

Representative Democracy in Flux

Deconstructive Narratives from a Legal
and Constitutional Perspective

Edited by Martin Below

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There and back again

Martin Below

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1 Imaginaries of representation

There and back again¹

Martin Belov

1. Introduction

Representation is a durable and well-established institution and practice in all societies and political orders. This does not mean that it always functions well, but rather that it is a necessary prerequisite of legitimate political and, later on in the course of history, also of constitutional government. In some pre-modern societies, representation has been entrenched in non-democratic, quasi-democratic, or semi-democratic regimes and had usually theological, aristocratic, or monarchic content.² Since the beginning of modernity, the people were convinced to believe in different political imaginaries of representation in the official schemes of power, authority, and government. These political imaginaries later became legally institutionalized. Thus, they were upgraded into constitutional imaginaries. This process has unfolded differently in the different sociopolitical contexts but had also overall structural similarities.

Representation is a structural precondition for legitimate and efficient government. Nevertheless, it has not always been practiced as democratic representation – the form that was predominant since the second half of the 20th century. Regretfully, we are currently witnessing the reemergence of non-democratic, semi-democratic, and quasi-democratic forms of representation. Currently they have elitist, technocratic, and populist instead of monarchic, aristocratic in the traditional sense, and theological substance. Actually, this is not a return to premodern elitist representation. Instead, it is entry into a new phase of elitism mixing democratic, technocratic, and populist elements.

1 This chapter is produced as part of and funded by the European Union-NextGenerationEU, through the National Recovery and Resilience Plan of the Republic of Bulgaria, project No bg-rrp-2.004-0008.

2 See Hasso Hofmann, 'Der spätmittelalterliche Rechtsbegriff der Repräsentation in Reich und Kirche' (1988) 27(4) Der Staat 523–45.

There is a vast amount of literature exploring the reasons, factors, shapes, and outcomes of the crisis of representative democracy.³ The scientific discourse is either preoccupied with its legal, institutional, and normative dimensions or exposes its socio-legal and political manifestations. Instead, the imaginary aspect of representative democracy and its increasing dysfunctionality in the context of constitutional polycrisis and constitutional polytransition is less researched.

This chapter aims at exploring the constitutional imaginary dimensions of the crisis of representation and representative democracy. It shall analyze the historical and conceptual trajectory of constitutional imaginaries in the course of contemporary constitutionalism. It will present their rise and establishment in modern constitutionalism and their role for stabilizing representative democracy as a universal and holistic model for national constitutional orders implemented also on the sub-national level in federations and on the supranational level in the EU. It will also explore their deconstruction and demise in the context of globalization, technological revolution, post-modernity, and post-democracy.⁴

The chapter will also explore the process of use and misuse of imaginaries of representation as part of the constitutional make-believe. It will be focused on imaginaries of representation in constitutional post-modernity and in times of constitutional polycrisis, constitutional polytransition,⁵ technological revolution,⁶ and emerging post-democracy. The research will expose the constitutional imaginary dimensions of the crisis of representative democracy and the process and tendency of (re)emergence of non-democratic imaginaries of representation.

Imaginaries of representation are not always and not necessarily democratic. In fact, representation started as a non-democratic practice and was formed as a democracy-detached concept. Thus, the pre-modern and early modern imaginaries of representation were initially and essentially non-democratic but also autocratic, elitist, aristocratic, theocratic, etc. Even in the course of constitutional modernity, when representation was intermingled with democracy,

3 See Martin Belov (ed), *Rule of Law in Crisis: Constitutionalism in a State of Flux* (Routledge 2023) 1–280.

4 For the concept of post-democracy see Colin Crouch, *Post-Democracy* (Polity Press 2004) 1–144.

5 Martin Belov, ‘The Conceptual Shapes of Constitutional Polycrisis: Deconstruction, Asymmetries and Post-Modern Anxieties of Constitutional Normalcy’ (2023) 70 *Irish Jurist*, special issue *Law in a Time of Crisis* 393–410; Martin Belov, ‘Rule of Law in Europe in Times of Constitutional Polycrisis, Constitutional Polytransition and Democratic Discontent’ (2023) 3 *Diritto Pubblico Comparato Ed Europeo* 875–84; Martin Belov, ‘Rule of Law and Democracy in Times of Transitory Constitutionalism, Constitutional Polycrisis and Emergency Constitutionalism: Towards a Global Algorithmic Technocracy?’ in Martin Belov (ed), *Rule of Law in Crisis: Constitutionalism in a State of Flux* (Routledge 2023) 21–47.

6 See Martin Belov (ed), *The IT Revolution and Its Impact on State, Constitutionalism and Public Law* (Hart Publishing 2021).

as will be shown later, imaginaries of representation beyond democracy (e.g., charismatic, populist, heroic, existentialist, and exceptionalist) continued to persist.

In the context of constitutional polycrisis and constitutional polytransition that have been unfolding during the last two decades, we are witnessing the reemergence of non-democratic imaginaries of representation. Nevertheless, they are not limited only to populist imaginaries that are clearly predominant and are already well explored in the literature.⁷ Simultaneously, there are also other non-democratic imaginaries of representation that are gaining momentum, mostly in the constitutional law in action and the constitutional law in collective imagination rather than in written law. The novelty here is that they are not limited to authoritarian, identitarian, charismatic, and populist imaginaries, as in the previous ages. There are also elitist, technocratic, and paternalistic imaginaries that are trying to shape emotionally and intellectually the feelings and beliefs of representation in the age of globalization, technological revolution, and post-modernity.

That is why this chapter shall not be limited to research of the imaginaries of representative democracy. It will expose, analyze, and systematize them, but it will also go beyond and explore populist, technocratic, and elitist-paternalistic imaginaries of representation that set the scene of symbolic-imaginary constitutionalism at the beginning of the 21st century in the context of constitutional polycrisis and constitutional polytransition.

2. Imaginaries of representation as mixed rational-emotional narratives and symbolic proxies to constitutional insights

2.1 Imaginaries of representation and emotional constitutionalism

‘Sometimes reality is too complex. Stories give it a form’.⁸ This famous saying of Jean-Luc Godard demonstrates the natural tendency of people to feel, signify, and visualize complex social, political, and legal phenomena. It shows their need to imagine constitutional phenomena not only in rationally plausible ways but also in emotionally appealing ways. In that regard, one should

7 See, e.g., Jiri Priban, ‘Constitutionalism, Populism, and the Imaginary of the Authentic Polity: A Socio-Legal Analysis of European Public Spheres and Constitutional Democratization’ (2023) 50(S1) *Journal of Law and Society* 26–44; Paul Blokker, ‘Political and Constitutional Imaginaries’ in S Adams and J Smith (eds), *Social Imaginaries: Critical Interventions in a Paradigm-in-the-Making* (Rowman and Littlefield 2021); Paul Blokker, ‘Populist Constitutionalism’ in C de la Torre (ed), *Routledge Handbook of Global Populism* (Routledge 2018); Paul Blokker, ‘Populism as a Constitutional Project’ (2019) 17(2) *International Journal of Constitutional Law*; Jo-Anne Dillabough, ‘Higher Education, Violent Modernities and the “Global Present”: The Paradox of Politics and New Populist Imaginaries’ (2021) 20(2) *Globalisation, Societies and Education* 178–92.

8 See <<https://www.goodreads.com/quotes/514541-sometime-reality-is-too-complex-stories-give-it-form>>.

also consider the statement of Dale Carnegie: ‘When dealing with people, remember you are not dealing with creatures of logic, but with creatures bristling with prejudice and motivated by pride and vanity.’⁹

Hence, people need to be emotionally inspired, enchanted, and even amazed in order to not only understand but to voluntarily adhere to central constitutional concepts such as democracy, representation, and democratic representation. In the words of the Orwellian *Nineteen Eighty-Four* Big Brother, it is not enough to understand or just to obey the legal and constitutional order.¹⁰ The people must also love it. Indeed, George Orwell’s *1984* was authoritarian dystopia, but in all constitutional orders the degree of adherence to normative ideologies and constitutional architecture is maintained not just by rational means. They are fostered and promoted also via instruments for establishment and preservation of emotional belongingness that are shaping the constitutional imaginaries of the community, the social groups, and the citizen. Hence, representation must not just be rationally plausible and practically useful. It must also produce adherence and affiliation maintained by sustainable constitutional imaginaries.

Indeed, there are many instantiations when representation is practiced in a purely rational way. It is used for promotion and protection of interests and for pragmatic influencing of policymaking. This has been the case of representation in both pre-modern and modern parliaments and representative bodies. Nevertheless, apart from and in parallel to this pragmatic, interest-based, and rational aspect there is also an emotional dimension of representation. It consists in the affectual discourse of the feeling of being represented, wanting to be represented, imagining ways of representation, and signifying them on the plain of the collective imaginaries. Interests of representation are mixed with feelings, emotions, and imaginaries of representation. Representation as a tool toward a pragmatic goal is paralleled by representation as an imaginary and representation as an emotional relation. Imaginaries of representation are emotionally loaded stories signified through a range of forms of symbolic-imaginary, visual, and performative constitutionalism. They give form to constitutional power realities and serve as emotional and imaginary proxies to relational pragmatics of representation condensed into signifiers of meaning that appeal to both individual and collective patterns of behavior.

Hence, constitutional phenomena are perceived, remembered, and shared between the people in terms of stories or narratives shaping through words, texts, and images constitutional myths and mythologies, normative ideologies and ideas, constitutional codes, and constitutional taboos as main forms of symbolic-imaginary constitutionalism.¹¹ In other words, the process of constitutional communication is in fact a process of semiotic signification of

9 See Dale Carnegie, *How to Win Friends and Influence People* (Pocket Books 1998).

10 See George Orwell, *1984* (Signet Classic 1961).

11 See Martin Belov, *Constitutional Semiotics: The Conceptual Foundations of a Constitutional Theory and Meta-Theory* (Hart Publishing 2022) 107–97.

meaning through forms of symbolic-imaginary, visual, and performative constitutionalism reflected in emotional constitutionalism beyond the official textual, normative-institutional, and rational constitutionalism.¹²

Emotions play a key role in shaping our understanding of the world and the constitutional order with its constitutional design and conceptual underpinning in particular. However, emotions *per se* need to be joined in clusters and to be at least partially institutionalized in constitutional texts and textures in order to be preserved, transmitted, and shared and to produce legally relevant throughput. Thus, they are building elements of a broader phenomenon that is defined as constitutional imaginary.¹³

The affectual aspect of representation and the normative beliefs in the process of representation and its different manifestations and projections in valid law and in socio-legal practices can be properly perceived through the concept of imaginaries of representation. These imaginaries are the durable attitudes – both rational and emotional – of the people (or different social strata or segments) toward representation as holistic concept and its specific forms.

Signification of constitutional meaning¹⁴ is also accomplished in a transtemporal manner. Preservation and translation of normative concepts, ideas, beliefs, and constitutional myths runs from the constitutional past through the constitutional present into the constitutional future. Thus, imaginaries, in order to sustain the test of time, must be emotionally appealing and rationally plausible also in a transgenerational manner.

2.2 *Representation, democracy, and representative democracy as objects of multinarrative symbolic-imaginary signification of meaning*

The proper exploring of imaginaries of representation requires the brief presentation of key concepts. They are the substance and target of signification in the collective constitutional imagination¹⁵ and thus are the core of constitutional imaginaries of representation. These are the concepts of representation, democratic representation, and representative democracy as a multilayered phenomenon.

There are four main aspects, layers, or discourses of representation in general and democratic representation in the context of representative democracy

12 Below, *Constitutional Semiotics* (n 11) 1–349.

13 More about constitutional imaginaries see Jiri Přibáň, ‘Constitutional Imaginaries and Legitimation: On Potentia, Potestas, and Auctoritas in Societal Constitutionalism’ (2018) 45(S1) *Journal of Law and Society* 30–51; Jiri Přibáň, *Constitutional Imaginaries. A Theory of European Societal Constitutionalism* (Routledge 2020) 1–251; Jan Komárek, ‘Political Economy in the European Constitutional Imaginary – Moving beyond Fiesole’ (*Verfassungsblog*, 4 September 2020) <<https://verfassungsblog.de/political-economy-in-the-european-constitutional-imaginary-moving-beyond-fiesole/>>.

14 See Below, *Constitutional Semiotics* (n 11) 1–349.

15 For the concept of constitutional imagination see Martin Loughlin, ‘The Constitutional Imagination’ (2015) 78(1) *Modern Law Review* 1–25; Oliviero Angelini, ‘Global Constitutionalism and Constitutional Imagination’ (2017) 6(3) *Global Constitutionalism* 359–76.

in particular. These are the normative-institutional, socio-legal, theoretical, and symbolic-imaginary aspects. The normative-institutional aspect concerns the constitutional design of representation and representative democracy. The socio-legal aspect frames representation and representative democracy as social and political practice. The theoretical aspect contains the theories of representation, part of which are also the theories of representative democracy. Last but not least, the imaginary aspect defines representation and representative democracy in terms of constitutional imaginaries and constitutional imagination. It is the last aspect that is the object of analysis in this chapter.

The imaginaries of representation are embedded mostly in the theoretical and socio-imaginary discourses. The normative-institutional discourse contains normative ideologies and ideas, constitutional myths and mythologies, constitutional taboos, and constitutional utopias provided by the authoritative speakers of the constitutionally framed sociopolitical community. They are interpreted by the constitutional and political theorists as non-official and non-authoritative speakers of the community that, however, massively shape both the rational and the emotional aspects of the imaginaries of representation. The socio-legal imaginary discourse contains the imaginaries of representation spread in cloud constitutionalism¹⁶ and the constitutional conscious, subconscious, and unconscious stretched between the imaginary and the real¹⁷ and shaping the constitutional make-believe. However, they are developed and practiced in the socio-legal discourse on the basis of the constitutional design in the normative-institutional discourse.

Hence, the imaginaries of representation are related to and embedded in a conceptual power grid composed of several key explanatory paradigms. They are broadly framed by the overall concept of constitutional imaginaries, allocated on the plain of symbolic-imaginary constitutionalism, explained and ordered by constitutional epistemology, constitutional semiotics and constitutional anthropology, and resulting in constitutional make-believe and constitutionalism between magic and deceit.¹⁸

To sum up, the imaginaries of representation are narratives that allow the people to imagine and shape their own representative shadow or reflection in the institutions of public power. This shadow or reflection is stretching between the ideal, the imaginary, and the real and projecting itself into the plains of the textual, visual, performative, emotional, and symbolic-imaginary constitutionalism.

Drawing imaginaries of representation resembles the building of sandcastles on the shores of constitutional imagination. This is due to the fact that

16 See Below, *Constitutional Semiotics* (n 11) and the following.

17 See Jacques Lacan, *Écrits* (WW Norton & Company 2007) 1–896; Jacques Lacan, *The Language of the Self* (Johns Hopkins UP 1956) 29–53; Cornelius Castoriadis, *The Imaginary Institution of Society* (Polity Press 1987) 160–65.

18 Gunter Frankenberg, *Comparative Constitutional Studies: Between Magic and Deceit* (Edward Elgar 2018) 63–66.

these imaginaries may endure for a very long time and then can be destroyed in a single strike in turning point situations such as Ackerman's 'constitutional moment'¹⁹ or Schmitt's '*Ernstfall*'.²⁰ Imaginaries of representation are sediments in the abyss of the time-space continuum, which are both stable and fragile, evolutionary and fertile with revolutionary potential. They contain and signify established meaning, but can also be hollowed and filled with novel substance. Thus, imaginaries of representation are also chameleonic phenomena.

3. Representative democracy – between history of ideas, normativity of patterns of socio-legal behavior, and the imaginary heritage of constitutional modernity

Representative democracy is the pillar of constitutional architecture of the later phases of Westphalian constitutionalism²¹ that is based on the normative ideologies of representation and democracy. Hence, representative democracy is conceptually embedded in the imaginaries of representation shaped in the course of constitutional modernity.

Representative democracy is a fundamental and complex phenomenon of constitutionalism. It is of pivotal importance for the constitutionally framed societies of the Global North since the 'long 19th century'.²² Detailed rational justification of representative democracy has been developed for centuries by political philosophers and constitutional scholars. It has produced an intertwined web of reasoning that was underlying the logic of government in Western modernity and was also transplanted to non-Western contexts in the context of the 20th and early 21st centuries. Nevertheless, it would not have been such a successful transplant – ideological, axiological, or institutional – if not paralleled by convincing imaginaries mastering collective beliefs. Hence, the necessity to explore the imaginaries of representation in historic, socio-legal, and constitutional semiotic perspective.

That is why this chapter explores representative democracy as a dynamic, complex, and multilayered concept that is stretched between the history of ideas, the normativity of patterns of socio-legal behavior, and the constitutional heritage of modernity. Hence, imaginaries of representation are explained as the emotional-affectual core of representation and democracy.

19 See Bruce Ackerman, *We the People: Foundations* (Harvard UP 1991) 266.

20 See Carl Schmitt, *Der Begriff des Politischen* (Duncker & Humblot 1932) 30.

21 For the concept of Westphalian constitutionalism see Martin Belov, 'Three Models for Ordering Constitutional Orders' (2022) XIII(2) *Pravni Zapisi* 361–87; Martin Belov, 'The Challenges to Westphalian Constitutional Geometry in the Age of Supranational Constitutionalism, Global Governance and Information Revolution' in Martin Belov (ed), *Global Constitutionalism and Its Challenges to Westphalian Constitutional Law* (Hart Publishing 2018) 13–55; Martin Belov, 'Constitutional Nationalism and Constitutional Globalism on the Edge of Westphalian and Post-Westphalian Constitutionalism: The Bulgarian Case' in Marianthi Kalyviotou (ed), *Essays in Honour of Kostas G Mavrias* (PN Sakkoulas 2022) vol. I, 221–51.

22 See Eric Hobsbawm, *The Age of Revolution: 1789–1848* (Vintage 1996) 1–368.

Moreover, representative democracy is exposed as one of the most visible and important forms of ‘constitutionalism between magic and deceit’.²³

Representative democracy is a product of Western modernity. It is the result of the creative mixture of two concepts, models, and ideals of political government – democracy and representation. They never existed as a joint phenomenon before the invention of representative democracy by modern political and social philosophy and their implementation in the sphere of constitutional governance by the modern constitutional theory.

In fact, representation and democracy were antipodes. Representation was an elitist concept applicable to religious communities and monarchic regimes,²⁴ whereas democracy was rather a political ideal close to a political and constitutional myth.²⁵

Democracy started its career in the history of political ideas exactly as a constitutional utopia that was pragmatically reduced to constitutional myth. Later it has been put in practice as an element of an ‘invented tradition’.²⁶ It was serving as both a bridge between the past and the future and as normative ideology. It has been transformed into a constitutional model with concrete institutional design only in the advanced phases of modernization through constitutionalization exactly through its merger with the concept of representation.

Thus, representative democracy is maybe one of the most important examples of what G. Frankenberg defines as ‘constitutionalism between magic and deceit’.²⁷ It was the result of a creative mixture of normative ideologies and constitutional mythologies that have different origins, axiologies, and pragmatics. Representation was initially a conservative and elitist concept used in the context of societies with radical non-egalitarianism – aristocratic, autocratic, and theistic regimes. It was a construct justifying the rule of monarchs, aristocrats, popes, and patriarchs. It was a tool for representation of class interest in the medieval assemblages of the privileged nobility.

In contrast, premodern ideals and versions of democracy were based on ideologies of radical egalitarianism, communitarian inclusion, and intense civic activism. Democracy was an exotic form of self-government practiced in historically or geographically remote destinations such as ancient Athens, the Alpine cantons of Switzerland, or the radical Protestant communities in the northeast colonies of the British Empire that later became part of the USA. While representation was a widespread model and praxis, democracy was ‘invented tradition’ that needed massive promotion through forms of

23 See Frankenberg (n 18).

24 See Hofmann (n 2); Otto Brunner, ‘Vom Gottesgnadentum zum monarchischen Prinzip’ in Otto Brunner (Hg), *Neue Wege in der Verfassungs- und Sozialgeschichte* (Vandenhoeck u Ruprecht 1968) 160–86.

25 See Monica Brito Vieira and David Runciman, *Representation* (Polity Press 2008) 29–63.

26 For the concept of ‘invented tradition’ see Eric Hobsbawm and Terence Ranger (eds), *The Invention of Tradition* (CUP 2012) 1–324.

27 See Frankenberg (n 18).

visual, emotional, and symbolic-imaginary constitutionalism in the course of modernity.²⁸

Representative democracy is an element of the institutional design of modern constitutionalism. Thus, it has a normative-institutional aspect. It is a well-established practice with vast history in many societies. Hence, it is a socio-legal, historical, and empirical phenomenon. It is part of the constitutional heritage of Western modernity. Representative democracy has been transplanted globally in the course of different waves of modernization through constitutionalization and democratization.

Nevertheless, representative democracy also has a symbolic-imaginary dimension. This dimension can be coded and decoded, constructed, deconstructed, and reconstructed through the means of constitutional epistemology, anthropology, semantics, and semiotics. This is due to the fact that representative democracy is embedded in a set of constitutional myths, normative ideologies, and constitutional utopias. These forms of symbolic-imaginary constitutionalism became interrelated in the course of the development of constitutionalism as a broad process of conceptual and institutional amalgamation including legal, socio-legal, and imaginary dimensions.

The normative imaginaries of representative democracy were a result of different political philosophies, constitutional traditions, and local or regional experiences. Nevertheless, at a certain point of no return, allocated in the late 19th century, they were amalgamated into a semi-coherent project for modernization through the constitutionalization of power. This project, while claiming to be rational, logical, and systematic, was in fact largely dependent upon collective emotions, shared beliefs, and forms of socio-legal imagination spread in the community.

The constitutional imaginaries of representation, democracy, and representative democracy had a huge imprint on normative ideologies of modern constitutionalism. They were institutionalized in written and practiced constitutional law. Last but not least, they were preserved in the common constitutional anthropology and mentality of the constitutionally framed sociopolitical community in the form of ‘cloud constitutionalism.’²⁹

Representative democracy was conceptualized, designed, and imagined by the political philosophy and constitutional theory of early modernity as a system for the achievement of the common good through the common will. The parliament has been frequently imagined as a laboratory for the extraction and distillation of the common good as the normative standard of political behavior and the ultimate political goal through the use of the common will as an instrument for its achievement.

28 See also the excellent research of Nadia Urbinati on the tension between representation and democracy in light of the fallacies of the key authors in modern political philosophy and constitutional theory. See Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago UP 2006) 1–326.

29 See Below, *Constitutional Semiotics* (n 11) 289–96.

The integrative force of the parliament as an institution has been realized in early modernity. This is the reason why in some countries (e.g., England, France, and Spain) medieval aristocratic representative bodies have been transformed into forums for national representation, while in most of the other states where such pre-modern institutions did not exist they were created via transplantation and constitutional engineering. This was the formative age of the constitutional imaginaries of parliamentarism. They were the product of the ingenuity of the political philosophy and constitutional theory of Western modernity, many of which were taking the form of ‘invented tradition’.

One of the remarkable advantages of parliaments was their capacity as platforms for representation and integration of interests. The parliaments were the most appropriate form for durable access to political power of the most influential sociopolitical players. Moreover, parliaments allowed for structured representation of interests and for their articulation in a deliberative, formal-procedural, rational, and peaceful manner. This structured representation with huge sociopolitical integrative force has been grounded on several autonomous but also interrelated constitutional imaginaries – mostly normative ideologies. They were the intellectual pillars of a new secular religion – the belief in parliamentarism as a source of sociopolitical eudemonia.

4. Key imaginaries of representative democracy in constitutional modernity

4.1 General features of the imaginaries of representative democracy

Representative democracy as norm and fact, as constitutional model and socio-legal practice, has been shaped, formed, and influenced by a range of constitutional imaginaries. These imaginaries do not form an uncontroversial system. Instead, they have been adjusted to each other in the course of time and practice for collective imagining the constitutional past, constitutional present, and constitutional future. Thus, after centuries of joint application and coexistence, they are felt, imagined, and practiced as part of conceptual unity with ideological, mythological, and utopian features. This imaginary unit forming the constitutional imaginary landscape of democratic representation serves as an imaginary normative framework for representative democracy as institutional model embedded in cloud constitutionalism and practiced on the basis of shared beliefs.

The imaginaries of representation and democracy that were merged into joint imaginaries of representative democracy in the course of the ‘long 19th century’³⁰ and appeared to be stabilized during the ‘short 20th century’³¹ were products of different schools of thought, political philosophies, and historic

30 Hobsbawm, *The Age of Revolution* (n 21) 1–368.

31 Eric Hobsbawm, *Age of Extremes: The Short Twentieth Century 1914–1991* (Time Warner Books 1995) 1–627.

experiences. They were produced in different times by authors with rather divergent viewpoints on the best models of state, society, and the people and with different ideas of how the bulk of sociopolitical interests must be reflected in the state institutions and transformed into a state policy.

In other words, the imaginaries of representative democracy were not painted with a single stroke of the brush. Instead, they form a collective multilayered landscape – the constitutional-imaginary landscape of representative democracy framed by multitude of normative ideologies of Western modernity. Constitutional imaginaries of representative democracy were polyphony, which was gradually transformed into a symphony in accordance with the political imperatives of Western modernity. In that process of amalgamation, the controversies were suppressed and the inner logical, conceptual, and pragmatic contradictions were pacified through reconciliatory imaginaries and long practice of constitutional ‘make-believe’.

As a result, representative democracy has been stretched between democratic and elitist, liberal and republican, technocratic and populist imaginaries of representation. Nevertheless, the predominant version of representative democracy is rooted in a mixed liberal democratic constitutional imaginary, whereas the populist, technocratic, and republican imaginaries played a more or less marginal role. The closest constitutional model behind this mainstream liberal democratic imaginary of representation is the concept of polyarchy suggested by R. Dahl.³² It is the demise of liberal democracy in the age of constitutional polycrisis and constitutional polytransition at the beginning of the 21st century that gave rise to non-democratic and anti-democratic imaginaries – mostly elitist, populist, and technocratic ones.

In addition, these imaginaries were a bulky category, themselves represented by various semiotic means in the planes of symbolic-imaginary, visual, and performative constitutionalism,³³ triggering divergent constitutional emotions³⁴ and beliefs. Representative democracy has been imagined as a limited, responsible, and responsive government by discussion.³⁵ These are also the key normative ideologies framed by the overarching normative ideology of representative democracy. These normative ideologies can be partially autonomous, but have been intermingled in a joint composite concept by constitutional

32 See Robert Dahl, *Polyarchy* (Yale UP 1971) 1–257.

33 See Below, *Constitutional Semiotics* (n 11) 107–241.

34 See Kathryn Abrams and Hila Keren, ‘Who’s Afraid of Law and the Emotions?’ (2010) 94(6) *Minnesota Law Review* 1997–2074, SSRN <<https://ssrn.com/abstract=2434251>>; Andras Sajo, ‘Emotions in Constitutional Institutions’ (2016) 8(1) *Emotion Review* 44–49; Andras Sajo, ‘Emotions in Constitutional Design’ (2010) 8(3) *I•CON* 354–84; Susan Bandes and others (eds), *Research Handbook on Law and Emotion* (Edward Elgar 2021) 1–640; Amalia Amaya and Maximilian Del Mar (eds), *Virtue, Emotion and Imagination in Law and Legal Reasoning* (Hart Publishing 2020) 1–275.

35 See Georgi Bliznashki, *Principles of Parliamentary Government* (U of Sofia ‘St. Kliment Ohridski’ P 2010) 1–262 (in Bulgarian).

theory and political philosophy despite the fact that they can be even contradictory and altogether functioning not without tension.

Representative democratic imaginaries contain elements related to imaginaries of representation and imaginaries of democracy that produce joint imaginaries of representative democracy. They may also refer to the normative ideologies of parliamentarism as one of the widely implemented forms of representative government. The normative ideologies of parliamentarism were creatively mixed by the constitutional theory of the 20th and 21st centuries. Parliamentarism has been coined as responsive, responsible, limited, and discursive government.³⁶ This is despite the fact that the responsiveness of government makes representative democracy prone to populist (mis)use, the liberal concepts of limited government and responsible government contradicts the belief in the omnipotence of the ‘secular God’ – the nation as a sovereign, while the discourse ethics utopia – the representative democracy as a government by discussion – clashes with the factual normativity of power politics and *Realpolitik*.

Hence, there are several constitutional imaginaries supporting representative democracy that are both mutually reinforcing and in tension with each other. These imaginaries were products of the acceleration of the just mentioned normative ideologies into democratic-sovereignist, liberal, representative, rationalist, utilitarian, and discursive ethics utopias existing separately or much more frequently in a form of imaginary mixture. The most influential constitutional imaginaries of representative government and parliamentarism are the imaginary of the Parliament as the temple of the nation being the secular God of modernity; the imaginary of the parliamentary government as a rational, logical, and systematic chess board; the imaginary of the Parliament as a utilitarian rational stock exchange; the imaginary of the Parliament as a mirror of the nation; and the imaginary of the Parliament as a national agora.

4.2. *The imaginary of the Parliament as the temple of the nation being the secular god of modernity*

Let’s start with the first imaginary – the imaginary of the Parliament as the temple and the altar of the ultimate secular God – the nation. This secular God, with its different conceptual versions shaped by the constitutional and political theory, the constitutional history, constitutional anthropology, etc., possesses ultimate, supreme, demanding, and imposing common will capable of detecting and mastering an objective, absolute, and holistic common good. This imaginary aims at sustaining a nationalist-parliamentary utopia.

Hence, the first group of imaginaries of representation must secure the imaginary, aspirational, and emotional power of nationalism and parliamentarism as key ideologies of Western and especially of European modernity that

36 Bliznashki, *Principles of Parliamentary Government* (n 35).

have been developed in the course of the 'long 19th' and the 'short 20th century'. In fact, the imaginary of the Parliament as the temple and the altar of the nation has been of huge political importance, much more in the course of the 'long 19th' than in the 'short 20th century'. This is due to the fact that the ideological combat for the hearts and minds of the people against the '*Ancien régime*' with its monarchist and religious imaginaries and conservative, pre-constitutional, feudal-aristocratic, and religiously inspired normative ideologies has happened most intensely in that period. Subsequently, the 20th century was already time for regional and then global expansion of the new status quo of republican nationalism and parliamentarism later on shaped as liberal representative democracy.

The 'secular God' to which the Parliament serves as temple and altar can differ as well. This can be the '*la nation*' or '*das Volk*'. The nation ('*la nation*') may be defined in historic but also in republican-activist terms as community of beliefs capable of collective will (*volonté générale*) and collective action in pursuit of the common good. This is a community of people sharing a common political project. Alternatively, '*das Volk*' is more a community of destiny and less a community of political beliefs. It is an organic, historic, and usually heroic entity that, similarly to the Hegelian *Weltgeist*,³⁷ takes different manifestations in the course of its traveling throughout history. Nevertheless, it remains ontologically, axiologically, and teleologically unified and capable of holistic representation.

This is the nationalist-representative utopia sustained by parliamentary-representative imaginaries. These imaginaries are naturally embedded in nationalism as political ideology and republicanism as constitutional ideology and form of governance, although to an extent, paradoxically, they are not irreconcilable with a monarchical form of governance.

4.3 The imaginary of the parliamentary government as a rational, logical, and systematic chess board

The second constitutional imaginary of modern representative democracy is the imaginary of the parliamentary government as a rational, logical, and systematic chess board allowing for a predictable and perfected system of checks capable of sustaining limited, responsible, and rational government. This imaginary is the pillar of a liberal utopia. Representation is imagined as a pillar of the rational construction of the constitutional powerhouse. It is a tool for the production of order out of disorder. Limitation is in fact empowerment serving the ultimate aim of preservation of the rules of the game.

Game metaphors are part of this imaginary. They are produced by rational choice, public choice, and game theories being themselves the offspring of rationalism and institutionalism. Similar to a chess play, the power grid of

37 See Georg WF Hegel, *Phenomenology of Spirit* (OUP 1977) 1–640.

representation is stable, predetermined, rationally constructed on the basis of enduring logic. Thus, the players – both the represented and the representatives – must simply follow the logic and obey the rules in order to achieve systemic equilibrium. Hence, the imaginary of the constitutional chess board serves limited government and ultimately produces constitutional autopoiesis.³⁸

This liberal imaginary is mixed with rationalist, institutionalist, and system theory utopias. It is a clear example of the emotional-imaginary bias of hyper-rationalism. It demonstrates the perils of the institutionalist excesses and the rationalist entrapment of constitutional modernity.³⁹ The reasonableness of public action; the rational modality of governance; the systematic character of the constitutional order, the complexity of which is reduced to rules and procedures; the predictability of the choices the constitutional actors and veto players⁴⁰ make, and their subsumption into a quasi-mathematical calculus are some of the key elements of the ‘chess-board’ imaginary of representative democracy.

Clearly, the ‘chess-board’ imaginary of representative democracy has many deficiencies. Symbolically, it seems capable of explaining symmetric representative orders based on biparty systems, but not asymmetric and pluralist ones characterized by multiparty systems. The ‘chess-board’ imaginary focuses on rationalist utopia and on the understanding of the constitution as a limitation to power and restraint to veto players. Thus, it ignores the inclusive, aspirational, and volitional aspects of representation enabling engagement beyond pure restraint. The rationalist overburdening of a systematic order is not permissive for detection of representational games beyond the system of valid law with their emotional, affective, and imaginary power.

4.4 *The imaginary of the Parliament as a utilitarian rational stock exchange*

The third imaginary conceives the Parliament as a utilitarian stock exchange where bargaining is the main modus for decision-making. It is based on a utilitarian constitutional utopia. In certain ways, it is similar to the liberal-rationalist ‘chess-board’ imaginary in its emphasis on the rational calculus of the political game and in its perception of constitutional politics as purely a rational, logical, systematic, and quasi-mathematical enterprise. However, it differs from it in one important aspect. The stock exchange and marketplace imaginary puts the emphasis on interests, bargaining, and utility instead of rules perceived as a neutral and interest-detached normative grid. Hence, while the chess-board imaginary accentuates restraint, neutrality, and maintenance of order, the stock

38 See Gunter Teubner and Diana Göbel, *Critical Theory and Legal Autopoiesis: The Case for Societal Constitutionalism* (Manchester UP 2019) 1–408.

39 See Belov, *Constitutional Semiotics* (n 11) 49–55.

40 See George Tsebelis, *Veto Players. How Political Institutions Work* (Russell Sage Foundation, Princeton UP 2002).

exchange and marketplace imaginary allows for imagining constitutionalism as a melting pot of interests and aspirations for power and benefit maximization.

In this context the Parliament is imagined as a marketplace where national, subnational (local and regional), and since the second half of the 20th century also international and supranational interests can be reconciled. Moreover, the national interest is balanced with and against party political, lobbyist, and other sector-specific interests. This understanding rests upon the almost axiomatic belief in the ultimate power of human reason conceived as an all-powerful epistemic and ordering device. The belief in rational and reasonable constitutional, legal, and political order is intertwined with the belief in the interests as the main driving force of constitutional politics and strategic and tactical policymaking. Thus, representative democracy is imagined mainly as a scheme for rational interest maximization, adjustment, and bargaining. This is a rationalist-utilitarian utopia shaped through imaginaries of the Parliament as an interest powerhouse maximizing the most benefits for most of the people.

4.5 The imaginary of the Parliament as a mirror of the nation

The fourth imaginary is the imaginary of the Parliament as a mirror of the nation. It is based on the normative belief in procedural and input legitimacy⁴¹ and on trust in the achievability of unity in diversity.⁴² To an extent, paradoxically, this imaginary can serve both nationalist and communitarian-multicultural utopias. The Parliament can be conceived as a mirror of the unified national society organized in a liberal-republican way or as a mirror of the pluralist and multicultural society structured in a communitarian way.

Indeed, initially the Parliament was conceived as the mirror of the nation as a volitional and homogeneous transtemporal community of destiny. It has to serve as an institutional reflection of the national capacity to mobilize, organize, and represent the people as a source of legitimacy of the state power in the course of the reformulation of the state in modern terms as territorial, national, constitutional, parliamentary, and democratic entity. Thus, the mirror imaginary has been powered by the ideals of the revolutionary world at the beginning of the ‘long 19th century’ and was intended as justification for the promotion of constitutional nationalism. Later on, however, the representative maxima ‘unity in diversity’ rephrased in terms of the mirror metaphor and imaginary has been put in practice also in the context of constitutional multiculturalism for shaping consociational democracies.

The Parliament as a mirror of the nation is in fact a complex and composite imaginary. It includes the metaphor of two worlds – one real and one

41 For the input legitimacy see Philip Kiiver, *The National Parliaments in the European Union: A Critical View on EU Constitution-Building* (Kluwer Law International 2006) 95.

42 See Gregory Conti, *Parliament the Mirror of the Nation: Representation, Deliberation, and Democracy in Victorian Britain* (CUP 2019).

imaginary – interrelated by the interplay of prototype and shadow, original and imprint. Both the mirror and the nation are imaginaries. Thus, we are confronted with the phenomenon of double signification of meaning. The citizens are first packed, framed, and imagined as a community that possesses common will and is capable of mastering its own destiny. Thus, the nation is usually imagined as a ‘community of faith’, ‘community of origin’, and ‘identitarian community’. Then, the nation is represented in its political replica, imprint, or shadow – the political representation in the Parliament.

Hence, there are at least two phases of self-identification employed in the mirror metaphor. These are, first, the self-identification of the people with the nation as transgenerational and meta-personal project and second, the identification of the nation with its clear, proper, quasi-automatic replication through representation in the Parliament. Thus, the citizens are socially represented by the nation and legally represented by the parliament as national representative institution.

The mirror metaphor is based, as all constitutional imaginaries, on a mixture of rationality and magic.⁴³ The magic is multilayered. It consists, first, in the belief of the parallel coexistence of the people as a social fact and the nation as a normative concept that imposes new political shape and brings additional capabilities to the people as an assemblage of citizens.⁴⁴ Second, the Parliament is supposed to reflect both the people in singular and the people in plural. In other words, it must represent the interests of the single person, the most relevant social groups, and the nation as holistic and fully fledged coherent community capable of joint action.

Thus, the imaginary of the Parliament as a mirror is composed of the imaginaries of the mirror as pure reflection, the mirror as a transformative lens, and the mirror as a crack in reality serving as a channel for transition to an imagined reality – the realm of the secular God (the nation) ruling through common will for the sake of the achievement of the common good.

The mirror metaphor, when intertwined with imaginaries of sovereignty, serves as justification for the constitutional imaginaries of sovereigntist nationalism. During most of its career in constitutional modernity, representation has been mostly a sovereigntist concept. Sovereigntist representation was mostly structured around the principles of national, popular, and parliamentary sovereignty. Sovereigntist imaginaries of representation varied from authoritarian visions of Leviathan, theistic, and monarchic representation to oligarchic or democratic visions of representation based on national, popular, and parliamentary sovereignty and democratic representation.

43 See Frankenberg (n 18).

44 See Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton UP 2008) 1–512.

4.6 *The imaginary of the Parliament as a national agora*

The fifth imaginary is the imaginary of the Parliament as a national agora. It conceptualizes the Parliament as a forum of national deliberation. The national agora is imagined as a representative, inclusive, enlightened, and deliberative locus for staging the national debate. It is allowing for the communicative inclusion of the sociopolitical forces and for the discursive construction of a common public meaning negotiated via never-ending processes of mature and reasonable political communication.⁴⁵

Hence, the imaginary of the Parliament as a national agora is a deliberative democratic utopia. It is grounded on the normative belief in the possibility for free and fair deliberation that is reasonable, efficient, and inclusive. The requirement for reasonableness and efficiency is similar to several imaginaries of democratic representation that have been explored previously. That is why it is exactly the belief in the capacity of communicative action to produce inclusive and thus representative debate, which is the essence of this deliberative democratic imaginary. This debate is supposed to produce decisions that shall be accepted by the constitutionally framed socio-legal community due to their input legitimacy.

4.7 *The imaginaries of democratic representation in the overall scheme of constitutional imaginaries*

Finally, it has to be mentioned that the constitutional imaginaries of representation are embedded in a broader imaginary framework. It consists of the imaginaries of the state as territorial container, the imaginary of the state as pyramid-like hierarchical order, the imaginaries of sovereignty as the political source of normative hierarchy, and last but not least, the imaginary or rather normative belief that the constitution can be a rational, logical, systematic, and written plan for ultimate ordering of the political order.

The imaginary of the state as territorial container sets the spatial framework of representation. It determines representative democracy as territorial democracy and follows its imperative that democracy requires closure.⁴⁶ All aforementioned imaginaries of representation – the imaginary of the Parliament as the temple of the nation, the imaginary of the parliamentary government as a chess board, the imaginary of the Parliament as a stock exchange, the imaginary of the Parliament as a mirror of the nation, and the imaginary of the

45 See Jurgen Habermas, *Theorie des kommunikativen Handelns Band I: Handlungsrationality und gesellschaftliche Rationalisierung* (Suhrkamp 1995); Jurgen Habermas, *Theorie des kommunikativen Handelns Band II: Zur Kritik der funktionalistischen Vernunft* (Suhrkamp 1995).

46 Seyla Benhabib, *The Rights of Others: Aliens, Citizens and Residents* (CUP 2004) 266; David Jacobson, *Rights across Borders: Immigration and the Decline of Citizenship* (Johns Hopkins UP 1997).

Parliament as a national agora – follow that territorial logic of representation. Indeed, some of them might be adapted to the post-national, post-territorial, aterritorial, and global constitutionalism. However, until now, they have been practiced entirely in the context of territorial democracy imagining the state as closed or much less frequently as open territorial container.

The hierarchical and pyramidal structure of the legal and also of the constitutional order is one of the most durable and fundamental imaginaries of modern constitutionalism. It has a profound impact on the constitutional geometry of Westphalian constitutionalism in general and its ordering and explanatory schemes related to the sources of law (including the constitutional supremacy), the institutions of the executive and judicial power, the bicameralism, etc.⁴⁷ It also influences the structure of representation justifying the distinction between representatives and represented. Nevertheless, it has less relevance for democratic representation since it is based not on the principle of supremacy but on the principle of identity. In other words, representative democracy, apart from the ontological role of popular or national sovereignty as source of the constitutional order, is a binary concept of political self-identification based on symmetry instead of hierarchy.

The impact of the imaginary of the constitution as a rational, logical, systematic, and written plan for ultimate ordering of the political order on the imaginaries of representation has already been discussed. It has been mentioned that it is of special relevance for the imaginaries of representation based on excessive rationalism. These are mostly the imaginary of the parliamentary government as a chess board and the imaginary of the Parliament as a stock exchange.

Consequently, imaginaries of democratic representation have twofold specifics. They are focused on the Parliament as a national representative institution. In that regard, they are mostly imaginaries of parliamentary representation. Moreover, they are allocated in a network of constitutional imaginaries that shape their overall outlook and set their general conceptual framework. Due to space constraints I am not going to explore the imaginaries of representation related to the head of state. In fact, monarchic representation has been briefly mentioned in the context of the outline of the history of the idea of representation. In the context of transplantation of monarchic imaginaries in the republican context and their adjustment to the republican constitutional axiology and its institutional order range of imaginaries related to the president of the republic have also been developed. These imaginaries, e.g., the imaginary of the president as supreme leader, the imaginary of the president as republican monarch, the imaginary of the president as neutral moderator,⁴⁸

47 See Belov, *Constitutional Semiotics* (n 11) 241–315.

48 See, e.g., Georgi Bliznashki, *Parliamentary Government in Bulgaria* (U of Sofia ‘St. Kliment Ohridski’ P 2009) 59–81 (in Bulgarian).

and the imaginary of the president as state notary,⁴⁹ deserve special attention and cannot be developed in detail in this chapter.

5. Imaginarities of representation beyond representative democracy: populist, elitist, and technocratic imaginaries of representation

5.1 Non-democratic imaginaries of representation in the context of constitutional polycrisis and constitutional polytransition

Representation has not always been democratic. In fact, democratic representation is an invention of Western modernity. It was properly functioning only in a relatively limited number of states and short historic periods under specific socio-legal circumstances. Thus, from a broader historic and geopolitical perspective, democratic representation seems to be the exception rather than the norm. In the pre-constitutional period – the time before the entry into constitutional modernity, which has lasted in some countries until the end of the 18th century, whereas in others it continued until the end of the 19th and the beginning of the 20th century – representation was an elitist, aristocratic, and even autocratic concept. This phenomenon has already been discussed in the previous parts of this chapter. Moreover, there are multiple signs of a possible demise of democratic representation producing implosion, deconstruction, and flux of representative democracy as a constitutional model of the Global North that has been exported and transplanted also elsewhere.

One of the biggest challenges of our time is whether we can preserve the heritage of democratic representation not only as a form and procedure but also as content and substance. We have to admit that representative democracy has been a mixture of rational and emotional elements possessing charismatic, rationalist, technocratic, and traditionalist features embedded in the context of mass democracy. We have to face also the divorce between democratic and technocratic, representative and democratic, charismatic and rational elements of representative democracy producing increasing mismatch between representation and democracy.

Hence, similarly to the rule of law and democracy, one can expect the emergence of ‘thin’ and ‘thick’ versions of representation. Indeed, all three constitutional principles, which are also pillars of modern liberal-democratic constitutionalism, are experiencing huge pressure and are gradually dismantled in the context of globalized, technocratic, and post-democratic post-modernity. In that regard, we witness processes of deconstruction, fragmentation, and crisis of these principles (being also normative ideologies of constitutionalism)

49 See, e.g., Roland Lhotta, ‘Der Bundespräsident als “Außerparlamentarische Opposition”? Überlegungen zur Gewaltenteilung und Typologisierung des parlamentarischen Regierungssystems’ (2008) 39(1) *Zeitschrift für Parlamentsfragen* 119–33.

that are producing rule of law, democracy, and representation in flux. They jointly lead to constitutionalism in a state of flux.⁵⁰

The structural transformations of representation raise the question whether we can still speak of representative democracy or if representation will be again detached from democracy in post-modern, post-national, post-territorial, and post-democratic contexts. Another issue is whether such detachment will lead to a situation similar to the pre-modern forms of aristocratic, elitist, and theocratic representation or if we will witness new forms of post-democratic representation. Very important, but less exposed and explored, is the problem of the elements of symbolic-imaginary constitutionalism (normative ideologies, mythologies, utopias, etc.) that will shape the forms of post-democratic representation from a symbolic-imaginary perspective. It is important to analyze whether post-democratic representation shall be rooted in old or new autocratic ideologies or if new forms of constitutional imaginaries more adequate to the global algorithmic technocracy shall arise and be established. These are just a few of the most important topics this part of the chapter shall address.

There are two main factors for the implosion of the constitutional imaginaries of representative democracy. They are mutually related and produce a joint negative impact on Westphalian symbolic-imaginary constitutionalism. Thus, they are paving the way to post-Westphalian and neo-Westphalian constitutional imaginaries of post-democratic representation.⁵¹

The first factor is the deconstruction of the bulk of representative democratic constitutional imaginaries and the destruction of their appearance as a system that was created in the course of modernity. Constitutional polycrisis and constitutional polytransition are swirling these constitutional imaginaries. They are exposing the inner controversies that have always existed but were suppressed and remedied by rational, emotional, and symbolic-imaginary means producing their acceptance during late modernity.

Hence, we are currently facing imaginary disorder and dare need for reshaping the imaginary construct of constitutional post-modernity. The holistic visions of representation, democracy, and representative democracy are transformed into narratives.⁵² The narrative character of post-modern constitutional imaginaries produces fundamental uncertainty. It questions the ability of the constitutional order to produce viable and convincing imprints in the collective imagination of the people creating holistic and normative visions of truth, e.g., imaginaries related to representative democracy.

50 See Belov, *Rule of Law in Crisis* (n 3).

51 For more about Westphalian, post-Westphalian, and neo-Westphalian constitutionalism, see Belov, 'Three Models for Ordering Constitutional Orders' (n 21) 361–87; Belov, 'The Challenges to Westphalian Constitutional Geometry' (n 21) 13–55; Belov, 'Constitutional Nationalism and Constitutional Globalism' (n 21) vol I, 221–51.

52 For constitutional law as narrative and for the constitutional narratives see Belov, *Constitutional Semiotics* (n 11) 80–93.

The second factor is the emergence of new constitutional imaginaries deriving their normative, formative, and convincing power from the context of post-modernity and post-truth in the post-territorial and post-national condition of the globalized constitutional disorder and the world risk society.⁵³ From a system theory viewpoint, the new constitutional imaginaries in general and those related to the representation in particular can be perceived also as a response to the ongoing fourth technological revolution that is massively and profoundly reshaping our legal, political, social, and moral orders.

There are three main groups of post-representative democracy imaginaries. They can be defined as populist imaginaries, elitist imaginaries, and technocratic imaginaries. Some of them are new, while others have been also used during constitutional modernity in parallel with the traditional imaginaries of representation. There are also imaginaries that were pre-modern but are being recycled, reconstructed, and put in practice anew. Finally, there are also genuinely post-modern imaginaries triggered by the determinants of the current constitutional moment⁵⁴ – globalization, technological revolution, post-modern situation, rise of elitism and technocracy, etc. Hence, the post-democratic imaginaries of representation are not a coherent system of forms of symbolic-imaginary constitutionalism. Instead, they are a divergent group of forms of collective imagination jointly or separately challenging the imaginaries of the modern liberal-democratic constitutionalism and its institutional framework – the representative democracy.

5.2 Populist imaginaries of representation

Populism is, in principle, detrimental for true, well-established, and well-functioning representative democracy. Nevertheless, populism is also frequently part of representative democracy. Populist messages to the people are delivered by both extreme and mainstream political parties and players. The principle of responsiveness of government serves as a gateway for populism. Thus, populist imaginaries are, up to a certain extent, part of representative democracy. Hence, the problem of populism is a matter of degree, extent, and scale. It may be supportive of legitimate government based on responsiveness and output legitimacy. However, it may also be destructive for the democratic framework based on rule of law and toxic for the maintenance of pluralist society based on toleration, reasonableness, and responsibility.

There have been important historic periods when populism and its supportive constitutional imaginaries were expanding beyond the scale permitting their coexistence with representative democracy. Clear examples are the inter-war period and the first decades of the 21st century. This means that populism has always been part of the political game. Moreover, it has been practiced

53 See Ulrich Beck, *World Risk Society* (Wiley 1999) 1–192.

54 See Ackerman (n 19).

also by mainstream politicians in times of constitutional cohesion and peace. However, it expands in times of crisis and transition.

To a certain extent, populism is a side effect of the immune reaction against oligarchy, elitism, and technocracy. Thus, the paradoxical simultaneous rise of populist imaginaries, elitist imaginaries, and technocratic imaginaries can be explained. This is due to the fact that they are all an offspring of the same problem or disease – the deficiency, crisis, and even dismantling of representative democracy and the key fundamental consensuses that form its core. These are the consensus for the establishment of representative democracy combining representation with democracy, liberal democracy combining liberalism with democracy, and capitalist democracy combining market economy with welfare state. The deconstruction of these fundamental aspects of the constitutional consensus in the age of neoliberal globalization and fourth technological revolution produces deep discontent manifested also through post-representative democracy constitutional imaginaries.

Populist imaginaries have been widely explored in recent years in constitutional theory, political theory, and comparative constitutionalism.⁵⁵ The reason is the massive rise of populism as socio-political, legal, constitutional, and imaginary phenomenon. Apart from the debates on details and implications in various contexts there is an overall broad consensus regarding the general outlook and key features of populist constitutionalism and the populist constitutional imaginaries. Thus, my analysis will build upon the achievements of this research, looking at it from the prism and perspective of the populist imaginaries of representation.

The most important populist imaginaries can be structured into four main types. They can be defined as: coherent and holistic community imaginaries; identitarian, predestined, and charismatic leadership imaginaries; separative imaginaries; and salvation imaginaries. These imaginaries are usually practiced jointly and altogether produce a detrimental effect on representative democracy and its supportive constitutional imaginaries. Nevertheless, they have also independent content and meaning and are sometimes used also separately.

Coherent and holistic community imaginary is one of the most widely spread populist imaginaries. It suggests the existence of a coherent, cohesive, and holistic social group. This group has a common destiny, shared memories, and constitutional past, present, and future. The community has a common good and is traveling throughout history in pursuit of a common future. This community of destiny is typically defined as a nation. It is united by a common identity and is governed by exclusively majoritarian schemes of decision-making.

The coherent and holistic community imaginary seems to be applicable also to representative democracy. The existence of a nation and a community as the social substance of the state and its constitutional form is part of the concept of representative democracy, as previously mentioned in this chapter. What

55 See the literature cited earlier.

makes this imaginary populist-representative instead of representative democratic is the claim that the community of destiny is unchangeable throughout history, holistic, and representable only in an identitarian way. The will of this community cannot be fragmented into a range of interests that shall be subsequently represented in the Parliament and the other representative institutions. Instead, the will of the nation can be expressed and represented only in a majoritarian-identitarian way as single, indivisible, predetermined, and non-transferrable.

The community is substantially coherent, volitionally unified, and politically mobilized. Its will is indivisible the same way its common good is predetermined, quasi-eternal, static, and supreme. Hence, the ‘community of destiny’ layer of this imaginary is supplemented by other layers of communitarian-populist imagination. They include: the imaginary of the volitional community, the imaginary of the holistic community, and the imaginary of ontological community. Thus, the holistic-identitarian community is serving as a ‘time capsule’ through which its members travel from the constitutional past, through the constitutional present, to the constitutional future.

The second populist imaginary is the imaginary of the strong, identitarian, and charismatic leadership.⁵⁶ It suggests that the group interests and identity are expressed by a leader. This leader can be democratically elected, and his support may stem from immediate means of input legitimacy. Nevertheless, the leader may derive his position from other sources of power that are incompatible with even formal democracy but sustain non-democratic forms of representation. The leader can be appointed by theocratic aristocracy (e.g., the medieval forms of justification of power and some of their contemporary versions practiced, e.g., in Iran or the Vatican state). He can also be imposed by revolutionary elites being imagined as leader of both the revolutionary vanguard and the people (e.g., the case of Castro’s Cuba and other charismatic dictatorships).

Thus, the imaginary of the strong charismatic leadership usually builds upon the imaginary of the coherent, holistic, integrated, and identitarian community. Both imaginaries are frequently mutually related and interdependent. This is due to the fact that the usually practiced way for representation of such coherent community of destiny is through a supreme leader. The combination of the two imaginaries aims at producing the belief that the leader is both democratic and autocratic. He is democratic because he is elected by the members of the community or stems from the will of an ultimate authority – religious or secular, e.g., revolutionary. Thus, the supreme leader is the focal point and climax of democracy-as-identity, democracy-as-natural God-like community, or democracy-as-revolution. At the same time, the leader is also autocratic because he has the ultimate choice over political decision-making on behalf of the constitutionally framed sociopolitical community. Thus, the

56 See, e.g., Cas Mudde and Cristóbal Rovira Kaltwasser, ‘The Populist Leader’ in *Populism: A Very Short Introduction* (Oxford Academic 2017).

identitarian politics is a product of the majoritarian will of the community expressed through its supreme leader. Conceptually, this construction can be justified through authoritarian theories of political existentialism, exceptionalism, and realpolitik. Clearest examples are Hobbes's *Leviathan*⁵⁷ and the theories of Niccolò Machiavelli⁵⁸ and Carl Schmitt.⁵⁹

The peculiarity of this combined populist-identitarian imaginary is that the leader is both within and beyond the community. He is legally and formally embedded in constitutional procedures. Thus, he is enjoying rational⁶⁰ and input legitimacy, if they are generally stemming from at least formal democracy.

Such strategies for legitimation of the identitarian leader are necessary for the constitutional strand of features in the imaginary. However, this is not sufficient to feed the emotional-populist strand of the imaginary. In order to support also this rather metaphysical perception, the leader must be both part of the community, 'one of us', naturally embedded in the common origin and destiny of the nation, but also has to stand beyond the community as its natural and quasi-metaphysical leader. He must have specific volitional, charismatic, and at times also possibly traditional features that distinguish him from the rest of the people. These features must grant him special status that is both communitarian and supra-communitarian. Thus, imaginaries of natural leadership close to Nietzschean predestined heroism are mixed with radical democratic and communitarian imaginaries of identitarian belongingness and natural integrity via egalitarian inclusion and simplicity. Hence, the leader has to enjoy also output, charismatic, traditional,⁶¹ or ecstatic and religious legitimacy, in case of revolutionary, authoritarian, or theocratic regimes.

The separative logic of populism is extensively discussed in the theory.⁶² It consists of the separation between elites and the people, between good leaders and bad elites, and between the members of the community and external factors of policymaking. Populism rests upon the 'we-them', 'friend-enemy' distinction that, according to Carl Schmitt, is the key for the establishment and maintenance of the community, the polity, and the politics.⁶³

These structural features of populist constitutionalism nourish the correspondent set of separative imaginaries. These are the imaginaries of the

57 See Thomas Hobbes, *Leviathan* (Penguin Classics 2017) 1–688.

58 See Niccolò Machiavelli, *The Prince* (Reader's Library Classics 2021) 1–107.

59 See Carl Schmitt, *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (Duncker & Humblott 2023) 1–261; Carl Schmitt, *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (Duncker & Humblott 2021) 1–72.

60 See Max Weber, *Soziologie: Weltgeschichtliche Analysen. Politik* (Kröner Verlag 1968) 151 and the following and John Patty and Elizabeth Maggie Penn, *Social Choice and Legitimacy: The Possibilities of Impossibility* (CUP 2014) 1–224.

61 Weber (n 60).

62 See, e.g., Marte Mangset and others, 'The Populist Elite Paradox: Using Elite Theory to Elucidate the Shapes and Stakes of Populist Elite Critiques' 34 *Elites and People: Challenges to Democracy Comparative Social Research* 203–22.

63 See Carl Schmitt, *Der Begriff des Politischen* (Duncker & Humblot 2018).

‘others’ – the minorities, the elites, the non-believers, the counterrevolutionaries, the range of external factors to the community, and ‘the outsiders’ that are frequently defined in the negative. Reversely, the imaginaries of the ‘We’ – the majority, the community, believers, the participants in the revolution, the identitarian leaders, and ‘the insiders’ – are shaped in an antipode way. Thus, the ‘we-they’ imaginaries actually form a symmetric dichotomic couple in the collective mindset. In both cases they are detrimental for the development of inclusive and liberal representative democracy.

Unfortunately, the separative imaginaries are widely used also by political players that pretend to be non-populist or even anti-populist. The increasing use of the ‘we-them’ distinction where ‘we’ are morally superior and politically better and ‘they’ are the morally inferior forces of evil, e.g., in the context of the ‘war on terror’ and all other strands of the constitutional polycrisis unfolding since the beginning of the 21st century show that this Schmittian approach to shaping the imaginaries of politics persists to be the leading one in both populist and seemingly non-populist political camps.

The salvation imaginaries stem from the messianic apprehension of leadership. Thus, they are related to all three previous groups of populist imaginaries. They presuppose a holistic and coherent community of destiny that needs to be saved from the misery of the constitutional present in the name of the constitutional past and for the sake of the constitutional future. Usually, the constitutional past is conceived as heroic and glorious, as tragic and oppressive, or very frequently as both. Furthermore, the salvation imaginaries require a savior. Hence, they are prone to identitarian, predestined, and charismatic leadership imaginaries. Finally, salvation suggests the existence of menace, peril, and threat stemming from an enemy. Thus, the imaginary of the enemy from whom the community should be saved and salvaged by the leader is the inevitable bond between separation and salvation populist imaginaries. Moreover, salvation in such context means representation. The community is represented in its desire to be saved by the identitarian messiah. Hence, there is intrinsic link between all these populist imaginaries. They jointly produce a mix of communitarian-identitarian-messianic-separation imaginaries of representation.

5.3 Elitist imaginaries of representation

Elitist imaginaries are the second group of post-democratic imaginaries of representation. They are thriving in connection with the mushrooming of conspiracy theories. In contrast to the populist imaginaries, some of which are reconcilable with specific versions of constitutionalism and democratic representation,⁶⁴ the elitist imaginaries are neither part of the constitution nor

64 See Blokker, ‘Political and Constitutional Imaginaries’ (n 7); Blokker, ‘Populist Constitutionalism’ (n 7); Blokker, ‘Populism as a Constitutional Project’ (n 7); Dillabough (n 7) 178–92.

of the valid law. They are mostly stemming from extralegal and meta-legal narratives with constitutional relevance that usually have no explicit legal standing. Nevertheless, these imaginaries have constitutional importance for constitutionalism as a socio-legal phenomenon fed by and resting upon collective constitutional emotions, beliefs, fears, and imagination.

Elitist imaginaries streamline with ‘dark constitutionalism’ as a form of constitutionalism resting upon fear politics.⁶⁵ The (un)constitutional politics of fear is an imminent part of the contemporary constitutional imaginaries. It is an element of constitutional polycrisis that is facilitated by constitutional polytransition. Constitutional fears impact the collective constitutional imaginaries of the constitutional past, constitutional present, and constitutional future.

Elitist imaginaries can be perceived as a post-modern version of premodern imaginaries. This is due to the fact that before the invention of representative democracy, democratic representation, and liberal-democratic constitutionalism representation had been an elitist phenomenon grounded on charismatic legitimacy and sacral imaginaries about the ontology and teleology of power. Supreme leaders were mediators between two worlds. They were community and political leaders representing the identity and unity of the society and divine leaders invested with sacred legitimacy to rule the world. Thus, pre-modern (and pre-constitutional) representation stemmed simultaneously from the will of the people and the will of God having joint communitarian-identitarian and sacred legitimacy.

The contemporary elitist imaginaries resemble the belief in the sacred origin of power of the elites. They mimic the imaginary of the divine, meta-legal, and meta-social ontology of the authority of the rules without giving it any form of justification. Thus, the post-modern elitist mythology is based on conspiracies of stolen, self-acquired, and abused power by hidden elites with esoteric entitlement to rule instead on official schemes for justification of the divine origin of public power. Constitutional mysticism and esoteric-elitist imaginaries are serving as a replacement of the lost transcendentalism⁶⁶ due to the rationalist entrapment of modernity and the emotional-imaginary disenchantment of hyper-rationalism and their toxic effect on democratic representation.

Elitist imaginaries are totally inconsistent with the logic and justification of representative democracy. They cannot coexist with representative democratic imaginaries. They are toxic for the beliefs in democratic representation and destroy any form of democratic version of symbolic-imaginary constitutionalism. This is another difference between the contemporary, post-modern

65 For more about fear politics, see Frank Furedi, *Politics of Fear* (Continuum 2005) 1–208; Martin Belov, ‘The Role of Fear Politics in Global Constitutional “Ernstfall”’: Images of Fear Under COVID-19 Health Paternalism’ in Martin Belov (ed), *Populist Constitutionalism and Illiberal Democracies: Between Constitutional Imagination, Normative Entrenchment and Political Reality* (Intersentia 2021) 187–221.

66 Carl Schmitt, *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (Duncker & Humblott 2021) 1–72.

elitist imaginaries and the pre-modern elitist imaginaries of monarchical or sacred representation. The latter are partially reconcilable with representative democratic imaginaries as the constitutional and parliamentary monarchies penetrated by the global religions.

5.4 Technocratic imaginaries of representation

In the last decades a range of technocratic imaginaries have appeared and gained momentum on the symbolic-imaginary scene of constitutionalism. They form the third group of post-democratic imaginaries of representation.

Similarly to elitist imaginaries, the rise of technocratic imaginaries is pre-determined by the emergency constitutionalism, constitutional polycrisis, and constitutional polytransition that are unfolding during the last phase of neo-liberal globalization and the fourth technological revolution. The increasing disturbances in the functioning of liberal democracy, the deconstruction of constitutional normalcy and its replacement with constitutional emergency,⁶⁷ and the multitude of crises and transitions that pave the way for global algorithmic technocracy altogether transform the well-ordered system of democratic representation into a 'shaken order'. The result is constitutionalism (including rule of law and democracy) in flux, which promote unprecedented levels of uncertainty, distrust, and insecurity with the capacity to trigger implosion of constitutional democracy and its replacement with global algorithmic technocracy.⁶⁸

The distrust in the political elites is gaining momentum. It is gradually transformed into distrust in the constitutional infrastructure of the liberal-democratic constitutionalism with its representative democratic scheme for justification of the constitutional governance and for interest representation in complex societies. These tendencies are facilitated and promoted by the deconstruction of the fundamental constitutional consensus for safeguarding of fundamental autonomy and liberty and basic equality stemming from the marriage between liberalism and democracy, capitalism and democracy, and representation and democracy on normative-institutional, socio-legal, and constitutional imaginary levels.

The range of technocratic imaginaries is broad and complex. Moreover, they do not necessarily share common ontology, axiology, and teleology. Some of them possess added value for the system of liberal democracy, whereas others (in fact the majority) are structurally incompatible and functionally detrimental for the liberal-democratic constitutional order.

Some of the generally positive technocratic imaginaries that still produce detrimental effects for representation, democracy, and representative

67 See Below, 'The Conceptual Shapes' (n 5) 393–410.

68 See Below, 'Rule of Law and Democracy in Times of Transitory Constitutionalism, Constitutional Polycrisis and Emergency Constitutionalism' (n 5) 21–47.

democracy, are related to different variants of national, supranational, regional, or global technocracy. This technocracy usually relates to technocratic governance by courts and administrations, although it can also concern technocratic governance beyond constitutional law. Examples of the former are the imaginaries of the judiciary as ultimate safeguard of the constitutional order defined exclusively through the prism of rule of law and the imaginaries of administrative governance based on efficiency and impeccable problem-solving capacity. Judicial utopias and anti-utopias such as Montesquieu's 'gouvernement des juges', Ran Hirschl's concept of juristocracy,⁶⁹ or my idea of global judicial empire⁷⁰ are just some of the attempt at grasping the political role of courts as activist players in the constitutional power game.

Most of the court's related imaginaries are grounded on rule of law and human rights. Thus, they are by necessity also fed by rule of law and human rights-related constitutional imaginaries. The interplay between judicial governance, rule of law, and human rights is frequently embedded in different versions of liberalism as fundamental constitutional ideology. Thus, they are using freedom, liberty, and autopoiesis⁷¹ as important axiological sources for activation of the constitutional imagination.

In fact, the very concept of autopoietic, self-ordering, nomocentric system is powerful constitutional imaginary. It is based on a mixture of liberal and system theory visions for the constitutional order.

The idea of the judiciary as ultimate source for self-refining and self-purification of the constitutional and political order is another important imaginary. In that liberal imaginary, the judge is supposed to be an independent and rational priest of the rule of law. He is supposed to be able to safeguard another liberal utopia – the belief of the practical possibility of 'rule of law instead of rule of men' that was launched in early modernity initially in the British and the US constitutional discourse.

The liberal rule of law– and courts-centered utopia is based on the conceptual preference for liberty and autonomy and for the principle of rule of law possibly sacrificing purely democratic axiology and sovereigntist, democratic, and egalitarian pragmatics. Thus, rule of law-based imaginaries centered around the judiciary are in deep tension with popular sovereignty, separation of powers, and democracy. They are detrimental for representative democracy because they are replacing political representation of interests with elitist technocratic representation of rights. In other words, representing politically active groups through democratic institutions is pushed aside by the technocratic interpretation of rights by hopefully benevolent, enlightened, rational,

69 See Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Harvard UP 2007) 1–196.

70 See Martin Belov, 'Global Rule of Law Instead of Global Democracy? Legitimacy of Global Judicial Empire on the Edge between Westphalian and Post-Westphalian Constitutionalism' in Martin Belov (ed), *The Role of Courts in Contemporary Legal Orders* (Eleven 2019) 99–133.

71 Guilherme Vasconcelos Vilaça, 'From Hayek's Spontaneous Orders to Luhmann's Autopoietic Systems' (2010) 3 *Emergent Order* 50–81.

and socially engaged judicial elites. In these judicial imaginaries the institutional epicenter of the constitutional order are courts instead of parliaments, democratic representation is overshadowed by judicial decision-making, political process is shifted from parliamentary deliberation to the judicial procedure, political and democratic inclusion is replaced by judicial protection, and democracy is overshadowed by the presumed techno-democratic autopoiesis based on rule of law.

The rise of importance and political involvement of administration and bureaucracy on the national, supranational, regional, and global levels can be reflected in the collective constitutional consciousness through imaginaries of good governance. In contrast to the imaginaries of rule of law and judicial governance the imprints of bureaucratic-administrative imaginaries that are compatible with some positive version of constitutionalism in the constitutional imagination are rather scarce. Instead, most of them are related to different versions of technocratic paternalism.

Constitutional polycrisis and emergency constitutionalism produced several variants of technocratic paternalism. They were versions of traditional organic-paternalistic concepts enriched with markers, imaginaries, and ideas of technological society and embedded in the 'world risk society'. Consequently, several variants of bureaucratic-technocratic Leviathan have risen out of the different constitutional crises and emergency regimes starting from the 'war on terror', going through the financial and migration crisis, reaching its climax with the COVID-19 pandemic and going toward the perils of natural and ecological disasters and the risks of the algorithmic society and digital constitutionalism.

Hence, there are powerful versions of technological, post-modern, and global Leviathan. The first one was the security Leviathan. It was supposed to be protecting people from terrorism and organized crime. Then, we witnessed the emergence of the financial Leviathan. It was providing safeguards against different financial crises. The financial Leviathan was even protecting economies from the inevitability of the negative phase of the financial cycle through technocratic magic. The most visible, refined, and promoted form of such constitutional technocratic magic was the 'golden budget rule'. The utopia of financial stability and evasion of negative phases of the financial cycle related to public debt and budgetary deficit has been a powerful constitutional imaginary itself.

The COVID-19 pandemic has led to the birth of another very powerful version of technocratic paternalism. Its reflection in the collective imagination was the imaginary of the health Leviathan. The health or pandemic Leviathan was an omnipotent paternalistic state radically sacrificing liberty, freedom, autonomy, free will, and free choice for the sake of health protection and security.⁷² The health Leviathan was an upgraded version of the security Leviathan.

72 See Belov, 'The Role of Fear Politics in Global Constitutional "Ernstfall"' (n65) 187–221; Alexandra Mercescu, 'The COVID-19 Crisis in Romania, or on How One Cannot Escape (Bad, Legal) Culture'

It was also mixed with the emerging digital Leviathan. Hence, the COVID-19 pandemic was a melting pot of paternalistic imaginaries. Some of these are traditional, e.g., the security and police state, while others are rather novel both in terms of manifestation and the depth of the intrusion in the personal sphere, the physical, and psychological autonomy.

The health Leviathan manifested itself through several imaginaries. They were constitutional with regard to their impact and importance and unconstitutional in terms of constitutional axiology and constitutional design. One of the most important imaginaries viewed the state as clinic or hospital and the society as medical sanitation camp. The most powerful imaginary that combines digital and health aspects is the imaginary of the state as panopticon.

One of the final versions of technocratic utopias is the digital Leviathan. It has different aspects ranging from global surveillance power to digital techno-oligarchy and data processing algorithmic technocracy. These utopias and their visions have been defined and explored in a neutral or generally positive sense as well as in a negative sense. Examples of the former are the theories of digital constitutionalism, algorithmic constitutionalism, AI constitutionalism, big data governance, etc. Imaginaries with largely negative connotations have been launched as part of several hypotheses for the direction of constitutional tendencies. The most challenging and critical among them are the ‘surveillance capitalism’ proposed by S. Zuboff⁷³ and the ‘technofeudalism’ launched by Y. Varoufakis.⁷⁴

All these versions of technocracy and their constitutional imaginaries are hardly reconcilable with the system, design, axiology, and imaginaries of representative democracy. They have a double effect on representative democratic imaginaries. They deconstruct the belief in the feasibility of representative democracy in the current socio-legal context and dismantle many of the traditional representative democratic imaginaries, e.g., the imaginary of the nation as a community of destiny and secular God, the imaginary of the Parliament as a ‘mirror of the nation’ and efficient melting pot of interests, the imaginary of the Parliament as a deliberative forum of the nation capable of generating joint political decisions through political communication and public reason, etc.

Reversely, technocratic constitutional imaginaries demonstrate the value of representative democracy for the society in general and for personal autonomy and liberty, social equality, and political inclusion in particular. The shift from the imaginary of the Parliament as a temple of political liberty where the people can demonstrate their ‘unity in diversity’ with the different versions of

<http://exceptions.eu/2020/05/11/the-covid-19-crisis-inromania-or-on-how-one-cannot-escape-bad-legal-culture/?fbclid=IwAR3hTyciWCKiei2r9KFjHVN0KjGzx6aepFuZ9VYlnDz89Jr94dWUydAh_Y>.

73 See Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (Profile Books 2019) 1–704.

74 See Yannis Varoufakis, *Technofeudalism: What Killed Capitalism* (Melville House 2024) 1–304.

Leviathan and the replacement of the imaginary of the politically enlightened, rational, self-esteeming, and autonomous citizen with the citizen as a patient, obedient and patronized by uncontrollable technocracy, is a game changer in the history of constitutionalism. These shifts may be clear signs for the durable tendencies of post-democracy, post-liberty, and post-constitutionalism. However, they may be also a painful reminder of the importance of the liberal democracy and democratic representation. Thus, they may eventually reinforce traditional representative democratic imaginaries or produce new ones that are better adapted to the new reality of a globalized world risk society undergoing structural transition under the reformative pressures of the fourth technological revolution.

6. Conclusion

Representative democracy is in crisis. This is not a simple and short crisis, but rather a constitutional polycrisis with multiple dimensions and manifestations and with long duration leading to semi-permanency. It consists of multiple crises that are overlapping and are jointly producing huge dysfunctionality of the constitution and the institutional design and the normative order established by it. Constitutional polycrisis itself is partially a result of constitutional polytransition, the latter being a phenomenon denominating the multitude of transitions through which our constitutional orders are passing.

The shift of the forms of representation is paralleled by shifts in the ways they are conceptualized, apprehended, and experienced from emotional, cognitive, and affectual viewpoint. Thus, the range of constitutional imaginaries of representation is changing. The constitutional polycrisis and constitutional polytransition are promoting new imaginaries of representation. These are imaginaries that try to correspond to the global, post-democratic, increasingly digital reality in the context of post-modern deconstruction of truth.

Nevertheless, there is no automatic parallelism between the structural shifts of representative democracy and liberal democratic constitutionalism and the dismantling and reshaping of its supportive constitutional imaginaries. Hence, older beliefs sometimes prove to be of great endurance, whereas novel schemes are at times shaping our understanding of representation ahead of the socio-political and legal developments occurring in the constitutional, legal, and political order. Thus, antiquated and anticipated imaginaries are shaping the constitutional imaginary landscapes together with the mainstream imaginaries of democratic representation.

The interplay between representative democratic imaginaries and the post-representative democracy imaginaries – populist, elitist imaginaries, or technocratic – is another instantiation of ‘constitutionalism between magic and deceit’. In that regard, constitutionalism is power game, legal game, but also emotional-affective game and, thus, a game of constitutional imaginaries. The battle for political control includes a fight for control over constitutional imagination and the constitutional conscious, subconscious, and unconscious.

Today's 'fight for law' (*Kampf um's Recht*)⁷⁵ is also fight for legal, political, and constitutional imaginaries and imagination, for the hearts and souls of the citizens.

There are signs of tendencies toward a post-representative administrative-technocratic governance. They are part of the overall trend toward a deconstitutionalized future. Hence, we may witness not just changes in the representation imaginaries that may shift from democratic to post-democratic forms. Non-democratic representation and its imaginaries – constitutional, pre-constitutional, or even anti-constitutional – have been the mainstream before the establishment of constitutional modernity and have persisted even during the 'long 19th century' and the 'short X20th century'. Trends toward post-democratic representation are also visible.

What is really challenging is that there might be imaginary representations embedded in post-representative society. In other words, we might be confronted with a brand-new claim of the power holders – to govern not just beyond democracy, liberal democracy, or representative democracy, but to rule without the need to make recourse to representation. Such claim is rather unique in history. It may be justified through (un)constitutional politics of fear. Fear instead of representation, fear management as a replacement of the representative bond between the people and the elites, fear as legitimation of technocratic governance that is not justified by democratic or even traditional autocratic, aristocratic, elitist, or theological schemes of representation may be the game changer of the game of political representation. Thus, dark constitutionalism grounded on politics of fear may produce new constitutional imaginaries for a post-democratic, post-representative, and post-truth society.

Hence, the mission of contemporary constitutionalists is to try to better understand the representative democratic imaginaries as a still predominant form of constitutional imagination. The proper knowledge of the democratic, pre-democratic, and post-democratic imaginaries of representation is of vital importance for sustaining representation, and its democratic forms as key legitimation strategies of government. The tendencies toward post-democratic and even post-representative governance can be understood and eventually remedied mainly on the basis of deconstruction and subsequent reconstruction of representative democracy as phenomenon of constitutional imagination with strong projections in symbolic-imaginary, visual, performative, and emotional constitutionalism.

75 See Rudolf Von Jhering, *Der Kampf Um's Recht* (Nabu Press 2010) 1–106.