

Article

## Reactionary Gender Constructions in Illiberal Political Thinking

Elisabeth Holzleithner

Institute of Legal Philosophy, University of Vienna, Austria; [elisabeth.holzleithner@univie.ac.at](mailto:elisabeth.holzleithner@univie.ac.at)

Submitted: 15 March 2022 | Accepted: 22 August 2022 | Published: 31 October 2022

### Abstract

Theories of the state, its functions, limits, and legitimacy have been overwhelmingly “liberal” in the past few decades, in a very broad sense of the term. Such theories are inherently open to a diversity of genders, sexual orientations, and ways of living together because they place equal freedom and the right to prosper according to one’s own ideas front and centre. Illiberal political thinking is of a completely different stock. This article focuses on the role of gender and sexuality in such approaches. Both gender and sexuality are pivotal for illiberalism’s defence of an order that is supposed to overcome Western-style liberal democracy. In contrast to the liberals’ and their like-minded critics’ quest for social justice in societies that are traversed by structures of oppression and domination, illiberal political thinking offers an utterly different brand of autocratic rule that keeps conventional hierarchies intact. It only takes note of advanced gender theories to either ridicule them or condemn them as a supposed threat to social cohesion. This article exposes illiberal approaches to gender and sexuality, considering the roots and focus of the former on the dichotomy of public/private and illiberals’ aversion to equality and human rights.

### Keywords

convention; culture; equality; gender; human rights; law and morality; liberty; sexuality

### Issue

This article is part of the issue “Gender and Illiberalism in Post-Communist Europe” edited by Matthijs Bogaards (Central European University) and Andrea Pető (Central European University).

© 2022 by the author(s); licensee Cogitatio (Lisbon, Portugal). This article is licensed under a Creative Commons Attribution 4.0 International License (CC BY).

### 1. Introduction

The trend toward illiberal politics has become a worldwide phenomenon. In 2014, in his Băile Tuşnad speech, Prime Minister Viktor Orbán declared Hungary an “illiberal democracy” (Orbán, 2014); similar developments also occurred in Poland and other former communist states. Krastev and Holmes (2020, p. 12) drastically speak of an “anti-liberal counter-revolution that began in post-communist Europe, specifically in Hungary, and that has now metastasized worldwide.” The situation in the USA is particularly disconcerting. While Donald Trump’s re-election failed in 2020, “Trumpism” with its authoritarian streak has left deep imprints, not only on the Republican Party. Using a variety of tricks, the former president succeeded in installing an illiberal majority of Justices on the Supreme Court, which has now intensified its process of dismantling long-standing rights, most notably by overruling *Roe v. Wade* (1973), the precedent

that had enshrined the right to abortion for nearly fifty years. *Roe v. Wade*, the majority in *Dobbs v. Jackson Women’s Health Organization* (2022) insisted, had been “egregiously wrong” from the beginning because its holding was “not deeply rooted in the nation’s history and traditions.” With this line of argument, a plethora of other rights, such as the right to choose one’s sexual partner regardless of their gender, and marriage equality are possibly up for disposal, as Clarence Thomas’s concurring opinion in *Dobbs* suggests. In the USA, the era of expanding individual rights, a hallmark of liberalism, has ended with a bang.

Events such as these, and the role played by reactionary gender constructions (aka “antigenderism”) in illiberal politics are the object of significant studies (e.g., Mancini & Palazzo, 2021; Pető, 2021; Verloo, 2018). The article at hand wants to dig into another place, looking for the foundations of political illiberalism and its gender politics in political thinking. This endeavour leads to

the fringes of the field and into perilous proximity of fascist approaches (cf. McAdams, 2022). Illiberal political thinking contrasts sharply with liberal political philosophies that take the idea of equal freedom as a point of departure, and that are sensitive to the dangers of political abuse of power. Liberal approaches insist on restraining governmental power through law under a constitution, “creating institutions protecting the rights of individuals living under their jurisdiction” (Fukuyama, 2022, p. 3). Based on the premise that all people have equal moral worth, they advocate for every person’s right to live according to their own ideas. Therefore, such theories are inherently open toward a diversity of genders, sexual orientations, and ways of living together; their design is hospitable to the human rights of women and LGBTIQ\* people. To be sure, liberal political theories are often rightly criticized for their neglect of the grim realities of marginalized groups, for their merely implicit ways of dealing with discrimination and oppression, and for their disregard of the private sphere and its complex interplay with public life as a major source of gendered exclusion. This is part of the “dark legacy” (Petö, 2021, p. 315) of liberalism, as is its lack of attention to economic considerations and the material conditions of individual self-fulfilment. However, these disputes are conducted under a set of shared principles.

Illiberal political theories are of a completely different stock. As a rule, they are genuinely reactionary—they (angrily) respond to political liberalism, specifically to its hegemony in Europe after the end of communism. Indeed, Eastern European thinkers such as Ryszard Legutko, a Polish philosopher and member of the European Parliament for the Peace and Justice Party, believe that liberalism is fundamentally alien to Eastern Europe. Disregarding the national traditions grounded in Roman Catholicism, the process of democratization under the banner of liberalism seemed to amount to a “cultural conversion” (Krastev & Holmes, 2020, p. 10) akin to the reign of communism. Indeed, throughout his book, *The Demon in Democracy*, Legutko aims to delegitimize liberalism by showing structural analogies with communism. Liberal theories’ commitment to equality, in particular, arouses illiberals’ objection. (Gendered) inequalities are not only deeply entrenched in illiberal theories, but are rather all but celebrated—usually by way of illiberals’ distancing themselves from liberal political theories. They are scorned for their sympathies to those marginalized because of their gender and sexuality, especially in combination with other axes of power and domination revolving around race, ethnicity, ability, and other categories—the terrain of “intersectionality” (Crenshaw, 1989). Such approaches to gender and sexuality are the target of bitter illiberal polemics, inviting the sympathetic reader to nod in disdain.

At this point, some remarks on the notion of illiberalism and some features of illiberal political thinking are in order. The term “illiberalism” is rarely invoked for self-description (with the notable exception of Simpson,

2017, whose “defense of freedom” runs under the banner of “political illiberalism”). Rather, it is used by its critics as a pejorative term to denote theories that are anti-liberal or non-liberal. In terms of political theory, they belong to the broad family of communitarianism, “the philosophical rival of liberalism” (Frick, 2021, p. 863). There is a certain variety to communitarian theories, not least regarding their radicalism (Frick, 2021, pp. 861–866). Moderate versions criticize liberal theories for disregarding a person’s embeddedness in constitutive communities and the duties this entails, but they do not completely discard the principle of equal freedom (e.g., Sandel, 1982; for a more ambivalent approach see MacIntyre, 2007). This is the hallmark of more radical versions (“intolerant communitarianism,” according to Krastev & Holmes, 2020, p. 13), which are the focus of the present article, and which are referred to as “illiberal.” The works studied highlight the central importance of religion as the foundation of an illiberal society (Deneen, 2018; Legutko, 2016; Simpson, 2017; Vermeule, 2022). Atheist approaches, such as that by de Benoist (2011), *spiritus rector* of the “Identitarians,” are not central to this article, not least because it appears in the context of an edited volume on gender and illiberalism in post-communist Europe, where religion plays a decisive role, just like in the USA.

My argument proceeds in the following steps: The focus will first be on the ideological basis of illiberal conceptions of gender and sexuality, including the fact that they assign a particular place to women and (none) to LGBTIQ\* people. This will be embedded in illiberal conceptions of the dichotomy between the private and the public spheres and the role of “moral” arguments. Based on these premises, illiberal political approaches try to fend off demands for equality, pointing out that equality is not a legitimate principle in the first place. In the same vein, they either dismiss human rights or give them their own, non-progressivist spin (Vermeule, 2022, pp. 129–130). If they invoke arguments for gender equality and against gender-based violence at all, they do it to leverage them against unwanted immigrant minorities (Abji et al., 2019; Mancini & Palazzo, 2021, pp. 410–415). This instrumentalization would be ridiculous in its insincerity were it not so effective in political practice. In conclusion, the article explores possible ways of engaging with illiberal political thinking in a fruitful dialogue. It is apt to add one final remark concerning its status: Since it may be too much of a concession to assign the works discussed, which belong to the genre of contemporary right-wing ideologizing, to the field of political theory, the article will be speaking mainly of “illiberal political thinking and approaches,” and not of “illiberal political philosophy.”

## 2. Illiberal Gender Constructions: Roots and Designs

Illiberal political thinking fundamentally denounces gender equality in all its aspects, including—and especially—

concerning sexual orientation, gender identity and expression, and sex characteristics (cf. the Yogyakarta Principles at <http://yogyakartaprinciples.org>). Gender equality and LGBTIQ\* rights are seen as a symptom and an incarnation of what is wrong with liberalism. While liberalism seems to have rendered them sacrosanct, they are a constant nuisance to illiberal political thinkers. Their angry response is a rebuke of feminist and queer successes, as imported into liberal political philosophy and the legal structure of liberal democracies. Illiberal political approaches base their constructions of the gender dichotomy on several pillars: biology, theology, and conventional morality, combined with ethno-nationalist elements against the background of demographic crises that have grown into a full-blown “demographic panic” (Krastev & Holmes, 2020, p. 36). This fear is stoked by references to low birthrates, emigration, and the accompanying loss of the “indigenous” population, culminating in fears of “ethnic disappearance” (Krastev & Holmes, 2020, p. 39) and “replacement” through immigration by alien, particularly Muslim, “others.” National culture revolves around conventional gender norms, and illiberal political thinkers believe that a community’s (gendered) culture needs to be fostered and defended against internal critique and impositions from the outside. Not least, “gender ideology,” according to its illiberal critics, is fundamentally alien to national cultures (Mancini & Palazzo, 2021, p. 404).

How do illiberal political thinkers construct the gender of the nation? Usually, they do not offer any in-depth, extensive gendered anthropology. They express their notion of men’s and women’s designated positions indirectly via scattered observations and remarks, often angry or sarcastic, criticizing liberalism and its “disfiguring conception of human nature” (Deneen, 2018, p. 185). Biology plays an important role in this endeavor. Again, illiberal authors fail to elaborate on the extent to which a woman’s biology determines a certain destiny. Rather, this common patriarchal notion is implicit in their critique of women’s emancipation and the underlying feminist ideas. One author, Patrick Deneen, a political theorist from the University of Notre Dame, identifies the “main practical achievement” of women’s emancipation in many women’s move “into the workforce of market capitalism” (Deneen, 2018, p. 86). Referring to “traditionalists like Wendell Barry as well as Marxist political theorists like Nancy Fraser,” he calls this “a highly dubious form of liberation.” It contains two aspects: women’s “growing emancipation from their biology” and “freeing women from the household.” This allegedly leads to a new and “far more encompassing bondage” for women *and* for men: their participation in an economical order that is inimical to real freedom, including “political liberty.”

It is remarkable that Deneen includes men in this indictment since men did not have to be liberated from the household to participate in the economy. Regardless of how justified his criticism of the capitalist market economy may be, and Fraser (2013) is indeed one of the

fiercest critics of feminists’ entanglement in the neoliberal crisis, its main point is that women wrongly choose not to take their true place in society. Deneen does not spell out what that place is, but it is apparent in his writing: Women are supposed to fulfil their biological capacity of bearing children and their associated social role as caretakers. Moreover, we may conclude that if women devote themselves to the household, their husbands may rely on the services necessary for their unimpeded performance in the workplace, which Deneen does not fundamentally put into question.

It is typical for illiberal writing on gender to rely on a fierce critique of feminism. In turn, it seems unnecessary for the respective authors to spell out in more detail the implications for women’s place in society. In this vein, Legutko dismisses feminist thinking as “crude and destructive” (Legutko, 2016, p. 95). He juxtaposes “a real woman living in a real society” with the feminist construct of women as a “figment of political imagination” (Legutko, 2016, p. 94). Feminists, according to this view, fight bogus battles, have a false view of the real problems real women face, and shamelessly exaggerate the consequences of conventional family organization:

If in families it is the father who makes the major decisions, then such a power structure in a small social unit generates negative stereotypes that undermine the position of women in the family, which—multiplied by the appropriate number of cases—undermines the position of women in society at large and prevents them from cooperating on an equal footing with men. (Legutko, 2016, p. 99)

According to this passage, feminists allege that the power male heads of the household exert is detrimental to women’s standing in society—an unwarranted conclusion, in Legutko’s opinion. Rather, this passage suggests, it is only natural for a “real woman” to comply with the decisions her husband makes. It is also telling that Legutko refers to the father, whose command over his children seems to extend naturally to his wife.

Illiberal political thinking takes conventional gender roles for granted. It spurs a revolt against the successes not only of feminism but also of LGBTIQ\* activism, enabled by invoking the liberal principle of equal freedom. These successes have materialized in legal reforms, such as antidiscrimination laws and, in many European countries, marriage equality. They have also changed public discourse—a fact decried vehemently by Legutko. Once again equating liberalism with communism, he argues against this imposition of the gender ideology *du jour*. Legutko sees himself and like-minded others clearly on the defensive since emancipatory movements have been able to exert “a disproportionate influence on the government” (Legutko, 2016, p. 66) and society:

One is expected to give one’s approving opinion about the rights of homosexuals and women and

to condemn the usual villains such as domestic violence, racism, xenophobia, or discrimination, or to find some other means of kowtowing to the ideological gods. (Legutko, 2016, p. 120)

Legutko's reference to "the ideological gods" is an expression of his conviction that liberalism is an ideology, just like communism, rather than an overarching political philosophy. Far from being liberating, liberal democracy, to him, is a particularly subjugating regime. Legutko's list of liberalism's "usual villains" is a bit uneven, and it speaks volumes about the (lack of) value he attaches to physical integrity in intimate relationships ("domestic violence") and the dismantling of intersecting discriminatory structures in society.

Legutko is, of course, also critical of marriage equality, as may be inferred from his complaints that defenders of conventional marriage are subject to criticism "in a rhetoric of rage and hatred" (Legutko, 2016, p. 95): "Saying that homosexual and heterosexual unions are not equal, even if supported by most persuasive arguments," leads to "the charge of homophobia" (Legutko, 2016, p. 129)—a moral indictment that seems to bother him. Legutko and his fellow illiberals are not used to being on the receiving end of moral disdain, which may be the reason for their bitter criticism of liberalism's alleged moral superiority complex. Be this as it may, Legutko himself does not provide reasons why heterosexual unions are superior. He does consider the "warmth toward homosexuals" as "somewhat bizarre," tracing it back to "a persistent attempt to deconstruct family, the institution to which the Left has from the very beginning felt a singular hostility" (Legutko, 2016, p. 97).

Adrian Vermeule, a professor of Constitutional Law at the University of Harvard, is more direct in making his case against marriage equality. He regards law as "an ordinance of reason for the common good" (Vermeule, 2022, p. 120), which is founded on a religiously based idea of natural law. Vermeule is a prominent advocate of integralism, an approach that opposes the separation of law and religion (cf. Blakely, 2020). The natural law is binding for secular political authorities, since "marriage is not (merely) a civil convention" (Vermeule, 2022, p. 131). Rather, marriage is:

A natural and moral and legal reality simultaneously, a form itself constituted by the natural law in general terms as the permanent union of man and woman under the general *telos* or indwelling aims of unity and procreation (whether or not the particular couple is contingently capable of procreating). (Vermeule, 2022, pp. 131–132)

Procreation is, therefore, the tie that binds man and woman together in marriage, if not based on their actual capacity, then by way of transcendental elevation. Vermeule's final remark is intended to preempt any challenges to the purpose of heterosexual marriages if

a couple is physically unable to procreate, while same-sex couples should be excluded from marriage (see, e.g., Nussbaum, 2008, pp. 344–345).

All these authors believe that liberalism has gone astray. However, Legutko is particularly bitter about being let down by conservatives. Rather than opposing liberal approaches to gender and sexuality, they support them. He sees a united front of liberals, socialists, and conservatives in liberal democracy: "They condemn racism, sexism, homophobia, discrimination, intolerance, and all the other sins listed in the liberal-democratic catechism" (Legutko, 2016, p. 65). It is of pivotal importance for understanding Legutko's approach that he sees liberal democracy as (devoted to) a specific "liturgy" (Vermeule, 2017) in line with a certain enlightened morality that competes with conventional moral wisdom and that is deeply hostile to religion, which is so often the source of conventional morality. Whereas illiberals used to be on the "right side" of morality, they suddenly find themselves as villains in liberalism's "ritualistic" denouncement of their most profound beliefs, including conventional notions of men and women and their proper place in society. This is where the traditionally gendered dichotomy of the public and the private comes in.

### 3. Gendering the Public and the Private: Illiberal Moralism

The critique of the public/private dichotomy is one of the core elements of feminist thought. Feminists criticize that the privacy of the home insulates male power (abuse) from public control. This concept of privacy is deeply embedded in conventional political philosophy, and it has underpinned Western societies for centuries. Traditionally, that is, beginning with the age of enlightenment, (middle-class) women were bound to lead (only) a private life—a life confined to the private sphere, in the family, where they were dependent on their husbands. This included an allegedly natural acceptance of male command and coercive power—putting up with their whims to the point of physical and sexual violence. Only in the past few decades, cracks have appeared in the wall shielding the privacy of the home, and legal reforms inspired and spearheaded by feminist political activists have gained traction. The Council of Europe's 2011 Istanbul Convention on preventing and combating violence against women and domestic violence is the pinnacle of European action directed against such abuse. It is telling that in some Eastern European countries, there is growing opposition to the Convention. While Hungary has never ratified it, alongside Bulgaria, the Czech Republic, Latvia and Slovakia, Poland has considered withdrawing from it. The driving force behind this, the Polish Minister of Justice from the Peace and Justice Party, Zbigniew Ziobro, called the Convention "an invention, a feminist creation aimed at justifying gay ideology" and claimed that it "harms the interests of women and of family" (as cited in Santora, 2020).

Women and the family, the argument goes, are better served when the private sphere remains private without state intrusion. In this vein, and again identifying a genuine likeness between totalitarian communism and liberal democracy, Legutko decries the politicization of private life in and by liberal democracy. This regime, Legutko (2016, p. 91) writes, “has an inbuilt tendency to extend its rule to all areas of life, no matter how small or, one would think, non-political.” It particularly pains him to observe how “marriage, communal life, language” are politicized—and “the most private of all things private, the most intimate of all things intimate and thus the least appropriate to political meddling: the realm of sex” (Legutko, 2016, p. 105).

In criticizing the politicization of private life, however, Legutko never quite fleshes out what exactly he means. He presents himself as a staunch anti-totalitarian defender of privacy. But what kind of privacy does he have in mind? Again, Legutko does not develop his position systematically; it must be inferred from his points of criticism. Though he does not mention it himself, and he does not openly condone it, his is a conception of privacy based on conventional morality that easily goes hand in hand with the criminalization of consensual same-sex sexual encounters in one’s home. As late as 1986, the U.S. Supreme Court in its infamous decision *Bowers v. Hardwick* held that there was no constitutional right of “homosexuals to engage in sodomy” (*Bowers v. Hardwick*, 1986, overruled by *Lawrence v. Texas*, 2003). In his concurring opinion, Chief Justice Burger brought up Blackstone’s 18th century characterization of homosexuality as “the infamous *crime against nature*,” a crime of “‘deeper malignity’ than rape, a heinous act ‘the very mention of which is a disgrace to human nature,’ and ‘a crime not fit to be named’” (Blackstone, 2016, p. 142). Burger continued: “To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching” (*Bowers v. Hardwick*, 1986, p. 197). While neither Legutko nor Deneen, not even Vermeule, aggressively advocate the criminalization of same-sex sexual acts, they still cling to the “millennia” of religiously informed moral wisdom that homosexuality is a sexual orientation of lesser worth. Hence, their polemics against same-sex marriage. For Vermeule (2022, p. 131), marriage equality is an expression of a legal order being “detached from the objective legal and moral order that underpins classical legal theory and the common good.”

We may also infer from illiberal writings that laws should be in place against adultery, as well as sex work, pornography and, most certainly, abortion. In contrast, illiberalism is sceptical of any legal interventions against domestic violence and spousal rape. In this vein, Legutko fulminates against a “type of legislation” he considers “extremely dangerous and also illustrating ‘coercion to freedom,’” namely that relating to “hate speech” and “domestic violence” (Legutko, 2016, p. 67). These idioms, he claims, “tend to incriminate more and more acts of

conduct and of speech, allowing for further drastic intervention by the government and the courts in family life, the media, public institutions, and schools” (Legutko, 2016, p. 67).

The examples make abundantly clear that illiberal authors have a very specific concept of privacy. They are striving to uphold conventional Christian morality. Far from keeping the state out of private places, many such laws would lead to intrusions into private life. What is bothering illiberal authors is not the politicization of privacy as such, but a specific kind of politicization that might be characterized as a “postconventional moralization”—one that tries to implement the principle of equal freedom in law, including the protection of physical integrity, the partnership principle in marriage, and marriage equality. The argument that legal prosecution of domestic violence, for example, is an outgrowth of a totalitarian attitude and an encroaching state is imprecise. Indeed, such legal measures lead to state interference in the private sphere. However, they take place because a person’s, predominantly a woman’s physical integrity is threatened or has been violated. The reason for state intervention is the violation of the relationship of trust through violence—i.e., the violation of the very thing that is supposed to be protected from state interference. In the totalitarian state, on the other hand, the relationship of trust is destroyed by the fact that privacy itself is dissolved to enable state control of behavior. In this way, a relationship of trust cannot develop in the first place.

It is helpful at this point to have a look at the position of John Stuart Mill, a classic proponent of liberalism. Privacy is important to him, but not as complete insulation of the domestic sphere, as it were, from public interest and thus immune to state interference. When assaults occur in the private domain, Mill does not see them as “private” acts. Rather, the harm inflicted renders an assault an act to be condemned and outlawed by both law and public opinion—it is by its very nature public. As Mill writes so poignantly, a “person ought to be free to do as he likes in his own concerns; but he ought not to be free to do as he likes in acting for another, under the pretext that the affairs of the other are his own affairs” (Mill, 1998, p. 116). Mill explicitly refers to the problem of male command in the family to illustrate this point. Against the customary, legally sanctioned, “almost despotic power of husbands over wives,” Mill prescribes a simple antidote: equal rights for wives and their protection under the law, as should be afforded to every person regardless of their status (Mill, 1998, p. 116). Those who do not see the injustice or rather even affirm it, according to Mill, “do not avail themselves of the plea of liberty, but stand forth openly as the champions of power” (Mill, 1998, p. 116).

In this vein, illiberal thinkers are champions of power, indeed. They are only interested in privacy as it suits their moral and religious convictions—and as a sphere of uncontested private power of a male head of the



household. The polemic directed against politicization is the polemic of somebody who believes he should be in power and who feels that his power has slipped away; or, in the words of Robin (2018, p. 3): “the felt experience of having power, seeing it threatened, and trying to win it back.” What illiberals cannot stand is the contestation of the power that has been and is supposedly theirs, and the successes of those who strive for a change in their living conditions. In voicing their grievances and joining together in movements, the marginalized “raise the spectre of a more fundamental change in power. They cease to be servants or supplicants and become agents, speaking, and acting on their own behalf. More than the reforms themselves, it is this assertion of agency by the subject class—the appearance of an inconsistent and independent voice of demand—that vexes their superiors” (Robin, 2018, p. 5).

This critique of illiberal approaches to private life as the domain of unchecked power is of broad relevance. It has been and must be applied to liberal political philosophy as well, insofar as it has been ignoring this problem. But there is a decisive difference between liberal and illiberal approaches. The latter’s conception of privacy mirrors autocratic power, which is fundamentally affirmed. The liberal conception of privacy, in contrast, is anti-authoritarian. It carves out a room where the individual is free from state intrusion, a room that is spatial as well as metaphorical (Rössler, 2004). Far beyond mere freedom of thought, which the infamous reactionary ideologue Carl Schmitt saw as the decisive crack in the mighty power of Hobbes’s Leviathan (Schmitt, 1938, p. 84), the private sphere is the root of resistance against autocratic power. That is why a right to privacy is pivotal, again, as long as it is not used as a shield to immunize harmful behaviour.

#### 4. To Hell With Equality—And With Human Rights

Maybe more than anything else, equality is the target of illiberal political thinking. The debate on the status of equality is as old as political and moral philosophy itself. Inequality was, for a long time, the default position, be it due to nature or custom, including as a justification for slavery. The deep-seated conviction that humans are born unequal was even upheld, indeed, invigorated by enlightenment philosophers’ belief that, due to natural dispositions, women and members of “inferior races” were not born to be equally free. It took a long time to overcome this deep-seated bouquet of prejudices; and, of course, none of the liberal democracies is anywhere near perfect in this respect. Nevertheless, as a matter of principle, liberal political philosophy as well as legal constitutionalism choose to uphold the principle of equality. Accordingly, one basic prerequisite is irrevocable: the recognition of the equality of all people as human beings. Thus, every human being has the right to equal respect (of their autonomous decisions), concern (for their needs), and consideration (of their abili-

ties; cf. Holzleithner, in press). According to this understanding, justice prohibits discrimination on grounds that are irrelevant to the moral valuation of a person, including gender, ethnic origin, religion, and worldview, but also age, sexual orientation, disability, or social position.

For Legutko, however, the trouble begins with equality: Trying to achieve it in liberal democracies leads—just like in communism—to the “liquidation...of social hierarchies, customs, traditions, and practices that had existed prior to the emergence of the new political system” (Legutko, 2016, p. 131). It is also an important reason why the liberal state is allegedly so intrusive: because equality calls for state policies. At this point, Legutko (2016, p. 132) identifies “a paradox of equality”:

The more equality one wants to introduce, the more power one must have; the more power one has, the more one violates the principle of equality; the more one violates the principle of equality, the more one is in a position to make the world egalitarian.

Deneen diagnoses another reason for the pivotal role of the law. Law is the only thing the liberal state can rely on once it has parasitically destroyed a society’s culture, exhausted its resources, and thus become the victim of its own success: “Liberalism has drawn down on a pre-liberal inheritance and resources that at once sustained liberalism but which it cannot replenish” (Deneen, 2018, p. 29). If the culture in question used to be hierarchical, then so be it (or even: all the better). Vermeule (2017) bluntly proclaims that his “common-good constitutionalism does not suffer from a horror of political domination and hierarchy.”

The victim is then not only equality, but also liberty—and protections against state intrusion, as the preceding section showed. According to Vermeule (2017), who is most outspoken in this respect, the point is “to ensure that the ruler has the power needed to rule well.” The liberal distrust of unrestrained power is dismissed out of hand: “Constraints on power are good only derivatively, insofar as they contribute to the common good.” Liberty, according to Vermeule, is highly overrated; much more important is a just authority that is concerned with the common good, which Vermeule (2022, p. 31) sees incarnated in the trio of “justice, peace and abundance” and which is based on Christian foundations. It can and should be enforced, “if necessary, against the subjects’ own perceptions of what is best for them.” In this view, law is the all-wise teacher, encouraging “subjects to form more authentic desires for the individual and common goods, better habits, and beliefs that better track and promote communal well-being.” Vermeule’s position is compatible with that of Deneen: Invoking the law is acceptable, as long as it is not used for liberal social engineering, but in unison with national religious tradition and culture.

Human rights are a culprit just as villainous as equality and liberty. To Legutko, the notion of human

rights is a manipulative label for “arbitrary claims, ideologically motivated, made by various political groups in blatant disregard of the common good, generously distributed by the legislatures and the courts, often contrary to common sense and usually detrimental to public and personal morality” (Legutko, 2016, p. 142). From this perspective, human rights are not the least common denominator that leaves room for a diversity of worldviews and ways of life; rather they are seen as fundamentalist (Maulin, 2011, p. 9) and authoritarian (de Benoist, 2011; Maulin, 2011, p. 16). They (inter)nationalize what should be left to the real diversity of lived cultures.

If human rights are to be affirmed at all, then only in a version stripped of “progressivism” like that proposed by Vermeule (2022, pp. 129–130). As a model, he mentions the Geneva Consensus Declaration on Promoting Women’s Health and Strengthening the Family from 2020—a machination initiated by former Secretary of State Mike Pompeo during the presidency of Donald Trump. The idea was to (further) delegitimize and complicate safe access to abortions on a global scale. The Declaration rests on four “pillars”: “concern for women’s health,” “protection of human life,” “strengthening of family—the basic unit of society,” and a defense of “the sovereignty of nations in creating their own life protection policies” (Geneva Consensus Declaration, n.d.). Vermeule (2022, p. 130) himself declares that pillars two (in its specific meaning of protecting unborn life), three, and four cannot be “immediately couched in the idiom of ‘rights.’” And indeed, pillar four, in particular, is all but antithetical to the idea of universal human rights. If this is the kind of “pluralism” it takes to bring human rights into the orbit of illiberalism, it is tantamount to their declaration of bankruptcy. It is, to borrow a term proposed by Frick (2021, p. 870), a “hostile acquisition.” It also misses the point of human rights, which is not “human perfection but equal liberty” (Frick, 2021, p. 873). Equal liberty, however, is what illiberal political thought is up against.

Overall, illiberal defenses of freedom(s)—not human rights—are utterly selective (Simpson, 2017). They do not include the freedom of those considered the uneducated, unrestrained masses, but the freedom, that is, the unfettered power, of the privileged few. This also spells the end of equality. As Robin (2018, p. 7) observes, illiberals dislike equality not because it is “a threat to freedom but its extension.” Extending freedoms to others curtails their own freedom, because “equality ultimately means...a rotation in the seat of power” (Robin, 2018, p. 8). Indeed, it is well known what efforts the rulers in illiberal democracies make to prevent democratic change. The election law reform of 2012 in Hungary, initiated by the Fidesz government, and the “concerted and sustained attack” (Scheppelle, 2018) on democratic institutions immediately come to mind, as do gerrymandering, the gutting of the Voting Rights Act, and increasing voting rights limitations in the USA (Williams, 2022).

## 5. Illiberal Anti-Pluralism: Erasing the Separation of Law and Conventional Morality

One of the questions posed at the outset of this article was whether a fruitful dialogue with proponents of illiberal political thinking is even conceivable. The above considerations show that the hope of success for such dialogue is fraught with many question marks. One major obstacle may be that illiberal political thinkers themselves are not quite open to such dialogue, not least because they believe that their opponents—liberals, feminists, LBGTIQ\* activists, and multiculturalists—are unwilling to engage in fair dialogue. As Legutko (2016, p. 98) remarks bitterly: “Today’s ‘dialogue’ politics is a pure form of right-is-might politics, cleverly concealed by the ostentatiously vacuous rhetoric of all-inclusiveness.” Legutko conceals illiberals’ own strategy here, namely excluding their foes right from the start, contesting their right to even participate in political debates. They routinely argue from the position of those in power; of those who decide who may participate in power and who may not. Hence illiberal politicians’ tendency to manipulate election laws as soon as they are in power.

A major obstacle to fruitful discourse is the fact that illiberals do not believe in the separation of law and conventional morality, of their typically religious convictions and the law of the land. In this vein, human rights are considered illegitimate if they conflict with the natural order of things that is revealed to the true believer, e.g., of Christian morality. But contrary to what illiberals claim, the liberal state does not, for example, force a certain liberal gender order on people’s lives. It is true that gender equality should determine public life, especially in employment and politics. Marriage, too, is no longer organized patriarchally under state law; instead, it is governed by the principle of partnership, and marriage equality has been established in many countries all over the world—not only in the so-called West. But the state and the law do not force people to live in a certain way. They do not force married women into professional life; as a matter of course, couples can still organize their marriages along conventional lines. Illiberals claim that this has become impossible. This is simply not true—as long as a married couple can economically afford their conventional way of life.

In a liberal democracy, committed to equal liberty, including religious liberty, traditional religious ways of life are permitted. In an illiberal democracy, *au contraire*, there is only one way of living that is recognized by the law—namely, according to conventional gender norms. For reactionary Christianity, a liberal political order means a demotion to a mere creed, for which the liberal state carves out a room, but that does not define how to lead one’s life. This is also a result of emancipatory movements—e.g., of feminists and LBGTIQ\* people—striving for equal freedom. But, as it is obvious to anybody living in liberal democracies, traditionalist Christian groups, small and large, are thriving in many places and

are utterly outspoken. That they encounter dissent, that this dissent is voiced, and that state policies are, by definition, not based on Christian values, is part and parcel of living in a liberal democracy. After all, separating law and religion is how religious civil wars were overcome (Rawls, 2005, p. 476), and they should not return. As the Russian war of aggression against Ukraine—waged also with the approval of the Russian Orthodox Church—shows, they may indeed return, which is even more reason to adhere to the idea(s) of liberalism as an overarching political philosophy.

The decisive trick of illiberal political philosophers is to declare political liberalism an ideology—or a kind of religion—like any other. Political liberalism is not seen as an umbrella under which many religions and ideologies find a place as long as they affirm the basic structure of society (cf. Rawls, 2005), based on the equal right of every person to live according to their own ideas. Rather, political liberalism is considered to be as sectarian as religions and ideologies themselves. This diagnosis is based on the progressive gender politics that political liberalism entails. The sectarian, quasi-religious quality of political liberalism is, for its critics, exemplified in the US Supreme Court’s decision in *Obergefell v. Hodges* (2015), which opened marriage for same-sex couples. For Vermeule, such instances of “progressive constitutionalism” embody the “liturgy of liberalism”: “The repetitive impulse of liberal political theology to celebrate a sacramental moment of overcoming of the unreason and darkness of the traditional past” (Vermeule, 2022, p. 119). In this liturgy, the law is instrumentalized “in the service of a very particular liberationist narrative, in which ‘rights’ are continually ‘expanded’ to free an ever-larger set of individuals from unchosen obligations and constraints—legal, moral, and traditional, even biological” (Vermeule, 2022, p. 119).

Indeed, the law increasingly recognized the rights of women and LGBTIQ\* people. However, this is not kowtowing to a “progressive orthodoxy” (Fukuyama, 2022, p. 3); it is an extension of the principle of equal liberty enshrined in modern constitutions. Illiberalism, by contrast, intends to establish an order where there is no place for feminist or queer ideas, unconventional men, women, and other genders. Whereas liberalism carves out a space for illiberals to live the way they please in their religious communities, with certain protections for the vulnerable, illiberals intend to break or erase their “enemies.” An illiberal order is much less pluralist than a liberal order, and this is intentional. The illiberal fight against gender equality, including women’s and LGBTIQ\*s’ rights to live free from gender-based violence, is part of an ethno-nationalist insurgency against an unwanted import that is said to be alien and dangerous to the heart of the nation; and the heart of the nation is deeply gendered, with the heterosexual family at its core. It is also racialized, which explains the illiberal polemics against immigration from “alien” countries and against liberal multiculturalism “as a threat to the ‘ethno-nation’” (Chin, 2021, p. 280).

Petö (2021, p. 319) has called this bundle of values and promises “the ‘illiberal offer,’” warning that one should not be blind to its appeal. Illiberalism is much more than just opposition to “gender ideology”: It “also offers a liveable, viable alternative centred on the family, the nation, religious values, and freedom of speech.” In illuminating fashion, Petö refers to a chant by protesters against same-sex marriage during the *Manif Pour Tous* demonstrations in France: “Don’t touch our stereotypes.” She interprets this demand as a quest for recognition: for the protesters’ specific identity and the moral values they hold as indispensable (Petö, 2021, p. 321; see also Case, 2019, p. 655). These protesters feel that politics fundamentally disregards them in their quest for recognition. Just like illiberal political thinkers, they do not consider marriage equality a harmless expansion of legal possibilities that leaves room for individual moral disapproval, e.g., for religious reasons. For them, the *legal* extension of marriage is an intrusion on their *moral* convictions. Again, this position is based on a collapse of the separation of law and conventional, religiously informed morality. It seems to be the task of liberal political philosophy to insist on the importance of this distinction. Besides, it needs to emphasize that equal rights of unconventional minorities do not infringe on the rights of those who lead conventional lives, because they are simply not affected.

## 6. Conclusion

Illiberal political thinking rejects the liberal principle of equal freedom, advocating for a society in which traditional hierarchies dominate. The hierarchy between men and women, informed in particular by religion, plays a central role in that context, to the exclusion of unconventional genders and sexual orientations. The insistence on privacy is designed to reinstate male power in the family and seal it off against state control. In contrast, the state is very much authorized to intervene in behaviours identified as conventionally immoral, but this is masked by ostensibly anti-totalitarian rhetoric. The liberal principle of equal freedom is delegitimized, which also entails the vilification of human rights. As this article elaborated, this position in illiberal political thought rests essentially on erasing the boundaries between religion and politics. This is also the reason why a fruitful dialogue seems so futile: A basic prerequisite of such dialogue is the recognition of a specific sphere of state action that transcends religious positions. To reject this differentiation means to give up an essential basis for the peaceful coexistence of people across religions. Illiberal political thought embraces this; it is up to liberal political philosophy to elaborate why such a position is untenable.

## Acknowledgments

I would like to thank Kati Danielczyk, Christian Demmelbauer, Ines Rössl, and Maria Sagmeister for their



constructive criticisms and suggestions. I am also grateful for the helpful comments made by two anonymous reviewers. Open Access funding provided by University of Vienna.

### Conflict of Interests

The author declares no conflict of interests.

### References

- Abji, S., Korteweg, A. C., & Williams, L. (2019). Culture talk and the politics of the new right: Navigating gendered racism in attempts to address violence against women in immigrant communities. *Signs: Journal of Women in Culture and Society*, 44(3), 797–822.
- Blackstone, W. (2016). *Commentaries on the laws of England: Book IV of public wrongs*. Oxford University Press.
- Blakely, J. (2020). Not Catholic enough. The integralism of Adrian Vermeule. *Commonweal*, 147(9), 34–37.
- Bowers v. Hardwick, 478 US 186 (1986).
- Case, M. A. (2019). Transformations in the Vatican’s war on “gender ideology.” *Signs*, 44(3), 639–664.
- Chin, R. (2021). Illiberalism and the multicultural backlash. In A. Sajó, R. Uitz, & S. Holmes (Eds.), *The Routledge handbook of illiberalism* (pp. 280–298). Routledge.
- Crenshaw, K. (1989). Demarginalizing the intersection of race and sex: Black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics. *University of Chicago Legal Forum*, 1989(1), 139–168.
- de Benoist, A. (2011). *Beyond human rights. Defending freedoms*. Arktos.
- Deneen, P. (2018). *Why liberalism failed*. Yale University Press.
- Dobbs v. Jackson Women’s Health Organization, No. 19–1392 (2022).
- Fraser, N. (2013). *Fortunes of feminism: From state-managed capitalism to neo-liberal crisis*. Verso.
- Frick, M.-L. (2021). Illiberalism and human rights. In A. Sajó, R. Uitz, & S. Holmes (Eds.), *The Routledge handbook of illiberalism* (pp. 861–877). Routledge.
- Fukuyama, F. (2022). *Liberalism and its discontents*. Profile Books.
- Geneva Consensus Declaration. (n.d.). *Homepage*. <https://gcdintermariumconference.org/>
- Holzleithner, E. (in press). Law and social justice: Intersectional dimensions. In K. Davis & H. Lutz (Eds.), *Routledge handbook of intersectionality*. Routledge.
- Krastev, I., & Holmes, S. (2020). *The light that failed: A reckoning*. Penguin.
- Lawrence v. Texas, 539 U.S. 558 (2003).
- Legutko, R. (2016). *The demon in democracy. Totalitarian temptations in free societies*. Encounter Books.
- MacIntyre, A. (2007). *After virtue: A study in moral theory* (3rd ed.). University of Notre Dame Press.
- Mancini, S., & Palazzo, N. (2021). The body of the nation. Illiberalism and gender. In A. Sajó, R. Uitz, & S. Holmes (Eds.), *Routledge handbook of illiberalism* (pp. 403–422). Routledge.
- Maulin, E. (2011). Foreword. In A. de Benoist (Ed.), *Beyond human rights. Defending freedoms* (pp. 9–20). Arktos.
- McAdams, A. J. (2022). Contemporary far-right thinkers in the era of liberal-democratic crisis. In A. J. McAdams & A. Castrillon (Eds.), *Contemporary far-right thinkers and the future of liberal democracy* (pp. 3–23). Routledge.
- Mill, J. S. (1998). On liberty. In J. Gray (Ed.), *John Stuart Mill. On liberty and other essays* (pp. 5–128). Oxford University Press. (Original work published 1859)
- Nussbaum, M. (2008). *Liberty of conscience. In defense of America’s tradition of religious equality*. Basic Books.
- Obergefell v. Hodges, No. 14–556 (2015).
- Orbán, V. (2014). *Full text of Viktor Orbán’s speech at Băile Tuşnad (Tusnádfürdő) of July 26, 2014* [Speech transcript]. Budapest Beacon. <https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014>
- Pető, A. (2021). Gender and illiberalism. In A. Sajó, R. Uitz, & S. Holmes (Eds.), *Routledge handbook of illiberalism* (pp. 313–325). Routledge.
- Rawls, J. (2005). *Political liberalism*. Columbia University Press.
- Robin, C. (2018). *The reactionary mind. Conservatism from Edmund Burke to Donald Trump* (2nd ed.). Oxford University Press.
- Roe v. Wade, 410 U.S. 113 (1973).
- Rössler, B. (2004). *The value of privacy*. Polity.
- Sandel, M. (1982). *Liberalism and the limits of justice*. Cambridge University Press.
- Santora, M. (2020, October 27). Poland considers leaving treaty on domestic violence, spurring outcry. *The New York Times*. <https://www.nytimes.com/2020/07/27/world/europe/poland-domestic-violence-treaty.html>
- Scheppele, K. (2018). Autocratic legalism. *University of Chicago Law Review*, 85(2), 545–584.
- Schmitt, C. (1938). *Der Leviathan in der Staatslehre des Thomas Hobbes. Sinn und Fehlschlag eines politischen Symbols* [The leviathan in the state theory of Thomas Hobbes: Meaning and failure of a political symbol]. Klett Cotta.
- Simpson, P. L. P. (2017). *Political illiberalism. A defense of freedom*. Routledge.
- Verloo, M. (Ed.). (2018). *Varieties of opposition to gender equality in Europe*. Routledge.
- Vermeule, A. (2017). Liturgy of liberalism. *First Things*. <https://www.firstthings.com/article/2017/01/liturgy-of-liberalism>
- Vermeule, A. (2022). *Common good constitutionalism. Recovering the classical legal tradition*. Polity.
- Williams, B. (2022). Blocking the ballot box: The republican war on voting rights. *William & Mary Journal of Race, Gender, and Social Justice*, 28(2), 389–420.

### About the Author



**Elisabeth Holzleithner** is a professor of legal philosophy and legal gender studies at the University of Vienna. She is also the principal investigator of the interdisciplinary research platform GAIN—Gender: Ambivalent In\_visibilities. Her research interests include legal and political philosophy, legal gender and queer studies, and the field of law, literature, and (popular) culture.