

CALL FOR PAPERS: Constitutionalism Under Scrutiny: New Critical Voices

Workshop at the University of Oxford, Spring 2026.

We invite scholars to contribute to a Special Issue or Symposium aimed at a top-ranking journal on the topic of **opposition to constitutionalism**. Constitutionalism is a global phenomenon, yet our understanding of its opposition outside North America is limited. Who if anyone is mobilising against it, and on what grounds? And is it confined to legal and academic circles? Is the opposition unified or fragmented? What precisely is contested, how (e.g. through legal mobilization, advocacy), and to what end and with what impact? We seek contributors who can innovate the theory and empirics of these consequential issues. Of special interest are contributions on opposition to constitutionalism in Africa, Asia, Latin America, and Russia, as well as in Europe and the USA.

Abstracts (500-1000 words) should articulate a clear argument, its relevance to the theme, methodology, key assumptions, and main findings, and be emailed to the editors by 15 November 2025 (Gaetan Cliquennois gaetan.cliquennois@univ-rennes.fr and Cristina Parau elena-cristina.parau@cnrs.fr). Accepted authors will be invited to a workshop at Oxford University in Spring 2026, with selected papers prepared for a Symposium/Special Issue.

Background and questions

Since their adoption, for the most part, in the eighteenth century, constitutions have been associated with the Enlightenment project of emancipation in terms of personal freedom, socio-political progress, and equality, which all are promoted in constitutional texts. Constitutions are considered virtuous for imposing limits on the presumed excesses of sovereign power by setting up organic checks on abuses through a separation of political powers. These features have contributed to the spread of constitutionalism which has been progressively generalized and even globalized (Loughlin, 2022).

Trenchant criticism of constitutionalism and judge-made public policy has thrived above all in the United States, where this phenomenon first took root. The Critical Legal Studies (CLS) movement, born in the 1970s as a radical leftist network of U.S. law professors influenced by the civil rights movement, women's rights, and anti-war activism, challenged liberal legal formalism for stifling "transformative, counter-hegemonic thought" and for entrenching inequalities (Kelman, 1987). CLS scholars like Mark Tushnet urged returning constitutional authority to "the people" and prioritizing collective over individual rights (Tushnet, 1999, 2020). Building on CLS's ideological scepticism but grounding it in empiricism, across the border, Canadian political scientist Ran Hirschl criticized liberal constitutionalism as a tool of domination that favours individual rights—private property especially—over collective, social ones to entrench elite power through "hegemonic preservation" (Hirschl, 2004). From a centre-left, pragmatic perspective, Cass Sunstein faulted liberal and conservative judicial overreach, both, advocating "judicial minimalism" to curb the judiciary's role in contentious social issues (Sunstein, 2005). Jeremy Waldron, from a democratic vantage, concurred that ceding to courts final authority over constitutional questions disempowers legislators and voters, especially on moral issues like abortion or free speech, and advocates legislative supremacy to boost democratic deliberation (Waldron, 1999). Similarly, Larry Kramer critiqued the rise of judicial supremacy as an illegitimate departure from the Founders' vision of popular constitutionalism sharing interpretive authority between the people and their representatives (Kramer, 2004).

On the right, U.S. conservatives have fiercely opposed judicial review when courts make liberal activist decisions that override democratic consent and traditional values. American jurists like

Robert Bork and Antonin Scalia have denounced the Supreme Court for exploiting constitutions to impose their policy preferences over constitutional texts, thus assuming legislative authority without the consent of the governed. Conservatives advocate “originalism” to anchor judicial rulings in the Constitution’s original meaning and deference to elected representatives unless the Constitution dictates otherwise (Bork 1990; Scalia 1997).

Libertarianism, a quintessentially American philosophy, has constructed critiques of judicial power as well, as when it enables government overreach or shields elite economic interests at the expense of individual liberty. Scholars like Randy Barnett and Richard Epstein have rejected judicial deference to Federal self-empowerment, urging courts to enforce the limits of “strict constructionism” to protect property rights and consumer-sovereign free markets over collectivist projects (Barnett, 2004; Epstein, 2014).

Only rather recently have critiques of judicial power gained traction outside the United States especially across the Atlantic. Foundational works include Joseph H. H. Weiler’s *The Transformation of Europe* (1991) analysing and critiquing the expansive role of European courts in the constitutionalisation of the European Union, particularly its implications for democracy and legitimacy; Carlo Guarnieri and Patrizia Pederzoli’s *The Power of Judges: A Comparative Study of Courts and Democracy* (2002); Richard Bellamy’s *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy* (2007) which argues that legal constitutionalism undermines the constitutionality of democracy by elevating judges over elected representatives. This suggests that the phenomenon of opposition to constitutionalism is the same on both sides of the Atlantic.

Left-leaning critiques are more prevalent in Europe than in the USA, however, as witness some of the more recent European scholarship. Martin Loughlin of the LSE traces constitutionalism’s arc from its 18th-century roots in Madison, Hamilton, and Jay to its global dominance, exposing its evolution as a “civil religion” and a “new species of law”, which has eroded democratic government (Loughlin 2022: 111, 151). U.S. scholars propose reforms such as limiting review power or rethinking institutional design, but Loughlin calls for “overcoming constitutionalism” by simply rejecting it as a governing philosophy (p. 191). Loughlin’s analysis of constitutionalism as a “cosmopolitan project” (p. 179) extends the critique beyond the West to nations in the throes of state-building worldwide (pp. 12, 179). Sharing the scepticism but weaving-in cultural and historical threads, French constitutional scholar Lauréline Fontaine portrays constitutions as a “social fetish” and quasi-religious artifact that alienate peoples from power, disguising elite agendas as progress and equality (Fontaine 2025). She is critical of constitutionalism’s market bias, which privileges economic interests over social and environmental complaints (Fontaine 2023). Empirical studies in Europe further illuminate these concerns. French socio-legal scholar Gaëtan Cliquennois has revealed how private foundations (*viz.* Open Society, Ford, MacArthur, Oak Foundations, Sigrid Rausing Trust) wield influence over Europe’s human rights system by funding NGOs and litigation teams (Cliquennois 2020). Donors shape the inputs, outputs, and structures of these courts, tilting jurisprudence toward individual and market emancipation at the expense of social, economic and collective wants, and crowding-out access to justice for those outside their strategic priorities. Finally, informed by an American libertarian perspective, British-Romanian political scientist Cristina Parau has traced how legal professional networks interlocking with the Council of Europe and riding on the power of EU accession conditionality, have redesigned post-Communist Eastern Europe’s judiciary institutions to steer them toward judicial supremacy and ultimately to empower a transnational elite project to make public policy (Parau 2019).

Amid these criticisms, the opposition to constitutionalism outside the USA is underexplored. A few European countries have stood out as opponents of national and supranational

constitutionalism, prioritizing state sovereignty. At supranational level, US conservative Christian NGOs like the European Center for Law and Justice in Strasbourg, and the Alliance Defending Freedom in Vienna have advanced the opposition by litigating the liberal constitutional agenda. Back in the USA, the second Trump Administration's opposition to lawfare and jurisdictional overreach is ripe for investigation. Our understanding is even more limited about opposition outside the USA and Europe. Who if anyone is mobilizing, for example, and on what grounds? And is it confined to legal and academic circles? Is it unified or fragmented? What precisely is contested, how (e.g. through legal mobilization and advocacy) and to what end and with what impact? We seek contributors who can innovate the theory and empirics of such consequential issues. Of special interest are contributions on opposition to constitutionalism in Africa, Asia, Latin America, and Russia, as well as in Europe and the USA.

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