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Populism and Contemporary Democracy in Europe

Old Problems and New Challenges

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FOREWORD

What is populism? Like many “isms” (fascism, communism, Islamism...), especially when they are taken in the wrong way, we tend to point out easily what is unpleasant in order to denounce it as inadmissible, unacceptable.

This book, which brings together academics and other high-level specialists, will help make progress in defining the concept—which is difficult. Pierre Rosanvallon, in his book *Le siècle du populisme*, mentions three central elements of democracy as conceived by populists: it is direct, polarised and immediate. In my opinion, it is the third element, immediacy, which is the most decisive, and also the most worrying. Democracy can be polarised, but neither direct nor immediate: this is the British system. It can be direct, but neither polarised nor immediate: this is the Swiss system. These systems have their weaknesses and their slippages, but they have the merit of having established some of the oldest and most stable world democracies. A direct and polarised democracy instead would tend more towards the exclusion of the other. The most worrying thing, however, would be the shift to a so-called immediate democracy. The unthinking exercise of power.

What is done in Parliament? Talks, deliberations, and this is often what fuels anti-parliamentarianism. And yet, this is the essence of democracy. It is debate with arguments, not spontaneity, which is often a euphemism for thoughtlessness, incompetence and even manipulation. Firstly, with regard to voting on an issue. The Venice Commission therefore insists that

referendums should be the outcome of a deliberative process involving parliament. This is the opposite of an immediate decision by the people. The citizens' assemblies that have appeared in some countries should be understood in the same sense. Their aim, far from being to let average citizens express themselves on a subject they do not know, is to involve them in public affairs and to enable them to debate these affairs.

Democracy does not have to be immediate either in terms of elections, including elections to an assembly. It is not enough to return to the slogan: "who loves me follows me!" This is why the Venice Commission, like other international organisations, does not (or no longer) judge an election on the basis of election day alone (including the count). On the contrary, the importance of equality of opportunity in the pre-election phase and of the free formation of the elector's will is regularly stressed. It cannot be achieved without debate, and in particular without access to the media. Hence, for example, the rules on speaking time on radio and television. But *what about* social networks? The question may sometimes arise as to whether they are deliberative spaces, and this is a question that would deserve further attention.

As for the populists' demand for direct democracy, the danger is above all the use of a so-called direct democracy of a plebiscitary nature, strengthening the power of the executive. Or to consider that the people decide on the truth, somewhat in the manner of Rousseau. Or rather the truth of the majority of the people, understood as a compact and homogeneous entity—capable of identifying the general truth. Direct democracy and referendums are an element, a complement to the representative and deliberative system, and are themselves the result of deliberation, even in states where they are commonly practised. According to the principle of the rule of law, the people can only express themselves within the framework of procedures defined by the legal order.

Finally, a word about polarised democracy. Democratic States are conceived with a majority and an opposition, and therefore with a certain degree of polarisation. What should be avoided here again is the logic of "us" and "them", of truth versus error, of friend and enemy *à la* Carl Schmitt. There is a majority and an opposition, not good and evil, and the opposition must be given rights as well as duties, as the Venice Commission pointed out.

In two words, democracy is not the dictatorship of the majority, but a system where everyone has a say, and where the exchange of ideas and opinions is essential. It is the opposite of a system where some hold the truth in the name of the people.

President Emeritus
European Commission for Democracy
through Law
Strasbourg, France

Gianni Buquicchio

ABOUT THIS BOOK

When this edited volume was first conceived, in December 2019, the world was on the verge of entering the worst crisis in terms of human lives since the end of World War II. The pandemic, with its lockdowns and curfews, the social-distancing and the remote-working, had an impact on social and economic life that was simply unimaginable a couple of years ago. Also our publishing project, *si parva licet*, was significantly affected. It took us more than one year to organise the symposium, which constitutes the basis of this edited volume, and compelling reasons convinced us to broaden the scope of the project to cover the legal responses to the crisis, its consequences for democracy, and the opportunities it offered to populists.

The symposium, organised by the research group GEDECO (*Grupo de Estudios sobre Democracia y Constitucionalismo*) of the University of Barcelona, was finally celebrated online on 25 and 26 February 2021. Albeit not physically in Barcelona, the event gathered scholars from different parts of Europe to discuss the relationship between populism and constitutional democracy, and thanks to the partnership with the European Commission for Democracy through Law of the Council of Europe (best known as Venice Commission), it saw the interventions of its President, whom we shall thank for his foreword to this book, of the Secretary, and of some individual members; several of them also contributed to this volume.

The very idea of this book, its structure, and themes reflect almost three years of research work carried out in the context of the H2020 project ‘DEMOS. Democratic Efficacy and Varieties of Populism in Europe’.¹ During this period, we had the opportunity to cooperate with the legal teams of the Centre for European and Comparative Legal Studies of the University of Copenhagen, the

¹This research has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No. 822590, DEMOS.

Institute of Legal Studies of the Budapest Center for Social Sciences, and the DIPEC of the University of Siena, coordinated respectively by Helle Krunke, Fruzsina Gárdos Orosz with Zoltán Szente, and Tania Groppi. Their participation in this book simply attests to our common effort in investigating populism and its remedies.

Besides, our participation, through the GEDECO, in a project funded by the Spanish Ministry of Science and Innovation² allowed a deeper investigation of themes common to the European project in the Spanish system, whose results are visible in this book.

Systematically, the book is divided into four parts, preceded by an introduction setting the background of the book and identifying the main points of frictions between populism and constitutional democracy (*Castellà and Simonelli*).

Part I provides the theoretical framework of the book, illustrating the reasons for the conflict between populism and constitutional democracy. As a starting point, the emergence of populism as an ideology that exploited the failures of representative democracy in answering societal and economic challenges is analysed (*Tudela Aranda*). Then, the fundamental tension between the populist ideology and constitutionalism is explained and revisited (*de Ghantuz Cubbe*). Lastly, the very idea of democracy according to populist parties is investigated through an analysis of the discourse of the French *Rassemblement National* (*Debras*).

Part II assesses the practical effects of populism on the institutions of constitutional democracy and the rule of law. Contributions in this part are mainly concerned with the impact of populism on the judiciary and constitutional courts, as these are the bodies that should enforce compliance with the rule of law in a democracy. The first two chapters offer a wide-ranging comparative overview of the effects of populism on European democracies, assessed from the standpoint of the Venice Commission opinions on judicial reforms (*Granata-Menghini*), and through an empirical analysis of normative data obtained with a comparative survey (*Gárdos-Orosz and Szente*). The other chapters of the part instead adopt a country-focused perspective: *Granat* takes the example of the Polish Constitutional Tribunal to illustrate the paradoxical role of a constitutional court in a populist-ruled state, and *González Campaña* shows the various forms through which populism is eroding constitutional democracy in Spain.

Part III adopts a European perspective, analysing the causes and effects of the populist malaise towards Bruxelles and the European Union reactions to the spread of illiberal values. Contributions in this part provide a critical analysis of the reasons why the EU actions have been largely ineffective against populism (*Pinelli*) and show what are the responsibilities of the EU institutions in the spread of populism in Europe (*Guerra*). The chapter by *Krunke, Tornøe and Wegener* instead

²Project ‘Instrumentos Contramayoritarios en el Estado Constitucional’ (PID2019-104414GB-C32).

turns the picture around and analyses the effects of populism on the EU legal order whilst the chapter by *Sáenz Pérez* contains an assessment of the European Court of Justice's role in upholding the rule of law in Europe via the dialogue with national judges.

Finally, Part IV contains a preliminary analysis of the impact of the COVID-19 pandemic on European democracies. The contributions of this part first investigate how constitutional democracy should be equipped to face future emergencies through an analysis of the position of the Venice Commission (*Castellà*) and how the emergency situation was managed at the state level, taking Spain as a case study (*Dueñas Castrillo*). Other contributions reflect upon the long-term effects of the pandemic: on populist politics (*Rubio Nuñez*) and on the institutional equilibrium of constitutional democracy (*Simonelli*). Finally, the chapter by *Groppi* tries to find the silver lining in the pandemic by pointing at the lessons that can be learnt from the pandemic to strengthen constitutional democracy.

Last but not least, we would like to thank all the persons working in the management team of DEMOS at the Centre for Social Sciences in Budapest for their support in the organisation of the symposium and in the publishing process.