

Democratic backsliding and resilience in extraordinary times: Poland and Italy during the Covid-19 crisis

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Abstract

We investigate the consequences of the Covid-19 crisis for the quality and survival of democracy. According to the literature, in countries with a weak state of emergency regulation (SER), crises such as the Covid-19 pandemic entail a risk of democratic backsliding. Yet the experience of some countries challenges similar conclusions. For instance, democracy in Italy proved resilient despite a relatively thin SER. In turn, a well-defined and constitutionally embedded SER did not shield Poland against backsliding. To explain these 'deviant' cases, we argue that, besides SER robustness, at least two other factors could influence the likelihood of experiencing 'pandemic backsliding', namely, the prior quality of democracy and government loyalty to democracy. The analysis of Poland and Italy corroborates our argument. In Poland, in particular, relatively malleable democratic institutions allowed an authoritarian-leaning government to circumvent the existing SER to aggrandize its own power beyond the realm and duration of the Covid-19 crisis.

1. Introduction

Despite differences in terms of intensity and timing, the Covid-19 pandemic has been a tremendous challenge for the governments of virtually all countries, which suddenly had to deal with an unprecedented calamity affecting health, welfare, labour, productivity and social life. Even more worryingly, the Covid-19 pandemic threatened the quality and survival of democracy in many states (Lührmann et al., 2020a; Maerz et al., 2020). According to several monitoring institutes, in 2020 we experienced, in particular, 'the biggest rollback of individual freedoms ever undertaken by governments during peacetime' (Economist Intelligence Unit, 2021: 14; see also Freedom House, 2021a; Varieties of Democracy, 2021; Institute for Democracy and Electoral Assistance, 2021).

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During a pandemic, some waivers to the normal functioning of democracy in terms of individual and political freedoms and regarding the balance of power between executive and parliament (Bolleyer and Salàt, 2021; Gambacciani, 2022) are justifiable, as long as they are proportionate, non-discriminatory, and temporary.¹ Nevertheless, scholars argued that, in countries lacking a well-defined and constitutionally embedded state of emergency regulation (SER) (De Angelis and de Oliveira, 2021), crises provide governments with an opportunity to take advantage of their greater authority and of the reduced checks and balances to aggrandize their power and repress dissent and political opposition (Lührmann and Rooney, 2021).

While intuitive, similar conclusions are challenged by the experience of some countries. For instance, in Italy, the weakness of SER (Canestrini, 2020) did not pave the way for democratic backsliding during the pandemic. In turn, Poland supposedly had a well-defined and robust SER (Szymański and Zamecki, 2022), but nonetheless was among the worst performers in terms of ‘pandemic backsliding’ (Varieties of Democracy, 2022). How can we explain such counterintuitive and ‘deviant’ regime trajectories? Rather than considering Poland and Italy as exceptions, in our view, these cases demonstrate that SER, previously identified as a key safeguard against backsliding, is only part of the story. A robust SER is neither necessary nor sufficient to prevent backsliding, as Italy and Poland respectively suggest.

In this paper, we argue that the backsliding effect of exogenous shocks such as the Covid-19 pandemic is contingent on a combination of structural conditions and agency (North, 1990; Thelen, 1999). More specifically, we posit that, besides the robustness of the SER, the vulnerability of a country’s democratic institutions is shaped by the pre-pandemic state of democracy in that country, and by the loyalty to democracy of the incumbent government. To investigate variations in the democratic backsliding effect of the Covid-19 pandemic, and to test the explanatory power of the above factors, we analyse the apparently ‘deviant’ cases of Italy and Poland.

The analysis supports our argument and shows how differences in terms of prior quality of democratic institutions and governments’ democratic commitment help explain the regime trajectories followed by Italy and Poland during the Covid-19 crisis – democratic resilience and backsliding, respectively. In Poland, the presence of malleable democratic institutions already weakened by years of executive aggrandizement allowed an authoritarian-leaning government to circumvent a relatively well-defined and constitutionally embedded SER and to take advantage of the emergency to consolidate its own power and pursue an illiberal agenda. In Italy, on the contrary, a combination of government loyalty to democratic principles and relatively well-consolidated democratic institutions favoured democratic resilience, despite a SER that was potentially prone to abuses of power. Hence, Poland and Italy are neither exceptions nor deviant cases, if we pay attention to how the SER interacts with other variables.

This paper contributes to the debate on the consequences that exogenous shocks such as the Covid-19 pandemic could have on the risk of democratic backsliding and on the significant differences in terms of policies and power abuses observed across countries, regions, and political regimes during the pandemic (Croissant, 2020; Hale et al.,

¹ International Covenant on Civil and Political Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

2020; Guasti, 2020; Lührmann et al., 2020a; Lührmann et al., 2020b; Cassani, 2022; Engler et al., 2021; Goetz and Martinsen, 2021; Russack, 2021; Narsee, 2022). From a theoretical viewpoint, our contribution is twofold. First, we show that the causal relationship between the Covid-19 crisis and democratic backsliding is complex, and we draw attention to factors such as the pre-pandemic state of democracy and government loyalty to democracy, which should be integrated into existing explanations of when, how and to what extent crises threaten the quality and survival of democracy. Second, and relatedly, we show that, rather than an outright *trigger* of democratic backsliding, a crisis such as the Covid-19 pandemic is better understood as a *catalyst* of an ongoing process of backsliding.

The paper is organized as follows. First, we review the literature on the impact of exogenous shocks such as the Covid-19 pandemic on democratic backsliding and discuss our theoretical argument and hypotheses. In the next three sections, we introduce the cases of Poland and Italy, illustrate the SER and the pre-pandemic state of democracy in these countries, and investigate the loyalty of their governments to democratic rules during the Covid-19 crisis, respectively. In the final section, we draw some conclusions regarding the different effects the Covid-19 crisis had on democracy in these two countries, and we elaborate further on what we can learn from future research on this topic regarding not only backsliding but also democratic resilience (Merkel and Lührmann, 2021).

2. Pandemics, states of emergency and the risk of democratic backsliding

The Covid-19 pandemic broke out in a historical conjuncture which was particularly dismal for democracy, characterized by an increasing number of episodes of backsliding – that is, a state-led debilitation of some of the political institutions sustaining democracy (Bermeo, 2016; Waldner and Lust, 2018) – as well as of outright autocratisation (Cassani and Tomini, 2019; Lührmann and Lindberg, 2019). Crises (of various origins) have frequently been studied as potential challenges to democracy (Linz and Stepan, 1978; Morlino and Quaranta, 2016; Foa and Mounk, 2017). Since the pandemic’s onset, accordingly, scholars have been debating its possible impact on the ongoing global trend of democratic erosion (Lührmann et al., 2020a; Maerz et al., 2020).

The instruments available to governments for addressing the pandemic have been identified as a potential threat, in particular. Extra-ordinary challenges, as a pandemic arguably is, require extra-ordinary responses, such as the adoption of emergency powers to allow faster decision-making and limit or suspend certain rights and freedoms. In this regard, Lührmann and Rooney find that states of emergency have historically offered political leaders ‘the opportunity to both extend their control beyond the realm of the emergency and past the duration of the emergency’ (2021: 622; see also Bjørnskov and Voigt, 2018). Specifically, executives can use the state of emergency both as a formally legal instrument to aggrandize their power, weaken checks and balances and silence the opposition (Scheppele, 2018), and as an argument to justify these actions and reduce their legitimacy cost (Petrov, 2020).

Based on this argument, the state of emergency adopted in several countries during the pandemic was in itself a factor that heightened the risk of backsliding (Lührmann and Rooney, 2021). Others contend that states of emergency are windows of opportunity

for eroding democracy (Palano, 2022) rather than sinkholes in which democratic countries inevitably fall, and investigate the factors shaping the actual probability of experiencing democratic backsliding in such critical junctures. In a recent article, in particular, De Angelis and de Oliveira (2021) identify the state of emergency regulation (SER) as a key source of variance that makes some countries more immune to the risk of democratic backsliding than others.

For clarity, states of emergency by definition are situations in which the constitutional order is ‘at least partially suspended’ (De Angelis and de Oliveira, 2021: 1604), executive powers are expanded, and the division of state powers and the hierarchy of laws are subverted. However, states of emergency could be designed in different ways (Ferejohn and Pasquino, 2004) – e.g. in terms of who is entitled to take and implement emergency decisions, the time limit and the scope of the emergency powers, the type of legislation that can be adopted, and the level of parliamentary involvement. Given that these variations could influence the ability of incumbent rulers to abuse emergency powers, they also imply different levels of protection for democracy. Accordingly, countries in which the state of emergency and the corresponding expansion of executive powers are tightly regulated and embedded in a sound legal framework should face a lower risk of democratic backsliding during crises such as the Covid-19 pandemic than countries characterized by thin and/or ill-defined SER (De Angelis and de Oliveira, 2021).

We contend that, while SER robustness could undoubtedly constrain incumbent governments during crises, it hardly represents a sufficient and/or necessary condition against abuses of power. In our view, the risk of democratic backsliding in extraordinary situations depends on a more complex combination of both structural conditions and agency-related factors (North, 1990; Thelen, 1999). Concerning structural conditions, besides the robustness of the SER, we consider another factor, namely, the pre-pandemic state of democratic institutions, which could be more or less malleable. Concerning agency, given the focus of this research on state of emergency situations in which executives play a prominent role, we focus on incumbent governments and, specifically, on their ‘loyalty’ to democracy.

First, institutional pre-conditions matter. Some democracies are more vulnerable than others (Croissant, 2020). In this regard, empirical research highlights that backsliding is more likely to occur in so-called ‘defective’ democracies (Cassani and Tomini, 2019; Lührmann and Lindberg, 2019), in which elections are relatively free but, differently from ‘liberal’ democracies, the boundaries of government power remain blurred. When the system of checks and balances of the executive power is weak, the survival of democracy is at risk: attempts to abuse political power will face little resistance from those institutional actors that, in principle, are entitled to prevent such abuses, such as parliament and the judiciary. Hence, we expect defective democracies to face a greater risk than liberal democracies of suffering backsliding during critical junctures such as the Covid-19 pandemic.

Second, agency matters. Recent research shows that the relationship between the strength of democratic institutions and democratic resilience during the Covid-19 crisis is not so obvious (Youngs, 2023) and that other factors should be considered. In particular, we note that democratic backsliding is a process of regime change intentionally pursued by state actors (Bermeo, 2016); it rarely happens by accident. According to a

long tradition in democratization studies emphasizing the role of partisan preferences (O'Donnell and Schmitter, 1986), even if heads of government want to keep their jobs (Bueno de Mesquita et al., 2003), some political leaders are more committed and loyal to the rules of democratic politics – including the principle of fair competition and the legitimacy of opposition – than others (Linz and Stepan, 1978). In a similar vein, we argue that not all political leaders are interested in seizing the opportunities to erode and/or subvert democracy offered by crises and states of emergency. Therefore, we expect the risk of democratic backsliding during crises to be higher in countries governed by authoritarian-leaning rulers who ‘prefer less democracy’ (Waldner and Lust, 2018: 99) and who are inclined to take advantage of all the legal (and sometimes even illegal) means available to aggrandize their executive power and to prolong their grip on it.

To summarize, while the literature on ‘pandemic backsliding’ has mostly focused on states of emergency and SER as key determinants (Lührmann and Rooney, 2021; De Angelis and de Oliveira, 2022), we contend that this is only part of the story. Building on the broader comparative literature on regime change, we identify other factors that, besides the SER, could influence the risk of experiencing backsliding during the Covid-19 crisis, such as the pre-pandemic state of democratic institutions in a country and the democratic commitment (or loyalty) of its rulers.

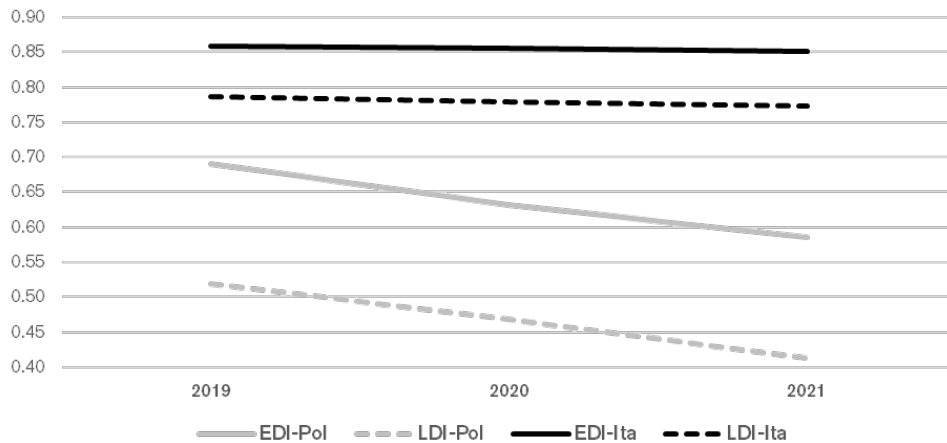
3. Reassessing democratic backsliding and resilience during the Covid-19 crisis in two deviant cases

To demonstrate how, besides the state of emergency regulation (SER), considering factors such as prior quality of democracy and government loyalty to democracy could improve our understanding of when, how and to what extent crises such as the Covid-19 pandemic threaten democracy, we analyse the cases of Italy and Poland. In both countries, the governments adopted extraordinary powers and quite stringent measures to contrast the spread of the disease, but democracy followed quite divergent trajectories during the Covid-19 crisis. Using the Varieties of Democracy’s Electoral Democracy Index (EDI) and Liberal Democracy Index (LDI), Figure 1 vividly shows that Italy experienced only minor decline, while Poland’s levels of democracy suffered a much more evident negative trend.

Italy and Poland differ in several respects – including, for instance, the time in which they transitioned to democracy and the form of government. However, they share one important aspect in the context of this research: they both appear to be ‘deviant’ cases, to the extent that, during the pandemic, these countries followed regime trajectories that cannot be explained by the SER alone. Democracy in Italy proved resilient during the Covid-19 crisis *even though* the Italian SER offered scarce guarantees against abuses of power (De Angelis and de Oliveira, 2021). In turn, Poland suffered backsliding *despite* its supposedly well-defined and robust SER. In principle, based on the different robustness of the SER in these countries, we should have observed diametrically opposite trajectories, namely, backsliding in Italy and resilience in Poland. Moreover, studying these cases is useful as they offer substantial variance in the other two factors to which we drew attention, namely, the pre-pandemic state of democracy and government loyalty to democracy. Using Italy and Poland, we will thus show how differences in these factors help explain the regime trajectories they followed. In fact, the analysis will

demonstrate that Poland and Italy are neither exceptions nor deviant cases, if we pay attention to how the SER interacts with these factors.

Figure 1. Trends of Electoral Democracy and Liberal Democracy in Italy and Poland, 2019-2021



Source: authors' own elaboration of data from the Varieties of Democracy dataset (<https://www.v-dem.net/data/the-v-dem-dataset/>). Notes: EDI stands for Electoral Democracy Index, LDI stands for Liberal Democracy Index, Pol stands for Poland, Ita stands for Italy.

The analysis focuses on the period from early 2020 to mid-2021. The in-depth study of these two cases was conducted through content analysis of documents such as constitutional provisions regarding the proclamation and management of a state of emergency, executive and legislative acts adopted during the pandemic, legal commentaries, and expert opinions from secondary sources (including newspapers and research centres' online publications and country reports). Concerning the case of Poland, whose Covid-related legislation was particularly challenging from an interpretative viewpoint (as we will illustrate), especially concerning some legal aspects and their accordance with the rule of law, we also conducted two focus group interviews online with 12 Polish legal experts (both academics with at least a PhD, and practitioners, such as attorneys and legal advisers).

4. State of emergency regulation and the quality of democracy in Italy and Poland before the Covid-19 crisis

Consistently with the theoretical framework we proposed, our analysis of the factors influencing the risk of democratic backsliding during crises such as the Covid-19 pandemic, starts from the institutional pre-conditions Italy and Poland displayed at the outbreak of the pandemic. First, we illustrate Italy and Poland's state of emergency regulation (SER) through an in-depth analysis of the relevant laws and regulations. Next, we discuss the prior state of democracy in each of these countries through a reconstruction of the main political events that occurred in the years preceding the pandemic. The narrative is supported by quantitative data tracing democracy trends in Poland and Italy during the 2010s.

4.1. State of emergency regulation

Several studies highlight the weaknesses of the Italian regulatory framework for the state of emergency (Canestrini, 2020; De Angelis and de Oliveira, 2021; Gambacciani, 2022). The Italian constitution does allow the government (i.e. the Council of Ministers and its President, or Prime Minister) to overcome parliamentary approval to adopt by decree temporary extraordinary measures ‘in cases of necessity and urgency’ (Art.77) and to limit individual mobility ‘for reasons of health or security’ (Art.16).² However, the constitution also establishes that, while these provisional measures have the force of law, they remain valid for a maximum of 60 days and must be presented immediately to Parliament, which can either convert them into law or terminate them even before their 60-day validity (Art.77). Based on article 87, moreover, even the President of the Republic (i.e. the Italian head of state) has a say when emergency measures are taken, as he/she is formally entitled to issue the decree-laws.

Importantly, however, the Italian constitution does not explicitly envisage the possibility of declaring a state of emergency, which is instead regulated by a 1992 law creating the Civil Protection Agency, subsequently replaced by a 2018 legislative decree introducing the Civil Protection Code.³ The state of emergency has a 12-month limit (renewable for other twelve months) and grants the central government the authority to intervene directly in the administrative affairs at all levels of governance (regions, provinces, metropolitan cities, communes). However, since it is not a constitutional norm, the limitations to the individual freedoms that could be necessary in circumstances such as the Covid-19 pandemic can only be enacted by law or the above-described acts having the force of law.

Differently from Italy, the Polish constitution provides a quite detailed regulation of the state of emergency. Specifically, ‘in situations of particular danger, if ordinary constitutional measures are inadequate’, three alternative extraordinary legal instruments can be adopted, namely, martial law, state of emergency, and state of natural disaster (Art.228, Par.1).⁴ While martial law and state of emergency refer to cases of threat to the security of the country as well as of constitutional and public order, the 2002 Act on the state of natural disaster specifies that the mass spread of infectious diseases – such as the Covid-19 pandemic – constitutes a case of natural disaster.⁵ The constitution (Art.232) also spells out that the state of natural disaster can be introduced by the Council of Ministers over the whole territory or part of it for no longer than 30 days, and its extension may only be issued upon consent of the Sejm (i.e., the Parliament’s lower chamber).

Under this regulation, the government has the power to limit, among other things, personal freedom, freedom of movement, freedom of work and economic activity, prop-

² Constitution of the Italian Republic, https://www.senato.it/sites/default/files/media-documents/Costituzione_INGLESE_2023.pdf.

³ Gazzetta Ufficiale, 17 March 1992, n.64, <https://www.gazzettaufficiale.it/eli/id/1992/03/17/092Go253/sg>; Codice della protezione civile, Decreto Legislativo n.1 del 2 gennaio 2018, <https://www.protezionecivile.gov.it/en/normativa/decreto-legislativo-n-1-del-2-gennaio-2018--codice-della-protezione-civile/>.

⁴ Constitution of the Republic of Poland, <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

⁵ Ustawa z dnia 18 kwietnia 2002 r. o stanie klęski żywiołowej, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20020620558>.

erty law, as well as the right to strike. These extraordinary measures ‘may be introduced only by regulation, issued upon the basis of statute, and which shall additionally require to be publicized’ (Art.228, Par.2) and ‘shall be proportionate to the degree of threat and shall be intended to achieve the swiftest restoration of conditions allowing for the normal functioning of the State’ (Art.228, Par.5). Significantly, moreover, during a period of extraordinary measures, the constitution, electoral laws and laws on extraordinary measures cannot be modified (Art.229, Par.6), and nationwide elections cannot be organized (Art.228, Par.7).

4.2. Democracy before the Covid-19 pandemic

Italy – a parliamentary system in which the head of government is a Prime Minister who can be dismissed together with his/her cabinet by a simple vote of no confidence – transitioned to democracy at the end of World War II. In turn, Poland – a *de facto* semi-presidential system of the premier-presidential subtype, in which executive power is shared by a directly elected President and a Prime Minister that can be removed by Parliament through a constructive vote of no confidence – is a ‘third wave’ democracy (Huntington, 1991), which returned to multiparty politics in 1989. While the two countries clearly differ in the level of consolidation of their democratic institutions, in both of them democracy came under threat in the years preceding the pandemic, even though to different extents and with different implications.

Since 2011, Italian politics has been characterized by a high degree of instability. The worsening of the economic recession led the centre-right government chaired by Silvio Berlusconi to be replaced by a technocratic government. The 2013 elections failed to identify an outright winner and, between 2013 and 2018, three different coalition governments led by the centre-left Democratic Party (DP) succeeded one another. The 2018 parliamentary elections instead resulted in the success of the Five Star Movement (5SM), an anti-establishment party that quite unexpectedly allied with the right-wing and anti-immigrant League (Lega) to form a coalition government chaired by the relatively unknown law professor Giuseppe Conte.

During the first year, the political agenda of the new government was dominated by the Minister of the Interior and Deputy Prime Minister Matteo Salvini (the League’s leader), who on several occasions professed admiration for both ‘illiberal democrats’, such as Viktor Orban, and outright autocrats, such as Vladimir Putin (Donadio, 2019). Salvini launched several security reforms aiming to increase the power of the interior ministry (often interfering in the prerogatives of other ministries) and to limit the rights of migrants and ethnic minorities (e.g. Roma), the freedom of non-governmental organizations (NGOs), and the freedom to demonstrate.⁶

The 5SM-League government was short-lived. Following the success of the League in the May 2019 European Parliament elections, Salvini publicly asked Italians to grant him ‘*full powers* to wholly do what we promised, without slowdowns’ (Harlan, 2019), presented a motion of no confidence against the government, and called for snap elections. In accordance with the constitution, however, the President of the Republic Sergio

⁶ Gazzetta Ufficiale, 3 December 2018, n.281, <https://www.gazzettaufficiale.it/eli/gu/2018/12/03/281/sg/pdf> ; Gazzetta Ufficiale, 14 June 2019, n. 53, <https://www.gazzettaufficiale.it/eli/id/2019/08/09/19A05128/sg>.

Mattarella did not dissolve Parliament and started new consultations that eventually led to a new coalition government in September 2019 formed by 5SM and the DP with Giuseppe Conte still as Prime Minister. However, the new government was born weak (Bull, 2021), due to the ideological distance between the two main parties – previously, fierce political opponents – and the fragmentation of the coalition, especially following a fracture within the DP and the formation of a new party led by former prime minister Matteo Renzi.

Poland did not suffer from the political instability that characterized Italy during the 2010s. However, the year 2015 represented a turning point for politics in this country. The right-wing Law and Justice party (PiS) won both the May presidential election – with Andrzej Duda defeating incumbent Bronisław Komorowski at the runoff – and the October parliamentary elections, in alliance with two smaller parties (the United Right coalition). Soon after its appointment, the new government embarked on a swift and far-reaching reform of the judiciary.

The first target was the Constitutional Tribunal, which gradually lost its independence through the replacement of several judges with persons close to the government (Sadurski, 2018). Moreover, a series of reforms progressively altered the composition of the courts and increased the control of the governing party (Varieties of Democracy, 2017). For instance, a law on the Supreme Court increased the head of state's influence over the appointment of its president and created two new chambers with the authority to *de facto* pick on judges criticizing the government's actions – i.e., the Chamber of Extraordinary Control and Public Affairs, which could overturn final judgements based on relatively vague criteria and call into question the results of elections and referendums, and the Disciplinary Board.

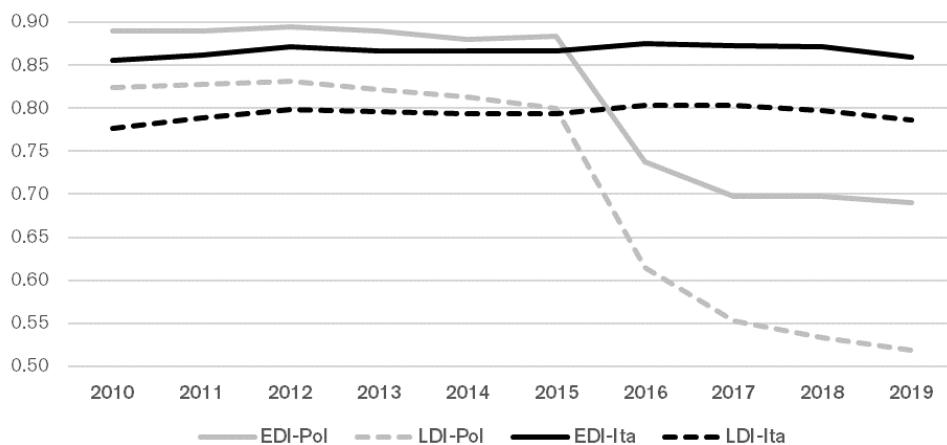
The same law also lowered the mandatory retirement age for the judges of the Supreme Court, which obliged about 40 percent of sitting judges to retire, including its president (Freedom House, 2018). These reforms were heavily criticized by the European Union, which for the first time called upon Article 7 of the Treaty on European Union, forcing the Polish government to reinstate the retired judges (Freedom House, 2019). However, other bills were approved to expand the control of the ruling party over appointments and dismissals in local and appellate courts and in the National Council of the Judiciary.

The judiciary was not the only accountability agent whose independence and ability to check and balance the executive power was severely limited by the PiS-led government. Parliament, for instance, suffered substantial disempowerment in terms of its involvement in the discussion of the new draft legislation proposed by the government (Szymański, 2020). Moreover, the government increased control over state-owned media and the previously independent National Broadcasting Council (Economist Intelligence Unit, 2018). The mandates of the directors of public television and radio broadcasters were ended and the Minister of Treasury appointed their successors (Freedom House, 2017). Other controversial measures included some restrictions to the freedom of assembly and the right of public protest (Economist Intelligence Unit, 2018), new regulations on NGO funding (Przybylski, 2018), and a reform of the National Electoral Commission that strengthened the role of political appointees (Varieties of Democracy, 2019).

To summarize, the instability that characterized Italian politics during the 2010s fuelled disillusionment with political institutions and increased support for an illiberal political leader who, once in power, adopted measures constituting a ‘threat to civil liberties’ (Economist Intelligence Unit, 2019: 15) and tried to bypass the rules of the game. However, Italy is a relatively consolidated democracy and its institutions proved resilient, even though government weakness persisted (Bastasin, 2019). In turn, from 2015, the PiS-led government engaged in the dismantling of Poland’s comparatively less consolidated democratic institutions (Pirro and Stanley, 2022). As a consequence of these actions, the quality of Polish democracy significantly declined.

These conclusions are supported by Figure 2, which traces the regime trajectories that Italy and Poland followed during the ten years preceding the pandemic (2010-2019), using Varieties of Democracy data. As we can see, Italy’s democratic performance suffered only a minor decline between 2018 and 2019, that is, during the 5SM-League government. On the contrary, the graph unambiguously shows the transformation of Poland into a defective democracy following the 2015 elections won by PiS.

Figure 2. Trends of Electoral Democracy and Liberal Democracy in Italy and Poland, 2010-2019



Source: authors’ own elaboration of data from the Varieties of Democracy dataset (<https://www.v-dem.net/data/the-v-dem-dataset/>). Notes: both indexes range from 0 to 1. EDI stands for Electoral Democracy Index, LDI stands for Liberal Democracy Index, Pol stands for Poland, Ita stands for Italy.

5. (dis)Loyalty to democracy: Government conduct during the Covid-19 crisis in Italy and Poland

The evidence we have thus far presented demonstrates two key points regarding the institutional conditions Italy and Poland displayed when the Covid-19 pandemic broke out in early 2020. On the one hand, from a legal viewpoint, Poland seemed to be better equipped than Italy to prevent abuses of power in a situation of crisis, thanks to a more detailed state of emergency regulatory framework (SER) embedded in the constitution. On the other hand, while Italy is a relatively consolidated liberal democracy which proved resilient even to years of political instability and a government with illiberal tendencies, Poland is a relatively young and defective democracy, especially considering

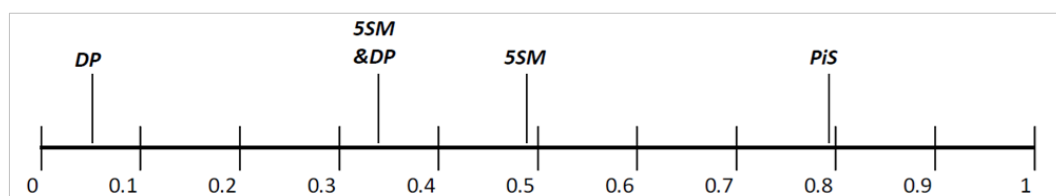
the weakening of the institutional checks and balances of the executive power enacted by the PiS-led government.

As anticipated, however, we should consider a third factor that could shape the risk of suffering ‘pandemic backsliding’, namely, the democratic commitment of the governments that managed the Covid-19 crisis. Government loyalty to democracy can hardly be estimated *a priori*; it must be demonstrated (and assessed) based on the actual behaviours and decisions of those who rule. Hence, our analysis will mainly focus on what actually happened in Italy and Poland during the period under examination and, specifically, how the governments of these countries managed the emergency and the measures they adopted.

According to some scholars (Medzihorsky and Lindberg, 2023), however, we could learn about the extent to which some political parties and leaders could threaten democracy by looking at their ‘anti-pluralist rhetoric’ before elections. Using the recently released *Antipluralism Index* from the V-Party Dataset, Figure 3 thus illustrates the degree of antipluralism of the main parties in government in Italy (5SM and DP) and Poland (PiS) when Covid-19 broke out, measured in the years before the most recent pre-pandemic elections (2018 in Italy; 2019 in Poland). As we can see, the Polish PiS stood out for its low commitment to democratic values (unsurprisingly, given its conduct during the 2015-2019 term, as described above), whereas the Italian 5SM and DP were characterized by comparatively lower levels of antipluralism.

Prima facie, therefore, even before the pandemic outbreak, we could have expected the Italian and Polish governments to behave in different ways in a window of opportunity for backsliding such as the Covid-19 crisis. Did these premonitory signs translate into concrete actions?

Figure 3. Antipluralist rhetoric of the main governing parties in Italy and Poland



Source: authors' own elaboration of data from the Varieties of Democracy's V-Party Dataset (<https://www.v-dem.net/data/v-party-dataset/>). Notes: the 5SM&DP value was estimated based on the average of the Antipluralism Index scores of the two main parties forming the Italian government, weighted according to their respective majority seat shares. The index ranges from 0 to 1.

5.1. The management of the Covid-19 crisis in Italy

Reflecting a relatively weak SER, the earlier responses to the pandemic of the Italian government were rather chaotic and uncoordinated. The first two restrictive measures were issued in January 2020 by the Ministry of Health based on Article 77 of the Constitution.⁷ At the end of January, however, the government also declared a nationwide state

⁷ Gazzetta Ufficiale, 27 January 2020, n.21, <https://www.gazzettaufficiale.it/eli/id/2020/01/27/20A00618/sg>; Gazzetta Ufficiale, 1 February 2020, n.26, <https://www.gazzettaufficiale.it/eli/id/2020/02/01/20A00738/sg>.

of emergency in accordance with the Civil Protection Code,⁸ and the restrictive measures were subsequently issued by a plurality of institutional actors at different levels of governance (e.g. Ministry of Economy and Finance, Ministry of Health, Ministry of the Interior, Regional Presidents, City Mayors), through legislative acts of different natures and sometimes containing conflicting directives (Canestrini, 2020; Vicentini and Galanti, 2021; Pecchioli, 2022).

Most importantly, given the limited scope and non-constitutional nature of the Italian state of emergency, which does not allow limitations on individual rights and freedoms, and considering the sudden and indeed quite shocking spread of the disease in the country, in late February 2020 the government resorted to a rather unusual legal procedure. Based on a relatively generic decree law,⁹ the government availed itself of the power to adopt ‘any appropriate restrictive measure’ through subsequent Decrees of the President of the Council of Ministers (DPCM), with no clear scope and boundaries. DPCMs are administrative acts that allow the government to enact measures that become immediately effective. They do not need parliamentary approval, nor must they be formally issued by the President of the Republic. The extensive use of a similar instrument to enact a vague – and thus potentially unlimited – list of measures implying significant restrictions to fundamental constitutional rights and freedom (including regional and nationwide lockdowns) was, at best, questionable (De Angelis and de Oliveira, 2021).

From late March 2020, however, many of these shortcomings were progressively addressed. A new decree law provided a better definition of the responsibilities and of the emergency measures that could be taken via DPCM.¹⁰ Moreover, the executive’s accountability to Parliament was restored, as well as Parliament’s involvement in the decision-making process (Poli, 2021). Between May and December 2020, for instance, the government was called 60 times to present the Covid-19-related measures in front of Parliament before their adoption (during 2019, the government was called by Parliament only 13 times) (Openpolis, 2020).

Most importantly, despite several flaws in the legal and material management of the crisis, no evidence was reported of attempts by the Italian government to abuse emergency powers and DPCMs in their own favour (Amnesty International, 2022; European Union Agency for Fundamental Rights, 2020; Reporters without Borders, 2020). Indeed, the country’s democratic institutions proved resilient even to another change of government, between January and February 2021, when Prime Minister Giuseppe Conte was replaced by the former president of the European Central Bank Mario Draghi. Supported by a larger coalition of both centre-left and centre-right parties, Draghi extended the state of emergency, but he also reduced the use of DPCMs and progressively lifted the restrictions to public life, whose persistence was fuelling new anti-establishment movements (Amoretti et al., 2021; Campati, 2022).

⁸ Gazzetta Ufficiale, 1 February 2020, n.26, <https://www.gazzettaufficiale.it/eli/id/2020/02/01/20A00737/sg>.

⁹ Gazzetta Ufficiale, 23 February 2020, n.6, <https://www.gazzettaufficiale.it/eli/id/2020/02/23/20G00020/sg>.

¹⁰ Gazzetta Ufficiale, 25 March 2020, n.19, <https://www.gazzettaufficiale.it/eli/id/2020/03/25/20G00035/sg>.

To summarize, in Italy, the lack of a well-defined SER led to a rather chaotic legislative activity during the first phase of the Covid-19 crisis. However, neither Conte nor Draghi actually tried to exploit the window of opportunity opened up by the pandemic to aggrandize their power beyond the realm and duration of the crisis.

5.2. The management of the Covid-19 crisis in Poland

Differently from Italy, our analysis of the case of Poland reveals that the PiS-led government intentionally attempted to abuse the emergency powers in its own favour in several ways, from silencing the opposition to manipulating the electoral process and passing illiberal legislation unrelated to the management of the emergency.

The main issue refers to the PiS-led government's decision not to use the previously described relatively solid and well-defined SER to deal with the Covid-19 pandemic. Instead, the Polish government introduced new ad hoc legal instruments. The earliest measure (2 March 2020) consisted in the so-called 'Special Coronavirus Act' regulating 'special solutions related to the prevention, counteracting and combating of Covid-19, other infectious diseases and the crisis situations caused by them'.¹¹ In turn, on 20 March 2020, the Ministry of Health introduced the so-called 'State of Epidemic',¹² based on which a series of legislative acts called 'Anti-crisis shields' were subsequently issued to provide infrastructural support to contrast the spread of the virus and impose temporary restrictions on people's movements, organised events and any other gatherings of people.

Legal experts harshly criticized this decision as an act of 'illiberal constitutionalism' (Florczak-Wątor, 2020; Drinóczy and Bień-Kacała, 2020), claiming that the already existing and constitutionally regulated state of natural disaster offered the necessary instruments to adopt appropriate extraordinary measures.¹³ Why, then, did the government choose to address the pandemic and impose restrictions on citizen's rights based on a new legal instrument whose accordance with the rule of law was controversial (Garwol and Grzęda, 2020; Żaczkiewicz-Zborska, 2021)?

The easiest answer refers to the relatively few obstacles the government faced. The low commitment of PiS to the rules of the game was not new and, as previously discussed, Poland's system of checks and balances was severely weakened in the years preceding the Covid-19 crisis. Most importantly, however, the introduction of a brand new emergency regulation was instrumental to the government's attempt to take advantage of the emergency to consolidate its own power and pursue its illiberal agenda.

First, the proclamation of the new state of epidemic had the immediate effect of further marginalizing parliamentary opposition and civil society organisations, which lost any impact on the legislative process (Szymański, 2020; Szymański and Zamecki, 2022). Parliamentary voting was typically organized according to a two-step procedure

¹¹ Ustawa z dnia 2 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20200000374/U/D20200374Lj.pdf>.

¹² Rozporządzenie Ministra Zdrowia z dnia 20 marca 2020 r. w sprawie ogłoszenia na obszarze Rzeczypospolitej Polskiej stanu epidemii, <https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/ogloszenie-na-obszarze-rzeczypospolitej-polskiej-stanu-epidemii-18972567>.

¹³ The legal experts we interviewed confirmed that the 'state of natural disaster' regulated by the Polish constitution is the legal instrument the government should have used during the Covid-19 crisis. They agreed that there was no 'technical' necessity to introduce a new 'state of epidemic'.

collecting proposals from the majority and amendments from the opposition in separate groups, so that the latter could be easily rejected *en bloc*. Moreover, government bills were often introduced as parliamentary ones, which allowed bypassing regulatory impact analysis and stakeholder consultations. In practice, also considering the restrictions on public gatherings to contrast the spread of the virus, opposing the government became virtually impossible.

The decision to bypass the existing constitutional norms by proclaiming a new ‘state of epidemic’ had a second key goal for PiS: avoiding a postponement of the presidential elections scheduled for 10 May 2020 (Guasti, 2020). According to Poland’s constitution (Art.228, Par.7), elections cannot be held during a state of natural disaster, but only 90 days after its termination. The idea of holding national elections amid a pandemic was quite in contrast with the election postponements that occurred during the same period in several countries. Yet, PiS had good reasons to be in a rush. First, at the beginning of 2020, President Andrzej Duda, who was supported by PiS, was highly favoured to win a second mandate (Szczerbiak, 2020). Second, winning the presidential elections would have strengthened the government, given that PiS lacked the three-fifths parliamentary majority to over-turn presidential vetoes. Third, holding elections during the pandemic would have significantly increased the incumbency advantage. Short-term support for top political leaders tends to increase during crises, whereas the medium-to-long term implications of crises tend to erode support for incumbents (Kucharczyk, 2021; Oana et al., 2021; Szymański and Zamecki, 2022; Tatarczyk and Wojtasik, 2023). Moreover, during a lockdown, an incumbent enjoys the privilege of being *de facto* the only candidate free to travel around the country to campaign (Kucharczyk, 2021; Tatarczyk and Wojtasik, 2023).

Despite the protests of the other candidates emphasizing the obstacles to holding free and fair elections during a pandemic (Vashchanka, 2020), in April 2020, about one month before the scheduled elections, PiS drafted a reform to conduct elections entirely through postal voting and to transfer election management from the National Electoral Commission to the Ministry of State Assets.¹⁴ Besides holding elections, modifying electoral rules would have been impossible if the government had proclaimed the constitutionally regulated ‘state of natural disaster’ (Art.228, Par.6) instead of the new ‘state of epidemic’. The whole legislative process in the Sejm was conducted in a single day, but the final approval of the reform was delayed until the beginning of May, as it faced some resistance in the Senate and harsh criticisms even outside the country (ODHIR, 2020). Even the collection of voter data by the Polish Post was declared a violation of the rule of law by the Voivodeship Administrative Court in Warsaw (Tarka, 2020).¹⁵

¹⁴ An attempt was also made to change the constitution to extend the presidential term by two years (Reuters, 2020).

¹⁵ The interviewed legal experts expressed several criticisms regarding the entire management of this issue. Besides the blatantly unconstitutional nature of the government’s decision to both hold elections and pass an electoral reform in a period of extraordinary measures, they noted that experimenting a voting procedure entirely based on postal voting during the pandemic would have significantly threatened the integrity of the electoral process. They also expressed a critical position regarding the attempt to disempower the National Electoral Commission in favour of the Ministry of State Assets and to delegate voter data collection to the Polish Post.

In the end, the vote did not take place due to organisational difficulties in the absence of any formal procedure of postponement. The election was rescheduled to 28 June 2020 via both personal and postal voting. Duda was re-elected narrowly in the second round (51%), following an electoral contest marked by misuse of state resources, unauthorized informal campaigning during lockdown, and media capture (Freedom House, 2021b; Skrzypek, 2021; Tatarczyk Wojtasik, 2023).

Besides elections, the Polish government exploited the new state of epidemic to pass legislation either loosely or entirely unrelated to the emergency, and in some cases introduced permanent changes to existing laws (Szymański and Zamecki, 2022). Among others, in April 2020, the government resumed the parliamentary debate on the so-called ‘Stop Abortion’ bill, a controversial legislative proposal aimed at limiting legal access to abortion. Previous attempts to pass the bill had failed in 2016 and 2018 due to mass protests (Eşençay, 2020; Human Rights Watch, 2020a). With the public attention focused on the pandemic, the government probably expected to face less resistance. While civil society organisations and opposition parties did organize some protests (Guasti, 2020), the Covid-19 restrictions on public gatherings inhibited their effectiveness (Kucharczyk, 2021). In the end, the abortion ban passed thanks to the intervention of the Constitutional Tribunal (Human Rights Watch, 2020b), whose independence was severely compromised in the years preceding the pandemic.

6. Conclusions

The Covid-19 pandemic threatened the quality and survival of democracy in many countries. In this paper, we claimed that the ‘backsliding effect’ of the Covid-19 pandemic – and, more generally, the likelihood that governments exploit states of emergency to aggrandize their power beyond the realm and duration of an ongoing crisis – depends not only on the tightness of the state emergency regulation, as previously argued by the literature (De Angelis and de Oliveira, 2021), but also on other structural and agency-related factors, such as the pre-pandemic state of democratic institutions in a country, and the democratic commitment (or loyalty) of its rulers.

The analysis of the apparently ‘deviant’ cases of Poland and Italy confirmed that the state of emergency regulation is neither sufficient nor necessary to prevent backsliding during crises such as the Covid-19 pandemic. In fact, we showed that, for a fuller understanding of when, how and to what extent crises such as the Covid-19 pandemic threaten the quality and survival of democracy, we should look at the complex interplay of the aforementioned factors.

On the one hand, Italy suggests that a state of emergency regulation potentially prone to power abuses could lead to rather chaotic management, but does not necessarily pave the way for democratic backsliding, as long as the government remains loyal to the rules of the game and the democratic institutions are robust, as demonstrated on several previous occasions. On the other hand, Poland shows that backsliding is possible even in the presence of a well-defined and constitutionally embedded state of emergency, if the government is willing to take advantage of an ongoing crisis and checks and balances are weak.

Relatedly, the cases of Italy and Poland demonstrate that, rather than outright *triggers* of democratic backsliding, crises such as the Covid-19 pandemic probably should be

understood as *catalysts* of an ongoing process of backsliding – a conclusion that echoes the findings of Engler and colleagues (2021) regarding variations in Covid-19 policies across democracies. Specifically, even when windows of opportunity open up, as in Italy due to an ill-defined state of emergency regulation, democratic backsliding does not happen by default, in the absence of explicit attempts and a favourable institutional context. In turn, in Poland, backsliding during the pandemic followed, and indeed was facilitated by the weakening of the checks and balances relating to the executive power that occurred in the years preceding the pandemic outbreak.

Several caveats and issues requiring further research must be highlighted, though. First, our research focused on the short-term regime consequences of the Covid-19 pandemic, which is bound to also have longer-term implications for democracy's quality and survival (Cassani, 2022). Our findings, therefore, remain preliminary, given that the Covid-19's medium-to-long term consequences on the quality and survival of democracy are yet to be fully evaluated. Second, the interregional perspective that we adopted to study the consequences of the pandemic on democracy complements other studies focusing on Europe that instead analyse countries belonging to the same geographical area (Guasti, 2020; De Angelis and de Oliveira, 2021). However, the explanatory power of the factors that we analysed should be tested on a larger sample of countries and against other variables that could affect democratic backsliding.

Moreover, the conclusions we drew from the cases of Poland and Italy regarding democratic backsliding and resilience during crises such as the Covid-19 pandemic, need to be reassessed by studying cases that display different combinations of the conditions under examination. For instance, we emphasized that democratic backsliding and resilience during the Covid-19 crisis resulted from the interaction between similarly important structural and agency-related factors. True enough, most of the time backsliding is intentional. Yet, in our view, we should not overlook the importance of the institutional context. In this regard, the case of Poland vividly shows that the government's attempt to bypass the existing state of emergency regulation was crucially facilitated by the defective nature of the country's democratic institutions and particularly the weakness of the checks and balances relating to the executive power. Admittedly, however, we do not have sufficient evidence to conclude that a hypothetical attempt by the Italian government to erode democracy during the Covid-19 crisis would have failed due to the strength of the country's democratic institutions.

To demonstrate further that agency alone is not sufficient, it would be useful to analyse other cases in which authoritarian-leaning leaders governed in countries with (still) relatively robust democratic institutions. Moreover, while our analysis challenges previous conclusions regarding the saliency of the state of emergency regulation (De Angelis and de Oliveira, 2021), we should consider that Italy's weak state of emergency regulation did not undergo the stress test of an authoritarian-leaning government, and that in Poland the SER was circumvented thanks to a specific combination of factors facilitating backsliding. Therefore, even the state of emergency regulation needs further attention through the investigation of other cases presenting different constellations of the factors under examination.

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