

ACADEMIC SEMINAR: “EU CONSTITUTIONALISM, RIGHTS AND RIGHT-WING POPULISM”

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Deliverable 1.2 Report of Academic Seminar, author: Anne Marie O'Mahony (LL.B), Research Assistant. Peer review: Project Operational Team

INTRODUCTION

This seminar was organised and chaired by the Jean Monnet Centre of Excellence: EU Integration and Citizens' Rights Principal Investigator, Professor Dagmar Schiek, of University College Cork. This seminar focused on EU Constitutionalism, rights and right-wing populism, with contributions from two main speakers; Dr Paul Blokker, Associate Professor in the University of Bologna and Dr Ulrike M. Vieten, Assistant Professor at Queen's University Belfast. Both are Editors-in-Chief of the European Journal of Cultural and Political Sociology (European Sociology Association).



Dr Paul Blokker presented his work based on his academic paper “Judicial Populism: The Rule of the People against the Rule of Law” (Blokker & Mazzoleni, 2020) with a focus on right-wing populism and its interaction with constitutionalism.

The second contributor to this seminar was Dr Ulrike Vieten from Queen's University Belfast, who based her argument on her academic paper “The ‘New Normal’ and ‘Pandemic Populism’: The Covid-19 Crisis and Anti-Hygienic Mobilisation of the Far-Right” (Vieten, 2020) which focused on right-wing populism and its ‘normalisation’ following the Covid-19 Pandemic.



MAIN AIM/THEME OF THE SEMINAR



Professor Schiek introduced the event, noting that this was the first Academic Seminar in the framework of the Jean Monnet Centre of Excellence for EU integration and citizens' rights (EUICR). This project explores the rights of citizens in the EU and how they connect with each other and connect with the EU to enhance the legitimacy of the European Union itself. This project does not explicitly investigate EU citizens' rights. Instead, research on rights in the EU encompasses rights of citizens in and not of the EU. Furthermore, the project investigates rights created by EU law beyond the EU in its

neighbourhood, with a specific focus into Northern Ireland and Ukraine, and globally, with a focus on trade agreements and China.

She stated that this project aims to go beyond an investigation of the legalistic elements of rights (such as courts or enforcement) in that it researches the effects of rights 'on the ground', in other words, the extent to which individuals in and beyond the EU can practically rely on rights created by the EU. It is this relevance of EU-derived rights in daily lives which could enhance the EU's legitimacy. She pointed to the contrast between this ultimately sociological approach to rights, and the composition of the project team which comprises political scientists, legal scholars and economists. Thus, she welcomed the fact that the first two speakers in a series of 14 academic events were sociologists. Further, she stressed the currency of engaging with far-right populism and its impact on rights. Sadly, the seminar gained added currency through the results of the Italian elections only three days before, which may result in one of the EU's founding states governed by a coalition headed by far-right populists. After the Swedish elections a few weeks ago, there are now four member states (including Poland and Hungary) where right-wing populism gained currency through elections and may determine the future fate of the EU.

The seminar was divided into different parts; firstly, it included Dr. Paul Blokker's contribution to populism, then onto Dr. Ulrike Vieten's views. Professor Schiek then offered a discussion of the contributions, after which the floor was opened for questions.

FIRST SPEAKER CONTRIBUTION: DR. PAUL BLOKKER (UNIVERSITY OF BOLOGNA)

The first contributor to this seminar, Paul Blokker, of the University of Bologna, presented his work based on his academic paper on right-wing populism (Blokker & Mazzoleni, 2020), highlighting that the core tenet of this form of government is grounded in notions of both the popular will and of national sovereignty. He focused his main points as to how populists operate and their main beliefs, including critique of international institutions, the current perceived lack of national sovereignty in the EU and the role of 'uncivil society'. He noted the fact that this populist reaction to a perceived lack of national sovereignty should not be seen as only a threat to liberal constitutionalism and democracy; but should be viewed as both a trigger and an opportunity for the EU to look at themselves as an institution and analyse its own faults and weaknesses.

He argued for the fact that legal concepts and populists' interaction with constitutionalism to further their ideology needs to be given more attention. He argued that populists dislike rights with effective judicial protection, as this leads to the juridification of society which benefits elitist groups, rather than the majority of ordinary people. He argues that populists believe that rights should be 'repoliticised' through constitutionalism, so they represent the 'will of the people' rather than the 'sum of the individuals' who happen to be in power at a particular moment in time, advancing their own agendas.

NATIONALISM AS A THREAT TO THE EU FRAMEWORK

In his first point, Dr Blokker notes that populists often reread human rights, other rights and constitutional norms from a perspective of nationalism, in order to once again portray law as the will of the people. From a European perspective, Dr Blokker notes the dangers with the populist agenda of repoliticising rights and constitutions into a purely nationalist/sovereign perspective, as it has the potential to undo the accomplishments that were achieved in Europe in the post WWII landscape. Right wing populism seeks to rewrite the domestic legal systems that are overarched by international and supranational agreements that have been embedded in constitutional democracy. The result of this means that the nationalism of each state takes precedence, and the international frameworks that citizens of the European Union cherish deeply, such as the European Convention on Human Rights are threatened by this ultra-conservatism.



POPULISM AS A REACTION TO RATHER THAN AN INVASION OF EU FRAMEWORKS

Leading into Dr Blokker's second point, he proposed to analyse right-wing populism from a new perspective. Instead of seeing this political phenomenon as a 'barbaric invasion of the EU and international projects that are cherished', populism needs to be viewed as a 'reaction' to both the international agreements put in place, and the framework and institutions which enabled these agreements in the first place and the perceived lack of national sovereignty underpinning them. When populism is viewed as a reaction to the EU/international frameworks rather than an 'antipolitical phenomenon' seeking to destroy constitutional democracy, it enables understanding of a new dimension of populism that has been underexplored and analysed, both in academia and in practice. He presented the view that the relationship between liberal constitutionalism and populism is not a pure dichotomy, despite the fact that these two political frameworks are frequently categorised as completely polarised views. Dr Blokker offered the perspective that in analysing this new dimension of populism, it allows internal reflection on the construction and operation of the EU institutions and analyse where the problematic aspects of the post-WWII frameworks occur, and where improvements can be made. If this analysis was not done, and populism was purely interpreted as a 'barbaric invasion' of EU institutions and projects, then it is prematurely denying the possibility and indeed the potential responsibility that there is a disconnect the international agreements and rights frameworks in place, and how EU citizens connect with the protection and enforcement of such rights.

THE POLITICISATION OF COURTS

The next point that Dr Blokker grounded his argument in lies with the fact that populists often advance the idea that courts are often 'politicised' and that some judges are biased towards certain agendas or views. He argued that laws and international arrangements are dominated by legalistic views, which goes against the core tenet of populism; being majoritarianism, whereby laws are made by the people, for the people, and most importantly, they reflect the will of the people as a whole. Dr Blokker noted that Orban of Hungary, for example, claims that ultra-conservatism does not deny foundational values such as liberalism or freedom, but instead just does not make this ideology a central element of state organisation.

POPULISMS 'THIN IDEOLOGY'

Dr Blokker advanced the idea that populism by its nature has a 'thin ideology' but finds further substantive expansions in an ultra-conservative set of ideas. An example of this in practice is Giorgia Meloni of Fratelli d'Italia, who is part of a much larger European global network of ultra-conservative forces, even if her post-Fascist political party would not necessarily have very strong religious underpinnings. Dr Blokker warned that studies need to be carried out into the effect that this methodology has on the international architecture for human rights. He noted that there is the 'civil sphere' of society, whereby instruments such as litigation and human rights promotion promotes the concept of European constitutionalism. Although this is seen as a positive, Dr Blokker warned that these same methods can also be used for 'uncivil' purposes, such as ultra-conservatism. In relation to rights of the European Union, the instruments which have been traditionally viewed as right-enhancing, or right-protecting are the same tools have the potential to fundamentally destroy cherished rights within the European Union and the framework which underpins it, in the name of nationalism and sovereignty.

However, for EU citizens, this populist agenda advanced sees not just a split between rights as an EU citizen and rights as a member of each state, but it seeks to portray the disharmony and discord that

occurs between the EU operating as an international institution, while also ensuring that our national rights and sovereignty are equally valued and safeguarded.

CONTRIBUTION FROM THE 2ND SPEAKER: DR. ULRIKE VIETEN

The next presentation was delivered by Ulrike Vieten of Queen's University Belfast, who offered a different view of populism, grounding her work in the assertion that this political phenomenon has become 'normalised' throughout recent crises and over the past few years (Vieten, 2020). She focused her presentation on the paper she wrote, which she argued was a 'timely intervention' into debates on the impact of the Pandemic on the rise of far-right populism. She suggests that right-wing populists may embrace certain rights discourses. She notices how 'Pandemic Populists' at times defend the right to free movement. However, Dr Vieten ultimately argued that populists use legitimate unease combined with public policy as a vehicle to 'normalise' right-wing extremist xenophobic views in our society. She delved into the 'blurring boundaries' that seem to have occurred between legitimate democratic protests and racist populist positions which are a challenge to modern democracy.

THE RISE OF POPULISM POST-PANDEMIC



Dr Vieten firstly discussed the rise of populism as a result of the Pandemic, detailing how there was essentially a 'global return to the local' where neonationalist states closed off international borders and restricted internal movement of citizens. She noted how pandemic populism expanded not just as a result of the global health crisis, but also due to the political crisis and social welfare crisis that was occurring concurrently. Some governments were failing to cope with

these crises, in particular the health crisis, which produced a very noisy 'anti-elite' segment, which is often cited as criteria that is typical for populist movements.

THE GERMAN PARADOX FOR POPULISM

Dr Vieten then showed a clip from a BBC video whereby protestors came out onto the streets of Germany to protest about coronavirus, bearing posters stating, 'stop the corona lie'. Dr Vieten used this example as an interesting paradox for populism. As she mentioned earlier, failure of governments to deal with crises can often trigger the anti-elite populist movement, however it appeared the opposite happened in Germany. When Covid-19 first hit in 2020, it could be said that Germany, under the leadership of Chancellor Merkel actually did quite well in dealing with the health crisis as a result of the Pandemic. The deaths were much lower in Germany than in other countries, yet despite the satisfactory management of the crisis by the Government, there were organised protests and a rise in populism.

Dr Vieten noted that the Pandemic created a specific form of populism, whereby each country was dealing with the Pandemic in their own way and making their own restrictions. As a result of this differing treatment across Europe, this created a space where citizens felt confused and conspiracy theories emerged as a result. Conspiracy theories which were inaccurate and anti-elite seemed to dominate, and as a result, the paradoxical Berlin protests occurred, with over 38,000 people out in force to express their outcries.

KEY POINTS FROM DR VIETEN'S ACADEMIC PAPER

Dr Vieten then moved on to offer a summary of the main points of her Pandemic Populism paper; with one of her points linking to the rise in conspiracy theories. Dr Vieten noted that naturally, with restrictions on movement and more remote working/living, there was an increase in digital dependency, social media usage and social media engagement. This was a vessel in which conspiracy theories could manifest, and lockdown enabled both interest and engagement in far-right ideology to manifest. Anti-elite rhetoric could be spread throughout covid via digital means and thus increased both the interest and the support of populism. Dr Vieten noted that the online spheres were important channels of mobilisation of the populist movement, and that the interplay between online and offline mobilisation was crucial to the normalisation of populism throughout the Pandemic. Dr Vieten noted that in Germany, the success of certain protest groups can be accredited to the use of digital platforms, such as Querdenken 711 and Widerstand 2020, two protest groups who spread their views online. With more people relying and trusting online communication during the Pandemic, there was an increase in the vulnerability to far-right propaganda and people were more willing to jump on the opportunities of anti-hygienic or anti-lockdown protests in order to articulate their grievances, and thus use the Pandemic as a vehicle in which populism could fester.

BLURRING BOUNDARIES BETWEEN POPULISM AND FASCISM

Dr Vieten voiced an interesting point of her research, noting that despite the Pandemic occurring, and some aspects of our urban/consumer lifestyle was disrupted, underpinning social inequalities such as race or class remained in place, and indeed increased. When analysing the demographics of those involved in the protests, it appeared that the angry citizens who organised themselves in protest were not the usual suspects of working class, deprived citizens, but were instead typical, professional middle class people. The anti-hygienic protests were clearly and definitively an accumulation and articulation of white middle class citizens. She highlighted the fact that the understanding in the post WWII frameworks articulate and portray that there is a consensus in the form of a clear, strict boundary against Fascist, neo-Fascist, and extreme political violence. However, the Pandemic seems to exhibit a new dimension that was not so evident before, and that it that the boundaries are becoming blurred. The anti-lockdown/anti-hygienic demonstrations seem to share space with Fascist and extremist far right groups. Dr Vieten advanced the argument that studies need to be done to assess how and why these boundaries have become blurred and why these spaces, which for years were seen to have clear boundaries now seem to cross and intermingle with each other. She poses the possibility that issues such as xenophobic populism which was associated with the immigration crisis that occurred was mobilised to other targets in the Pandemic, and whether the Pandemic, which led to cross border closures led to a new type of xenophobic populism. This needs further analysis and may explain why the lines are now being blurred. Dr Vieten acknowledged that while anti-hygienic protests cannot be labelled as far-right populist movements when looked at in isolation, however the lines become blurred when the protestors' anti-elite anger and willingness to share platforms with neo-Nazi and Anti-Semitic ideas confirms the argument and indeed advancement of the normalisation of the far-right movement.

Dr Vieten stressed the fact that although life has relatively returned to normal after the Pandemic, the consequences and the effect it had on citizens' rights needs to be analysed, with a particular focus on whether the pandemic has led to the normalisation of populism in today's society.

DISCUSSION AND QUESTIONS

COMPLEMENTING THE LIBERAL POST-WORLD WAR II ORDER BY A SOCIAL INTERNATIONAL ORDER?

In her role as discussant, Professor Schiek highlighted three different aspects of the papers presented. She agreed with Dr Paul Blokker that liberal institutions are regularly being used by far-right populists. Hungary and Poland for example, who are lead by right-wing populists, regularly challenge EU regulations through litigation before the Court of Justice, latterly to challenge the budget conditionality regulation aiming to withhold funds from Member States which do not uphold the rule of law. She posed the question as to whether liberalism should be reformed, going beyond the concepts conceived in the post-WWII international law frameworks. She proposed to consider the period between the WWI and WWII, when many states at national levels introduced social rights complementing liberal rights. She suggested that this development should be taken up at EU level and expressed the hope that EU funding for three projects on social citizenship might be indicative of a predisposition to such a development. She ended the discussion with questions to the speakers on how Dr Vieten views the relationship between curtailing free movement rights in the pandemic and the surge of right wing populism, and whether Dr Blokker would consider the interwar developments in relation to social rights as a model for the EU, or whether he views liberalism as sufficient for combatting right wing populism.

HOW USEFUL IS THE TERM POPULISM FOR ANALYSING THE THREATS POSED BY THE FAR RIGHT?

Once the floor was opened for questions, Dr Luigi Lonardo of UCC posed the question as to whether there is any analytical utility in calling these movements 'populist movements' as they seem to be generally sharing the same space and mostly refer to the concept of classic liberal politics. Dr Blokker then delved into this question, acknowledging himself that populism is not always the best term to use; however, it still remains useful and relevant in some political spheres today, such as Hungary, for example. The parties continue to claim to be operating within the system and the link with democracy remains, so populism is still evident. Hungary still maintains a set of populist dimensions as to how they operate and communicate with their citizens and so, the term populism is still of use today, despite sharing similarities with classic liberalism.

Dr Vieten also responded to this question, stressing the point that the most important aspect of populism is an anti-elite discourse. This important central dimension to populism means that it is appropriate to use populism as a standalone term.

A REGRESSION IN ITALIAN AND EU CONSTITUTIONALISM?

Another question that Dr Lonardo of UCC posed made referral to the rise, and success of Fratelli d'Italia in Italy, and whether this may result in a regression in Italian Constitutionalism. Moreover, if this was to ensue, would this be allowed by the EU, considering their status on non-regression clauses in recent case law and decisions, such as the Maltese Republikka case (Republikka v. Il-Prim Ministru, 2021) heard before the Court of Justice of the European Union. Dr Blokker answered this question from a sociological perspective, while leaving the legal aspects to Professor Schiek. He stressed that the problem is not merely the European Courts creating or not creating a new non-regression clause. Instead, Dr Blokker warned that there is a great danger with maintain an intra-legalistic perspective when analysing such potential issues, as a key part of populism itself involves moving outside and attacking such institutions from the outside. Therefore, if one was to focus solely or predominantly on the legalistic perspective; the result would be that other, more dangerous dimensions of populism and

its methods to advance its movement would be overlooked. Professor Schiek shortly summarised the legal dimension of the non-regression clause, which had been developed at national levels in relation to the welfare state or social state clause. Spanish courts posed the question to the Court of Justice whether EEC law, in 1987, contained a social non-regression clause in stating that the Community would strive for the approximation of living and working conditions while their improvement is maintained. The Court stated in the Zaera case that the provision, which today is part of Article 151 TFEU, does not have direct effect, but could be used to interpret Union law. Professor Schiek argued that a social regression clause in EU constitutional law should be promoted today, in order to counter the thrall of far-right populism. This would allow challenging any EU targets prompting Member States to restrain and limit welfare state entitlements, for example.

MAIN LESSONS FROM THE SEMINAR

There are important lessons to be drawn from this seminar and from its contributors. The first is that if populists were to reread human rights and other rights from a sovereign and nationalist perspective, then there is potential for the erosion of the post WWII frameworks which many citizens of the European Union cherish, value, and rely on. However, one must consider that the rise in populism and its current support demonstrated that a non-negligible proportion of EU citizens no longer cherish this framework and the Institutions it embodies. Populism as a movement does not have the primary purpose of destroying liberal constitutionalism but is instead a reaction to the lack of the 'popular will' that is perceived by populists to be evident in liberal constitutionalism. This here encourages one to analyse the EU institutions themselves and the rights they embody, and see the faults within the framework, rather than seeing populism as an 'antipolitical phenomenon' and 'barbaric' in both its nature, conduct and aims, as Dr Paul Blokker discussed in his contribution

Another point to consider is the impact that the Coronavirus Pandemic had on populism; whether it advanced and 'normalised' populism and indeed whether the lines have been blurred between populism, and traditionally separate ideas such as fascism and neo-fascism. (Vieten, 2020, p. 11)

Countries such as Poland and Hungary, who went through such drastic political, economic and social changes in the late 1980s and early 1990s and are seen as the 'poster children for post-communist Eastern European democratisation' (Krastev, 2018, p. 49) have now seen a rise in far-right ultra-conservative parties. This needs more investigation, and begs the question as to whether the EU's main goal, which was to have a more liberal, globalist community that embodies rights in order to counteract and defeat nativism, xenophobia, and all the tenets of the pre-war society, have in fact not achieved its goal of such counteraction, and whether the EU and its institutions in its current state, without any reformation, are a contributor to rise of populism, and causing the pendulum to swing back to the pre WWII framework and ideology, which is the exact opposite of what it desires to achieve as a rights institution and framework.

Orban, of Hungary, for example, credits his success to giving what people want, which appears to be an anti-EU vista. For many, leaving the EU is not the desired goal, but some aspects must be changed if the EU wants to remain as a legitimate institution that represents the people and embodies rights of all. The EU cannot and will not be successful if there is a large cohort of people who see it as a distant institution, and feel isolated and removed from it, (Grabbe, 2016) both as citizens, and rights enforcers. If the EU does not investigate this issue, then the dissatisfaction and upset of citizens has the potential to be destructive to the EU and its institutions.

This seminar encourages us to view populist voters as more than just 'anti-elite, angry and full of resentment' (Müller, 2017), but instead to view the reasons behind their reaction and perceived rejection of the European frameworks.

Although in 2010, populism was described as the ‘biggest danger to Europe’ by Herman Van Rompuy, the President of the European Council; to many, it is a mechanism in which politicians can ‘hear the voice of the hardworking people, who were previously neglected, betrayed and exploited by corrupt and condescending elites’. (Schumacher, et al., 2022) This project looks beyond the legalistic perspective of rights and legitimacy of the EU, but by incorporating a political, sociological and economic perspective, one can delve into how and why populism, for example, is one such answer to the cries and complaints of the European Union and the flaws within its framework.

CLOSING REMARKS

The contents of this seminar, with a particular focus on Covid-19 provides insight and will inform future events, such as a Seminar which will be held in January, on the topic of free movement rights within and beyond the Pandemic. Another seminar on EU anti-discrimination law and post-Pandemic inequalities will be held and will include content following on from this seminar.

The seminar was closed by Professor Dagmar Schiek. In her concluding presentation, she provided a brief summary of the main topics covered by both speakers as well as noting the questions posed by members of the audience in the open questions session. She concluded by confirming that this seminar raised many interesting points and enabled a fruitful discussion. She thanked everyone for attending and for contributing to the first seminar of the Jean Monnet Centre of Excellence: EU Integration and Citizens’ Rights project.

More about the Jean Monnet Centre of Excellence EU Integration and Citizens’ Rights Project, including our up-to-date publications and list of upcoming events can be found on our [website](#).

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