businessman Guillermo Lasso, who had in previous elections lost to a once popular Rafael Correa, was able to craft an alliance and message that appealed to various groups within society. People on the right, in the center, dissatisfied government supporters, as well as environmental and indigenous groups, voted against Correa's candidate Andrés Arauz fearing that high polarisation and authoritarian practices would return if he won.[34] In 2019, Evo Morales was forced to step down after a series of contentious events. Partisan and non-partisan denounced irregularities and protests erupted. Although once popular because given his government's ability to reduce poverty and inequality, Morales alienated voters with his power-maximising ambitions and disrespect for democratic institutions over time, including the disregard for his lost 2016 referendum to seek re-election.[35]

In contrast, both in Venezuela and Nicaragua, incumbents consolidated their power even more. Despite peaceful protests and concrete demands for democratisation between 2013 and 2018, citizens and opposition leaders in Nicaragua were not able to achieve their goals. The Ortega regime brutally repressed these attempts and has persecuted and exiled all relevant opposition figures as well as civil society members, including the Catholic church, over the past years. Despite decreasing popularity rates, his ruling coalition has installed a regime of fear that seems hard to topple so far. International pressure and domestic coordination among political opposition were not present when most needed, thereby allowing Ortega to consolidate his grip on power even faster.[36] In Venezuela, chavismo also gradually turned the country's once weak democracy into an electoral authoritarian regime that manipulated elections to maintain power, repressed civil society and opposition groups, engaged in violent crackdowns, arbitrary detentions, and even torture of dissidents.

In all these cases, authoritarian incumbents have relied on the classical 'divide et impera' strategy to weaken their opponents. Using highly polarising and inflammatory rhetoric, repression, or co-optation mechanisms,

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34 John Polga-Hecimovich and Francisco Sánchez, 'Latin America Erupts: Ecuador's Return to the Past', Journal of Democracy 32 (2021), 5–18.

35 Laura Gamboa, 'What Should the Opposition Do in Authoritarian Regimes? Here Are Lessons from Bolivia', Mischiefs of Faction, 21 February 2020, https://mischiefsoffaction.com/post/what-should-the-opposition-do-in-authoritarian-regimes-here-are-lessons-from-bolivia.

36 Kai M Thaler and Eric Mosinger, 'Nicaragua: Doubling Down on Dictatorship', Journal of Democracy 33 (2022), 133–46.

autocrats exacerbate pre-existing divisions or create new ones to prevent opposition groups from coordinating before legislative or executive elections. When oppositions do not overcome fragmentation to present a viable alternative, they can unintentionally help the autocrat consolidate his power. Therefore, it is essential to understand the relevance of *ex ante* and *ex post* coordination among diverse opposition groups. We make this distinction because there are different stages in the struggle for democracy as different obstacles and costs emerge with each stage. Oppositions make commitments to one another *prior* to the election to win, however, they must also craft credible mechanisms *upon* winning to be able to govern.

2. Anti-authoritarian coordination strategies in and out of government

Coordination between anti-authoritarian forces is crucial for a series of individual and collective reasons. Firstly, it allows different opposition groups to amplify their collective capacity, given that winning individually is harder to achieve. By joining forces, opposition groups can pool their material resources, expertise, and networks to create a larger and more competitive movement. Coordinating can also help to create a unified message and set of objectives to galvanise wide public support. Finally, coordination can provide a sense of individual safety for opposition groups, who may otherwise face intimidation or violence from the regime.[37] Precisely because the playing field is largely uneven in electoral authoritarian regimes, opponents are often forced to enter alliances they would not have pursued under democratic settings.

Yet, beyond the willingness or need to coordinate, the factor that can shape the effectiveness of collective efforts in the mid- and long run is *how* parties coordinate, which can be informal or formal. While informal coordination is one-off actions (i.e. organising protests), cross-party endorsement, or non-aggression pacts, formal coordination implies that parties commit to certain internal rules.[38] These rules help structure internal conflicts and facilitate collective decision-making among diverse opposition

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37 Elvin Ong, 'Opposition Coordination in Singapore's 2015 General Elections', The Round Table 105 (2016), 185–194; Orçun Selçuk and Dilara Hekimci, 'The Rise of the Democracy – Authoritarianism Cleavage and Opposition Coordination in Turkey (2014–2019)', Democratization (2020), 1–19; Daniela Donno, 'Elections and Democratization in Authoritarian Regimes', American Journal of Political Science 57 (2013), 703–716.
38 Keck and Sikkink (n. 30).

parties. While the Venezuelan opposition under chavismo has not managed to oust incumbents from power, their formal coordination attempt around the so-called Mesa de la Unidad Democrática (MUD) helped opponents narrow the gap to chavismo, even under barely competitive circumstances. In 2009, opposition parties in Venezuela decided to announce the creation of their opposition alliance Mesa de la Unidad Democrática (MUD), to contest upcoming elections more effectively. This alliance progressively allowed opposition parties to win in legislative, municipal, and regional elections. It also helped parties narrow the gap in the 2012 and 2013 presidential elections, where the opposition candidate, Henrique Capriles, lost to Chávez with a narrower margin (44 % to 55 %) compared to Manuel Rosales's 2006 loss (36 % to 62 %) and only with a 1.5 % difference to Maduro. In 2015, the MUD won the supermajority in the National Assembly because of their competitive collective campaign.

Over several electoral cycles between 2010 and 2015, voters learned to reward the MUD's efforts of building a serious alternative to the government. The 'secret' of these incremental successes was the careful work conducted by the MUD's Executive Secretariat and its working commissions, who tried to align the interests of all coalition members and helped craft unitary lists, select joint candidates, and design a joint minimal program. In the face of internal tensions, the coalition could manage conflicts based on the internal rules it had designed. This experience helps to stress the importance of mutual commitment based on written rules that tried to increase the costs of non-cooperation and allowed the coalition to survive four election cycles.[39] Though the MUD was not able to reverse authoritarianism altogether, it represented a valuable tool to slow autocratization in Venezuela to some extent.

Beyond ex-ante coordination to win elections, however, *ex-post* coordination upon winning also seems vital. A broad opposition coalition that wins legislative elections or assumes power after a period of authoritarianism must be able to govern, implement state reforms and public policies that benefit the people while it deals with authoritarian enclaves and informal structures built during the authoritarian recent past. Therefore, oppositions who want to remain in power and successfully democratize a country, must craft credible ex-post coordination agreements. It is often believed that an anti-incumbent umbrella movement can revert authoritarianism. However, existing empirical evidence shows that if newly elected

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39 Keck and Sikkink (n. 30).

governments do not distinguish themselves in programs and practices from the authoritarian past and/or authoritarian successor parties and most importantly do not engage in credible elite bargaining, their coalitions are vulnerable to collapse.

Cases from Latin America and Europe show that where oppositions fragmented upon winning executive offices, democratisation processes did not consolidate over time. For example, the opposition coalition led by Violeta Chamorro in Nicaragua, which won the 1990 presidential election, beating the Sandinista National Liberation Front (FSLN) that ruled a decade long, could not survive in time. Even though Chamorro's victory was attributed to her ability to unite a previously fragmented opposition, she could not hold it together after winning office. Her government suffered from internal divisions and conflicts, particularly because at heart what united them in the first place was their shared anti-incumbent sentiment and not a collectively designed reforms and/or program.[40] Similarly, the interim government of Jeanine Añez, who assumed office amidst a political crisis in November 2019 after Evo Morales was ousted from power, exemplified the series of errors an incoming opposition government could commit. On the one hand, Añez failed to build a broad-based coalition to support her government, which left her vulnerable to opposition from various sectors of Bolivian society. Her main supporters were on the right of the ideological spectrum, which left indigenous and working-class groups, who were the core constituents of the Movement for Socialism (MAS) outside her support base. Additionally, Añez's administration was questioned for attacking journalists, pressuring prosecutors to its favour, and retaliating against former MAS officials and supporters.[41]

A similar trend can be identified in Central and Eastern Europe. The lack of functioning institutions, democratic governance, accountability, and representation boosted dissatisfaction with democracy as the preferred regime type in Eastern Europe.[42] The most referred to cases of democratic

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40 Laura Nuzzi O'Shaughnessy and Michael Dodson, 'Political Bargaining and Democratic Transitions: A Comparison of Nicaragua and El Salvador', Journal of Latin American Studies 31 (1999), 99–127.

41 César Muñoz and José Miguel Vivanco, 'Bolivia Should End Revenge Justice', Human Rights Watch (blog), 22 March 2021, https://www.hrw.org/news/2021/03/22/boliv ia-should-end-revenge-justice; V. Ximena Velasco Guachalla et al., 'Compounding Crises: Bolivia in 2020', Revista de Ciencia Política 41 (2021), 211–237.

42 Kiran Auerbach and Bilyana Petrova, 'Authoritarian or Simply Disillusioned? Explaining Democratic Skepticism in Central and Eastern Europe', Political Behavior

backsliding within the EU are Poland and Hungary where Fidesz and PiS, both with a track record as democratic parties after the collapse of communism, have since 2010 and 2015, respectively, attacked the free press and independent civil society, restricted judicial independence and changed electoral laws to their benefit.[43] Research on these countries has argued that backsliding in recent years is a product of structural conditions (i.e. economic crisis in 2008, European refugee crisis in 2015) and the long-term impacts of the first transition to democracy after the fall of communism. Bernhard (2021) argues that the extrication processes from communism in Poland and Hungary were contentious and negotiated. He shows how the strength of the opposition was a key factor in initiating the democratisation process but less so after the extrication process. In both countries, the opposition had a relatively well-developed organisational capacity, which allowed them to strategically mobilise and open the system. However, after the extrication process, opposition parties split over strategic and personal motifs. The post-communist political and discursive space was divided between maximalists and moderates about how the transition process had come about. These struggles facilitated the 'memory warrior stance', which diminished the accomplishments of negotiated settlements and framed them as rotten deals. Meanwhile, post-communist parties were still able to survive and shape the emerging political landscape. The Polish Democratic Left Alliance (SLD) and Hungarian Socialist Party (MSzP) embraced programs supporting democratic and market reforms, as well as membership in NATO and the European Union, leaving little room for the opposition to distinctively distinguish itself on programmatic grounds. In addition, two exogenous factors contributed to the rise of illiberalism: the 2008 economic crisis and the 2015 refugee crisis. Both events consequently boosted PiS and Fidesz's ethno-national xenophobic capacity to mobilise Polish and Hungarian voters around discourses on the need to protect them from exogenous problems.[44]

Historical case studies from Latin America illustrate the impact of intra-opposition bargaining and coordination post-victory. Credible coordina-

44 (2022), 1959–1983; Besir Ceka, 'The Perils of Political Competition: Explaining Participation and Trust in Political Parties in Eastern Europe', Comparative Political Studies 46 (2013), 1610–1635.

43 Elisabeth Bakke and Nick Sitter, 'The EU's Enfants Terribles: Democratic Backsliding in Central Europe since 2010', Perspective on Politics 20 (2022), 22–37.

44 Michael Bernhard, 'Democratic Backsliding in Poland and Hungary', Slavic Review 80 (2021), 585–607.

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tion mechanisms among democratic opposition can help elites better navigate the multiple challenges of governing in a post-authoritarian country. Chile is a case that reveals the importance of opposition coordination prior to and post-transition. As in other countries, opposition parties in Chile were also deeply divided along ideological differences and personal rivalries. It took elites on the center-left and center-right years to process and transform internal tensions. Learning from past strategic mistakes, deemphasizing ideology, and developing a sense of duty to the Chilean people, parties in the opposition camp developed incentives for cooperation, which allowed for the creation of the Concertación in 1988, the longest-running coalition in Chile and among the longest running in Latin America. By building a coherent front to win the plebiscite against Pinochet in 1988 and subsequent presidential election in 1989, the opposition coalition was able to polarise along the regime-cleavage and in favour of democracy.[45] Upon winning, the Concertación, which was composed of the Christian Democratic Party (PDC), the Socialist Party (PS), the Party for Democracy (PPD), and the Radical Social Democratic Party (PRSD) – a party composed of the previous Radical Party (PR) and Social Democratic Party PSD) -, developed series of formal and informal mechanisms that enabled multiparty power sharing and representation. These mechanisms included regular meetings of party leaders, constant elite negotiations about appointments and candidates, ministerial distribution arrangements (*cuoteo*), consultative mechanisms, and a firm commitment to internal pacts. The Concertación also established a system of rotating the presidency among coalition parties, which helped to distribute power and prevent one party from dominating the coalition.[46] For twenty years, parties learned how to respond to formal incentives (i.e. constitution or electoral system) with a set of informal strategies 'designed to simultaneously balance the goals of promoting party interests, ensuring coalition survival, and winning political office'.[47] While the Chilean transition is not just a success story, it does illustrate the difficult compromises newly elected democratic governments have to pursue, both vis a vis the outgoing authoritarian cohort and its coalition partners. It is also a case that exemplifies the constraints outgoing

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45 Mariano Torcal and Scott Mainwaring, 'The Political Recrafting of Social Bases of Party Competition: Chile, 1973–95', B. J. Pol. S. 33 (2003), 55–84.

46 Kirsten Sehnbruch and Peter M. Siavelis (eds), *Democratic Chile: The Politics and Policies of a Historic Coalition 1990–2010* (Boulder: Lynne Rienner Publishers 2013).

47 Peter M. Siavelis, 'From a Necessary to a Permanent Coalition' in: Sehnbruch and Siavelis (n. 46).

elites impose on democratic parties and society's desire for rapid and all-encompassing reforms.

Venezuela also helps illustrate the relevance of elites' commitment to post-transition coordination and bargaining. In 1958 after the fall of Marcos Pérez Jiménez's military dictatorship, three political parties Acción Democrática (social-democrats), Copei (Christian-democrats), and URD (center-left) signed the Puntofijo Pact to establish a democratic system. These parties decided to design and follow a series of elite pacts and agreements to facilitate political stability and democratic governance, which they had agreed to months before the signature and Pérez Jiménez's fall. Some of these pacts centered around the shared idea that i) parties would be the key players of the new centralised system, in which they would structure society through its networks, ii) the state would be central in designing the economy and society, iii) party competition should be based on pluralism and competition. Though elite pacts and tight elite control over society and state institutions were vehemently rejected decades later, these very first negotiated compromises about procedures (democratic rules) and objectives (policy) allowed for a successful democratisation process in which citizens saw institutions and the state as legitimate.[48] In addition, because parties committed to redistributing the country's oil-based income by building a welfare state to address inequalities and facilitate social mobility, as well as providing a series of benefits to economic actors, Venezuela's emerging democracy counted on widespread support.[49]

These two examples demonstrate the importance of elites' normative preference for democracy. As Diamond and Linz put it 'to a considerable degree, the option for a democratic regime was a matter of pragmatic, calculated strategy by conservative forces who perceived that representative institutions were in their best interest. Even at the elite level, deep normative commitments to democracy appear to have followed these rational choices. In Chile, Uruguay, and Costa Rica (and much later in Venezuela), values of tolerance, participation, and commitments to democratic principles and procedures developed as a result of practice and experience with

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48 Brian F. Crisp, Daniel H. Levine and Juan Carlos Rey, 'El problema de la legitimidad en Venezuela', Cuestiones Políticas 12 (1996), 5–43.

49 Terry Lynn Karl and Philippe C Schmitter, 'Modes of Transition and the Emergence of Democracy in Latin America and Southern Europe' in: Eva Etzioni-Halevy (ed), *Classes and Elites in Democracy and Democratization: A Collection of Readings* (New York: Routledge 1997).

democratic institutions.'[50] In Chile and Venezuela, elites' commitment to consensus-building, self-restraint, and respect for democratic principles and procedures allowed for democratic political systems to emerge. Members of the Concertación in Chile as well as the two main political parties in Venezuela – AD and Copei – consciously crafted formal and informal coordination mechanisms to strengthen a democratic system based on pluralism, tolerance, and moderation. Though both processes suffered setbacks as citizens began to reject elite pacted transitions, they still highlight the relevance of sustained elite disposition towards democracy in post-transition contexts.

Extrapolating from these historical examples, but also from Poland and Hungary's history, it appears important that opposition parties in these countries elaborate credible ex-ante and ex-post coordination strategies around a long-term struggle for democratisation. The empirical discussion above illustrates the relevance of addressing divisions prior to and post elections, given that different dilemmas and obstacles emerge for opposition parties. When disagreements among a newly elected democratic government are too substantial and unfeasible to solve, given their heterogeneity, it might fall apart or cause disenchantment within the population. This, in turn, could revive longing for the authoritarian past and/or boost support for authoritarian successor parties. To prevent this from happening, elites can develop a series of formal and informal mechanisms, including cross-party parliamentary commissions, mutually beneficial portfolio distribution, and strategic senate pacts around shared objectives, that can help guarantee stability and collective success. Whether parties create one unitary bloc or multiple sub-alliances for upcoming elections, a shared elite commitment to a transition 2.0, that is, a return to upholding EU democratic principles, would also matter. In addition, democratic elites could pledge to collectively address long-standing economic inequalities, expressed through generational, educational, and urban-rural divides. Relying on high EU acceptance among Polish and Hungarian citizens, democratic parties can craft depolarizing pragmatic campaigns to connect with citizens tired of incumbent-induced polarisation and those hurt by the pandemic and economic crisis. Clearly, distinguishing a democratic programmatic offer from incumbents' illiberal and conservative platform may help parties reinforce value-driven politics.

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50 Larry Diamond and Juan Linz, 'Class Inequalities, Elite Patterns, and Transition to Democracy in Latin America' in: Etzioni-Halevy (n. 49), 297.

IV. The European Context: A Two-Level Game

The main lesson that we draw from the Latin American experience is that for transformative politics to work, we need this to operate both at the level of political elites, through the formation of a democratic bloc based on a shared commitment to democratic principles and an institutional structure guaranteeing constitutional rights and checks and balance; and at the level of ordinary citizens, promoting a democratic culture based on dignity and mutual respect, a free civil society, and a sense (however contested) of the public good. In the rest of this section, we look at some particular aspects of transformative strategies in the European context.

1. The social dimension – Boosting democratic performance from below

In the second section of this essay, we have argued that transition 2.0 within the European context requires a double-pincer strategy, recognising the importance of both the constitutional and the political dimensions and the way in which these may operate at both national and supranational levels. But it is important to stress that an essential condition for any democratic transformative strategy is what we call the 'social dimension.' In order for transformative constitutionalism and transformative politics to produce democratic outcomes, it is essential that politics and the legal-constitutional framework matter and are seen to matter to the citizens and their well-being. Hence, the legitimacy of democratic politics and constitutional democracy rests both on formal and substantial grounds, as well as on the input and output of democratic governance.

   The process of constitutional and democratic backsliding that has been observed in Hungary and Poland, and the similar tendencies observed in other EU Member States, as well as in the post-Brexit UK, needs to be put into the broader socio-economic context of the last thirty years in Europe, a context also determined by the shaping of the EU as a multi and inter-state kind of polity. The financial crisis of 2008 represents the moment when many of the problems of the social and institutional model of the EU came to the fore, posing questions for both democracies at the national and supranational levels. Arguably, and in spite of its foundational principles and values, the way in which the EU's quasi-constitutional structure has developed is anything but neutral in terms of policies and their effects on the social fabric of national societies and on the states' capacities

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for positive, not just negative types of intervention. Philippe van Parijs[51] describes the development of the EU, as an inter-state federal structure with a common economic market, as being caught in what he calls the 'Hayek Trap': on the one hand, there is the weakening of the constraining and social protection functions of the state and other collective forms of organisation resulting from the common market of goods, services, capital, and labour; on the other, the multinational character of the union weakens some of the identitarian mechanisms on which modern states relied to develop more solidaristic and redistributive kind of policies.

Even though these 'traps' and asymmetries do not tell the whole story of the EU's policies and their social effects (different stories can be told about environmental and consumer protection and social and equality-promoting rights); it remains the fact that these policy choices have affected macro political economy in the EU area, contributing both to a general trend towards social and economic inequality, and the erosion of the capacities of the European national states to provide social protection and a balance between private and public freedom. While for a while, up to the start of the 21st century, an overall positive assessment of the EU's output legitimacy was regarded as sufficient for the justification of the European integration project, this is no longer the case in view of the deterioration of some of the economic benefits attributed to integration. The EU and its policies can therefore be considered as partly responsible for increasing both economic inequality and social deprivation, contributing to a diffuse resentment against political and technocratic elites who seem to have gained from the integration process and market globalisation, while at the same time have failed to protect ordinary citizens from some of the effects of those very same processes. Addressing and reversing the turn towards authoritarianism in Europe may therefore require a more substantive idea of some of the social policies characterizing the European model besides the re-establishment of the principles and practices of formal constitutional democracy.

2. The political-institutional dimension

The argument about the importance of a transformative strategy that addresses the social malaise that has contributed to populist and anti-political forms of protest and mobilisation reinforces our argument that a primar-

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51 Philippe Van Parijs, 'Thatcher's Plot and How to Defeat It', Social Europe (2016), https://www.socialeurope.eu/thatchers-plot-defeat.

ily legal-constitutional transformative process is on its own incapable of turning the authoritarian tide. A renewed institutional politics, as well as a new social vision and citizens and civil society's direct involvement, are all requisite for a transformative strategy. But, within the EU context, the interplay between the national and the supra- and inter-state levels may play a significant part in articulating such a strategy.

As we argued in section II, transformative strategies need an assessment of what needs to be transformed into what, but also of how this transformation is possible and who are the likely agents of such a transformation. In the present constitutional architecture of the EU, democratic politics has a weak capacity for mobilization at a supranational level, limited to the subordinate way in which the European Parliament can participate in the legislative process. Moreover, the 'thin' kind of citizenship of the present EU structure is insufficient on its own to be an effective medium for mobilising political agency. The more readily available kind of agency available at the European level is that of the institutions. The CJEU, therefore, in what could be described as its role as the guardian of Treaties, may be considered the most likely candidate to promote and safeguard the EU constitutional principles and defend them against attacks coming from Member States. In this respect, an activist Court is something to be welcomed, but we think that there are two important qualifications that such activism should keep in mind. One is that any effective mobilisation at the European level needs to involve a horizontal dialogue between the European institutions so that any intervention of the Court can gain authoritativeness as seen as the result of coordinated actions between different institutional players at the European level; and, perhaps more importantly, that the Court needs to engage in a vertical dialogue with national courts, something that it is already happening. This is something that goes beyond the particular questions of stopping and reverting the turn towards more authoritarian forms of politics and constitutions but regards the very conception of constitutionalism in Europe.[52]

With the political failure of the Constitutional Convention, even though this resulted in the Lisbon Treaty, a more *processual* and open-ended conception of constitutional construction in Europe prevailed. One of the

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52 Cf. Koen Lenaerts, 'Upholding the Rule of Law through Judicial Dialogue', Yearbook of European Law 38 (2019), 3–17; Alison L. Yong, *Democratic Dialogue and the Constitution* (Oxford: Oxford University Press 2017), Ch. 8 'Dialogue between Courts', 255–294.

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implications of this is the recognition of the interaction between law and politics, thus producing a structural coupling between them so that constitutional politics results from various institutional dialogues. But horizontal institutional dialogue is not enough. Arguably, one other important element in the experience of recent European constitutionalism is that this needs to recognize that the European constitutional order is a plural one, operating both at the supranational and the national level and encompassing both the national and the EU constitutions.[53] As argued by Neil MacCormick: 'a pluralistic analysis... shows the systems of law operative on the European level to be distinct and partially independent of each other, though also partially overlapping and interacting'.[54] In itself, this is not a difficult state of affairs to perceive but it posed the difficult problem of how to conceive and operationalise conflict resolution in the context of constitutional pluralism. Although the resolution of this institutional problem is independent of the kind of action required to halt and revert the present turn towards authoritarianism, the solution of this crisis may greatly contribute to consolidating new institutional solutions for addressing that problem.

If a distinctive, transformative kind of *constitutional* politics has a central role at the European level, we believe that the main basis for a transformative strategy at the national level is to be found in *normal* democratic politics, which is more likely to provide the necessary agency to revert the authoritarian turn. This is because the full transference of the mechanisms of democratic politics to the European, supranational level is neither feasible nor convincing. If the main seat of democratic politics in the EU – the type of politics in which citizens can more directly participate, feel fairly represented, and able to control – remains taking place at the national level, it is here that we need to find the social and moral resources for building up and consolidating a democratic and constitutional culture in both the political elites and the citizenry, as we argued in section III. This is where transformative politics has its major role. It is important to understand that any intervention of the European Union and its institutions, or the other Member States, in promoting Transition 2.0, upholding the values of Article 2 TEU, and supporting a more pluralist understanding of democracy through the support of free media and civil society, will not

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53 Bellamy and Castiglione (n. 15), Chapter 7 'Constitutional Politics in the European Union', 187–190.
54 Neil McCormick, *Questioning Sovereignty: Law, State and Nation in the European Commonwealth* (Oxford: Oxford University Press 1999), 119.

work if they are perceived as an external imposition. This would undermine the important constitutional principle of political autonomy. The kind of corrective interventions against 'systemic deficiencies' or the EU's *mission civilisatrice*' may become counterproductive if they are not embedded in a multi- and inter-state democratic structure of which the European citizens become increasingly aware and in which they feel to have some meaningful representation. From this perspective, reverting the authoritarian turn in Hungary and Poland should be seen as part of the attempt to build such a new democratic structure, whose function would also be halting or preventing similar developments in other Member States.

The main principle of this multi- and inter-state democracy would be that of recognizing the foundational role still played by national democracy, but one capable of internalising inter-state externalities. This partly reflects what Robert Putnam[55] described as the logic of a two-level game, where governments agree amongst each other on an equal basis at the inter-state level while at the same time, they secure the long-term democratic agreement of their citizens. But this in itself is not enough, the EU must develop a set of institutional places where there is space for meaningful debate and deliberation between citizens either directly or through their national representative institutions so that the process of internalisation of externalities between Member States does not exclusively take place between governments but also between the citizens of the different Member States. It is only in this way that a true European constitutional and democratic culture can be fostered and regarded by the European citizens as their own. From an institutional perspective, this would involve going beyond the present institutional logic with the Council operating intergovernmentally, while the Commission, the EU Parliament, and the European Court more at a supranational level. What we would need to develop is a network of interstate institutions and dialogues, where, for instance, parties in the European Parliament should be linked more strongly to their national parties, and national parliaments gain a more direct and collaborative role in EU policy-making. Although the development of a more unified European public sphere is still only at an embryonal stage, the integration process has facilitated the development of a more European-wide civil society and inter-state collaboration in many sectors, from education to business. Something similar should be cultivated at a more institutional

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55 Robert D. Putnam, 'Diplomacy and Domestic Politics: The Logic of Two-Level Games', International Organization 42 (1988), 427–60.

level with the involvement of citizens, thus providing a solid base for a democracy respecting the autonomy of the different states and societies and the specificity of some of their arrangements but ensuring meaningful co-operation and the internalisation of externalities and the cultivation of a sense of common European interest with respect to a number of areas such global environmental issues, immigration, the digital revolution and of course the basic principles of constitutional democracy.

V. Conclusions

The EU is founded on the principle of democracy. Article 2 of the TEU explicitly establishes the EU's commitment to the principles of human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, which implies that by signing all EU Member States are expected to uphold these principles and promote them within their own countries. Over the past decades, the EU has tried to actively promote democracy through institutions and policies , such as the European Parliament, the European Commission, and the European Court of Justice; as well as through a number of legal frameworks and mechanisms. Democratic backsliding in some Member States, however, shows that not all governments uphold the principles and values underpinning the EU at all times.[56]

Our chapter has argued that reversing the authoritarian turn in some of the Member States of the EU will require the implementation of wide-reaching 'transformative strategies' – social and political mobilisation –, what we here refer to as 'transformative politics.' We have underlined that reversing or preventing further democratic and constitutional backsliding in the EU can only succeed as a long-term multi-level strategy that goes beyond the law to incorporate politics. We paid close attention to the world of oppositions to highlight their crucial role in building democratic regimes. In authoritarian settings, opposition elites might agree on wanting to topple the ruling elite, but they may disagree on *how* to do it. An important component for oppositions to fight autocracy is to coordinate their actions, both ex-ante and ex-post. We showed that coordination is more than just about pooling resources to increase competitiveness; what really matters to make a coordination agreement viable over time is to commit to internal

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56 R. Daniel Kelemen, 'The European Union's Authoritarian Equilibrium', *Journal of European Public Policy* 27 (2020), 481–499.

rules that help make collective decisions and solve internal conflicts that will naturally arise. Although coordination should not be overestimated as a variable to explain successful transitions and/or democratic consolidation, the Chilean and Venezuelan cases helped illustrate the relevance of elites' initial pacts and negotiated agreements to implement policy as well as state reforms during their newly elected governments. This means that before the rule of law constitutional order can be re-established *ex post* a transition, opposition parties need to strategise and mobilise *ex-ante* to win the upcoming elections and be able to govern upon winning.

In the European context, we stress the importance not only of transformative politics along transformative constitutionalism but the way in which the national and European levels may need different configurations in the way in which these strategies interact or the role they actually play in the interaction. While we recognize that at the European level institutions, and particularly the European Court, may provide some agency in the process of transformation, we argue that at the national level democratic politics is the main vehicle for such a transformation. We also suggest that bringing the principles of constitutional democracy back in Hungary and Poland is only part of a wider European process that involves both a new European social vision and the progressive construction of a novel inter-state democratic structure. Organising around shared democratic principles and building deep entrenchment in society in the period before and after elections are essential steps to craft a path towards democracy. This would not only facilitate transition 2.0, but also help prevent democratic and constitutional backsliding in other Member States.

Functional constitutional democracies do not merely rest on being formally enshrined in a constitutional text. They require that political elites and society constantly renew their commitment to following democratic practices, the rule of law and the fundamental constitutional principles underlying the Union. The challenges that Poland and Hungary are currently facing are shared by several countries within the EU, even if only to some extent. Paying close attention to the conditions that favoured democratic backsliding in some Member States in the first place and developing successful social, political, and cultural strategies to restore democracy in these countries might help foster a more egalitarian and democratic EU in the long run.