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(eds.)

CONSTITUTIONAL
DEMOCRACY
AND THE
CHALLENGES OF
ANTI-LIBERALISM

Lessons from Experience



Constitutional Democracy and the Challenges of Anti-Liberalism

Lessons from Experience

EDITED BY

MARTA POSTIGO – GABRIELLA SILVESTRINI – MAURO SIMONAZZI



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Introduction. Liberalism, Anti-Liberalism and Beyond

GABRIELLA SILVESTRINI, MARTA POSTIGO, MAURO SIMONAZZI¹

[...] a theory is all the more empirical the more it is construed inductively, thereby incorporating what is learned from experience. Conversely, a theory is less and less empirical, and, ultimately, nonempirical, the more it disregards experience and is constructed deductively
(Sartori, 1987, p. 17)

Liberalism and democracy: a mistaken marriage?

One of the most important lessons from experience we have learned in the recent decades is the acceleration of changes in international politics, internal regimes and in academic research. Climate change, the COVID pandemic and Russia's

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invasion of Ukraine have completely overturned previous narratives of globalization and the world (dis)order.

In the second half of the 20th century, studies of the processes of democratization mainly focused on the transition from autocratic to democratic regimes. Even the most realist political scientist in this field, Samuel Huntington, despite his cautions and his warning about a likely “third reverse”, believed that “Time is on the side of democracy” (Huntington, 1991, p. 33; 1993, p. 316).

Today we are no longer reflecting on the end of history (Fukuyama, 1989), nor even on the crisis, the “malaise” of democracy, but on its end, its death. As it has been appropriately noted, a new strand of “thanatological” studies has emerged (De Luca, 2019; see also Levitsky and Ziblatt, 2018; Runciman, 2018).

Huntington’s definition of democracy heavily relied on Schumpeter’s definition, including the two main dimensions highlighted by Robert Dahl: contestation and participation (Huntington, 1993; Dahl, 1956). Consequently, Huntington did not even mention the possibility of an ‘illiberal’ democracy because of the intrinsic link between participation and contestation that characterizes “procedural” democracy. One of the most important factors in his theory of the waves and the trend toward democratization was the “experience” (or the lack thereof) of past practices of contestation and participation, even though the former, including political dissent and liberty of expression, remained the most crucial.

Contemporary research on democratization has undergone dramatic changes in the past two decades. The generally ‘optimistic’ view of waves and reversals has been replaced by a more skeptical assessment of bidirectional shifts between ‘autocracy’ and ‘democracy’, categorized into four categories: liberal democracy, electoral democracy, electoral autocracy

and closed autocracy. Time no longer unilaterally favors one side. Instead, we now only observe fluctuations and the figures do not provide reassurance for supporters of liberal democracy. According to the V-Dem dataset, democratizing countries numbered 43 in 2002 and 14 in 2022. There were 13 autocratizing countries in 2002 and 42 in 2022. In 2012, 46 percent of the world's population lived in autocratic regimes, and in 2022 the share increased to 72 percent (V-Dem Institute, Democracy Report 2023). Despite the changes and improvements in empirical research, the concepts of 'illiberal' and 'anti-liberal' remain outside the scope of empirical investigations, as they are not seen as relevant to the development and the decline of democracies (in Coppedge, Edgell, Knutsen, Lindberg, 2022: the concept of "illiberal democracy" is not mentioned, probably because it is not regarded as an operational concept).

The word and the concept of "illiberalism" and "illiberal democracy" have nonetheless entered the current political and academic language, redefining what Tocqueville described as the "tyranny of majority", or the "soft despotism". The illiberal facet of democracy and popular sovereignty has always been the somewhat concealed target of liberal and procedural democracy theorists when critiquing the "classical doctrine of democracy" (Schumpeter, 1942) or the "populist" theory of democracy (Dahl, 1956).

In the academic and political discourse, the concept of "illiberal democracy" was introduced by Faared Zakaria (Zakaria, 1997 and 2003)². Zakaria also relied on the Schumpeterian concept of democracy, but he used it as a warning against the

² For previous but less successful uses of this concept see Raniolo, 2020, p. 3899.

politics of exporting of democracy. As procedural democracy is a competition to win political leadership, the introduction of elections and political competition in highly divided societies is likely to exacerbate existing social, religious or ethnic cleavages, thus producing undemocratic outcomes or even endemic civil wars³. Russia, India, Islamic countries, and the United States are the main cases in Zakaria's analysis, which turned out to be very provocative when his article and book were published. He suggested that the establishment of stable democracies is a process that must follow the same historical path that he believed was at work in the history of Western democracy: first, liberal autocratic regimes, and then democratization with the extension of suffrage. Within this paradigm, the best example of a liberal autocracy was Great Britain as opposed to the French model. The latter is presented as an illiberal autocracy that evolved into a democracy unable to become completely liberal, even in the 20th century. Hence, seems fair to assume that Zakaria's concept of "illiberal democracy" corresponds to a domesticated version of the well-known "totalitarian democracy" as put forth by Jacob L. Talmon (Talmon, 1952), explicitly quoted in Zakaria's book (Zakaria, 2003, p. 55; see also Raniolo, 2020, pp. 3901-3902). It is possible to suggest that the concept of "illiberal democracy" is an updated version of the "totalitarian democracy", appearing after the decline of the communist specter.

Zakaria's political liberalism seems to be entirely in accordance with those authors who construed a liberal tradition on the opposition between the Anglo-American model and

³ These social and political outcomes seem to echo the effects of majoritarian democracy versus consensus democracy, as presented by Lijphart (1984).

the French one. As a result, his position cannot be assimilated to the right-wing anti-liberal tradition that nourished Western political thought, which strongly attacked liberal parliamentarism especially through the 1920s and 1930s.

One of the most important scholars who has criticized Zakaria's main thesis, Marc F. Plattner, argued that, on a theoretical level, the sharp opposition between liberalism and democracy is not well grounded. Liberalism and the theory of human rights imply a strong appeal to a democratic value: the universal equality of human beings. However, his empirical conclusion was later contradicted by experience: "the overall trend, nonetheless, is for more and more countries to become and remain democratic" (Plattner, 1998, p. 180; see also Plattner 1999).

Since Zakaria wrote his book, the rise of anti-liberal politics in constitutional democracies across the world, significantly in Europe, has changed the terms of academic and public debate on democracy and rights. In 2019, Plattner himself revised his argument recognizing that liberalism and democracy "are not inseparably linked" (Plattner, 2019, p. 7). In real-world politics, anti-liberal claims and practices are defended in the name of democracy and even of basic rights. Beyond electoral rhetoric, this challenge is not just theoretical. The rise of anti-liberalism is now a widespread reaction to what are rhetorically presented as the faults of weak democratic regimes that, as the cases of eastern European countries illustrate, were undergoing the various tests of consolidation, both civic and institutional. This has become a pervasive experience across the entire continent, affecting also the most venerable democracies that are not immune to decay. In this regard, questions multiply over the real capacity of the European Union to serve as a bulwark of constitutional and parliamentary democracy.

On the one hand, two significant turning points were represented by Victor Orbán's speeches in 2014 when he explicitly endorsed the construction of an "illiberal state" as a political goal, and in 2018, when he affirmed the possibility of an illiberal democracy. As has often been the case, even with the word and the concept of democracy, a derogatory term has been used in a positive sense by those who were at first intended to be the target of it. On the other hand, constitutional and parliamentary democracy is under pressure because of a variety of phenomena that contribute to the dismantling of the rule of law and the reinforcing of the governmental powers, thus producing a "disintermediation" effect and favoring charismatic leaders in search of a "syntonic" and affective relationship with the masses or the "people". Populism, permanent emergency, as well as, on the opposite side, a government led by economic and technocratic elites which places under tutelage democratically elected parliaments to impose disastrous economic measures, as in the case of Greece and, to a lesser degree, Ireland: these are the opposite trends that are threatening constitutional democracies.

In our book, we offer a contribution to critically rethink not only the illiberal wind blowing on contemporary democracies but also the illiberal and undemocratic side of those liberal theories that, equating democratic procedures with the market economy, prefer to defend inequality at the expense of rights. The complexity that we learn from experience is often at risk of being flattened, as observed in empirical research, on the horizon of the present, and at the same time cannot be captured by normative theories that are often blind to the facts (Rosales, 2014).

The structure of the book

This book is divided into two parts. The first one, “Anti-Liberalism: Lessons from Experience?”, illustrates how anti-liberal, illiberal and populist concepts are intertwined and critically discusses the lessons that can be drawn from past experiences. The chapters gathered in this section show that democracy has become a disputed and controversial concept in contemporary politics. A suitable example is the debate concerning the European Union’s (EU) political definition and regime. From different perspectives, the four chapters comprising the first part of the book illustrate how anti-liberalism, illiberalism, and populism could be better understood together as political practices and discursive tools recurring in contemporary consolidated democracies to claim a vision of democracy that undermines liberal-democratic institutions. A good example is the rhetorical exploitation of both man-made and natural catastrophes and disasters to limit parliamentary and liberal-democratic guarantees. This concept is discussed, albeit in different contexts and perspectives, in the first and fourth chapters of the book.

José María Rosales focuses on anti-liberalism as a kind of rhetoric and politics. The author critically reviews the main features of liberalism’s history, reminding us of its multifaceted tradition of legal, political, social and economic thought, and showing that representative government, parliamentary democracy and liberal democracy are interrelated political traditions. The birth of representative democracy reflects the fact that liberalism intermingles with other modern traditions, such as republicanism and parliamentarism, “to produce new institutions, and to generate new intellectual debates”.

Although examples of anti-liberal politics run parallel to the history of liberalism and the formation of liberal democracies through the nineteenth century, historical comparison provides just a limited knowledge to understand why and how anti-liberal policies flourish in today's consolidated European democracies. Although external conditions have changed, anti-liberalism retains similar features in its discourses and practices. As Rosales highlights, historical experience reminds us of the fragility of democracies and "their vital reliance on civic factors".

What could be viewed as a malaise of Eastern Europe has become a recurrent phenomenon throughout the continent. Anti-liberal policies and discourses are no longer exceptional cases to be found in Hungarian and Polish regressive legislations, but a kind of political rhetoric and style that can be detected in many other governments across Europe. Drawing on the emergency measures adopted in response to the COVID-19 pandemic, Rosales' chapter helps readers gain awareness of the fact that anti-liberal and anti-parliamentary practices can take place in consolidated democratic regimes, from within political parties of moderate backgrounds and the same political actors holding representative duties, thus instrumentalizing the constitutional rules.

The extent to which populist politicians and discourses justify illiberal policies is well documented by Tomás Pacheco-Bethencourt. The author ventures to offer a definition of populism that takes a distance from the paradigmatic "ideational perspective" held by authors such as Cas Mudde, Jean-Werner Müller, and Cristóbal Rovira Kaltwasser. Contrary to the so-called ideological approach, Pacheco stresses that "populism is not something a politician *is*, but rather something that a politician *does* that could damage the rule of law". Therefore, populism could be best viewed as a rhetoric and a

set of performative tools that allow politicians to capitalize and even intensify polarization and conflict, undermining liberal democratic institutions and the rule of law. In this sense, Pacheco argues that the demarcation of what a crisis can be, who “the people” and “the elite” might be, “and the varying communication techniques that the politician can use makes populism a kind of political *ethos*”.

Such a “conceptual fluidity allowed by populist rhetoric” proves useful for politicians to justify the necessity for a transition to a post-liberal political system. In Pacheco’s view, illiberal politics is a recourse among politicians using populist rhetoric to control the judiciary and democratic institutions. Such a political *ethos* suits politicians with illiberal agendas “justifying their claims on the need for constitutional or judicial reform by stating that the elitist liberal establishment does not represent the true people”. As a way of illustration, the author focuses on the Polish and the Hungarian rule of law backslidings, which have led to the European Commission’s sanctions backed by the Court of Justice of the European Union.

In the multipolar and globalized world, the European Union (EU) is bound to play a decisive role in the future of liberal democratic values and institutions. The Union’s multi-level political architecture raises, however, key questions for democratic theory. The EU could, indeed, be viewed as a political experiment to analyze how liberal-democratic concepts and institutions can be redefined and rethought to adapt to a multilevel polity.

Marta Postigo explores how the European integration project encourages the reappraisal and redefinition of basic democratic concepts – such as representation, parliamentarism, citizenship, sovereignty, *demos*-cracy – beyond, although not without, the nation-state framework. The author contrasts

three basic approaches to democracy that can be highlighted when dealing with the debates regarding the Union's democratization and political definition: the communitarian, the federal, and the cosmopolitan. These three perspectives reflect different rhetorical uses of democracy, highlighting the extent to which it has become a controversial concept in contemporary European politics. It is in this sense that the EU can be viewed, according to Postigo, as a political experiment and a conceptual laboratory in which democratic concepts are being redefined and reappraised to capture the singularity of the European regime.

Postigo discusses two main versions of what she calls the EU's communitarian approach: the moderate delegative model and the radical populist-nationalist rhetoric. Both have in common the basic role attributed to the *demos* in a democratic regime. Since the EU has not (yet) created a unitary supranational *demos*, there is allegedly no strictly supranational democracy, but a conferral system where Member States, the main sources of democratic sovereignty, legitimacy, and representation within the European political architecture, delegate limited temporal and revocable powers to the supranational institutions. In this regard, Postigo delves into the German Federal Constitutional Court's Lisbon Treaty Ruling and contrasts it with some of the European political groups' programs holding conferral or more radical nationalist populist views. The author concludes her chapter by outlining some of the characteristics of the so-called cosmopolitan approach to the EU, and to test these conceptual innovations that better capture the EU's political singularity as a nonnation-state polity.

The extent to which the EU is able to tackle and curb the anti-liberal forces and dynamics spreading throughout the continent proves decisive for the future of the Union and the

liberal democratic values it embodies. In this regard, the historical experience of the 20th century cannot be ignored.

Nevertheless, in a globalized and interdependent world, the rhetorical use of catastrophes and disasters makes it easier for illiberal and populist forces. Javier Gil's chapter explores how the rhetoric of catastrophism serves anti-liberal populist discourses and purposes. The author contrasts two main political strategies: the use of emergencies and catastrophes as rhetorical devices for blaming and discrediting the adversary, and as a complex discursive practice that may lead to radical changes in policies and even in society. It is the latter example that can be particularly pernicious in the hands of anti-liberal politicians who seek to undermine democratic institutions.

As political polarization and extremisms grow in Europe and other continents, catastrophes and emergencies might be exploited as rhetorical tools to undermine the core values and institutions of liberal-democracy. Gil discusses the conceptual history and uses of catastrophism. What appears most relevant are not "the scientific theories and their parallels with Marxist and Schumpeterian socioeconomic doctrines", nor "the global existential scenario after a disaster of extraterrestrial origin", but the political analogy. As the author illustrates, the distinction between natural and anthropogenic disasters has become increasingly blurred and problematized. In fact, natural disasters become both social and political issues.

The political and rhetorical dimensions of sanitary crises and other natural or man-made disasters are common concerns in Rosales' and Gil's chapters. The electoral impact of catastrophes cannot go unnoticed, particularly for those holding positions in government, but also for opponents. Drawing on a rich scholarly literature, Gil explores how disasters im-

pact election outcomes and can also lead to social, legal and political reforms in democratic regimes.

Stable democracies, although often more effective in reacting to disasters than authoritarian and totalitarian regimes, are frequently unprepared for impending catastrophes due to their “endemic short-termism that captures the minds and hearts of voters and politicians and is reinforced by the dynamics of electoral systems”. It should not be ignored that “politicized disasters can eventually become the catalyst for political transformation”, which may be driven by anti-liberal, illiberal and populist politics.

In summary, the chapters in this first section of the book offer insightful reflections that help readers be more aware of the challenges facing contemporary liberal democracies. From different perspectives, Rosales, Pacheco, Postigo and Gil show that anti-liberal, illiberal and populist concepts and politics can be better understood when also viewed as political practices and rhetorical tools – a kind of political *ethos* – available for politicians with illiberal agendas to justify authoritarian shifts and undermine liberal-democratic institutions. The future of liberal democracy appears to be at stake within the EU, where democracy has become a controversial concept, subject to ideologically disputes.

The crisis experienced by liberal democracies has multiple causes, partly stemming from the economic and political transformations brought about by globalization, as well as the new geopolitical configurations of the 21st century. However, the weaknesses of contemporary constitutional democracies might also find their origins within neoliberalism. Indeed, the distrust of an expanding electorate, often resulting in appeals for the development of technocratic democracies, and the suspicion that the radicalization of democratic practices could evolve in a populist and demagogic direction have led some

authors to look to conservative theories to limit the power of the people.

This is what the authors of the second part of the book, entitled “Between liberalism and anti-liberalism: which lessons from political theories?”, focus on.

Matilde Ciolli’s essay, for example, aims to uncover the authoritarian, anti-democratic and anti-egalitarian essence of Hayek’s neoliberalism, the most influential author behind the Anglo-American neoliberal turn of the 1980s, showing how the Austrian economist drew heavily upon the conservative tradition, despite his repeated denials. Beginning with an analysis of the postscript to *The Constitution of Liberty*, entitled “Why I am not a Conservative”, Ciolli convincingly shows that Hayek uses concepts from the conservative tradition, particularly those concerning family, property, tradition, religion and inequality, to defend his free-market doctrine against socialist-style economic planning theory. His argument in defense of the distinction between neoliberalism and conservatism relies on the two ideas characterizing neoliberal “true individualism”: the theory of spontaneous order and the distrust of reason, linked to the idea that history proceeds by trial and error rather than via the implementation of rational revolutionary projects. Hayekian anti-constructivism and anti-rationalism thus represent an attempt to limit the potential constitutive power of democracies.

The second essay is complementary to Ciolli’s because it shows how Keynes’ theories were also premised on a distrust of mass democracy and how they were not conceived by their author as an antithesis to neoliberalism. Timponelli notes an often overlooked aspect, namely that “Keynes does not see his policies as distorting markets, but as necessary conditions for the full development of a competitive order that ensures consumer sovereignty”. Keynes believed that the market needed

corrections because some social problems related to poverty, unemployment and inequality could not be solved by the dynamics between private individuals, but these corrections had to be introduced by an intellectual elite and not by the “vast mass of more or less illiterate voters”. One significant constraint of mass democracy was the necessity to align with the electorate’s views to secure their consent. Keynes shared Lippmann’s thesis that liberalism, understood as the doctrine of the limitation of power, also had to defend itself against the democratic power of the masses.

Francisco Bellido takes up the analyses of Schumpeter, probably one of the most important economists of the 20th century along with Keynes, who clearly distinguished economic liberalism from political liberalism. According to Schumpeter, capitalism is characterized by a force that is both creative and destructive. The creative aspect of innovation leads to the centralization of wealth and the destruction of previous economic organization, resulting in an ever-increasing number of disgruntled bourgeois. Capitalism will not be defeated by the proletariat, but by its own success, which will lead a large part of the population to adhere to ideologies with values hostile to the capitalist system. It will be mainly the intellectuals, excluded from the productive system because they lack the necessary skills and are envious of the success of entrepreneurs, who will develop the anti-bourgeois ideology that will lead to the gradual growth of anti-capitalism. Moreover, political liberalism encourages the crisis of economic liberalism because it helps to create those spaces of individual and collective freedom that allow organized groups to challenge capitalism. Schumpeter warns of another danger to liberal societies, i.e. nationalism. The crisis of the bourgeoisie and its values, especially those of the family, opens spaces for alternative ideologies, such as socialism and nationalism, which have

in common a critique of individual freedom. Bellido concludes his essay by arguing that Schumpeter identifies the antidotes to the crisis of liberal society in the recovery of traditional family ties, the elaboration of an anti-utilitarian morality in private life that can counter utilitarianism on the economic level, and the defense of political liberalism and individual freedoms with nonutilitarian arguments.

In the final chapter, Zolli offers an analysis of Sheldon Wolin's anti-liberal theory of democracy. The American political philosopher theorizes a radical form of democracy, the essence of which lies in the expansion of participation rather than the limitation of power. From this perspective, constitutionalism is an attempt to harness the power of the people and turn democracy into a mere administration of the present. Democracy is by its very nature "fugitive", reflecting the will of the demos, which is constantly in motion. Through an analysis of the birth of American democracy drawing on the *Federalist Papers*, Wolin argues that it is constituent power, or revolution, and not the constitution, that represents the true democratic moment. Instead, constitutionalism is the response to the revolutionary dimension inherent in democracy. It is the problem that Jefferson summed up in the formula: "every generation has the right to rewrite the constitution", to which Madison had responded with skepticism, believing that a loose constitution would not guarantee social and political order. In other words, Wolin contributed significantly to shaping contemporary democratic thought from an anti-liberal perspective, in the belief that neoliberalism has at its core an authoritarian component that threatens to turn democracy into a form of "inverted totalitarianism".

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