

## 2. Democracy Versus Democracy: The Populist Challenge to Liberal Democracy

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The current populist challenges in western liberal democracies should not be seen as evidence of their decline, but as a constituent part. The history of democracy shows us that such challenges enable democracy's growth and evolution. As these modern conflicts and crises see populists seek to capitalise on the discontent of the people, it is evident that much of the conflict comes from tensions between the rule of law and majority rule. Elites seeking to preserve the liberal democratic system need to make their arguments in defence of the rule of law and democratic values, rather than assuming them to be self-evident. We should only become concerned over the fate of liberal democracy when the conflict moves from dialogue into physical violence, or as in Hungary, where the executive has dismantled counter-majoritarian checks. It is only then that the departure from democracy truly begins.

### **Keywords**

Liberalism; Liberal Democracy; Democracy; Populism; Rule of Law; Authoritarianism

## I

The present populist revolt targets two ideals that lie at the heart of liberal democracy – representative government and the rule of law. As Müller and Mudde and Kaltwasser have cogently explained, populists pit the popular sovereignty of ‘the people’ against the rule of the ‘establishment’, controlled by ‘self-serving’ elites who administer the rule of law and run representative liberal institutions [1, 2].

There is nothing new about such challenges from below. Throughout the history of democracy, radicals of the left and of the right have frequently adopted majoritarian arguments against the perceived political domination of the elites and their control over democratic institutions. From the agrarian revolts in late 19th-century America to the Poujadist challenge in 1950s France, populist revolts, often incited and led by skilled demagogues, are a common feature of the Western democratic tradition. They serve as a signal of discontent and can force elites to wake up and address issues of exclusion and inequality that have been ignored or left unaddressed.

The remedies populists propose are rarely effective or relevant, and this provides an opportunity for elites to regain control of the political agenda, if they are politically savvy. However, in restoring their control, they are usually obliged to make some concessions that address populist discontent. In this way, populism can be a source of renewal for democratic systems.

Conflict – especially populist challenge from below – is intrinsic to a healthy democracy. Even if such conflict polarises society, it does not necessarily mean democracy is in crisis, nor do such crises have to precipitate democracy’s collapse. However,

Ziblatt, Levitsky, Runciman, and Mounk (among others) have all warned that democracies can slip downhill from conflict to crisis and from crisis to collapse, and their arguments have been a bracing wake-up call to those of us who have taken democratic stability for granted since 1945 [3, 4, 5].

For all the talk about democracy dying, liberal democracy, at least in its heartlands of Europe and North America, is functioning normally. Democratic leaders are struggling, as they often do: to cope with popular distrust and discontent, to resolve conflicts among competing elites, to face the consequences of their failure to anticipate such crises and to pre-emptively engage with their causes. In other words, our leaders are dealing with all the ailments that the democratic flesh is heir to.

We fail to understand democracy at all unless we appreciate the extent to which conflict and crisis are a constituent and necessary part of it. The populist uprisings, whether Brexit, the Italian Five Star Movement, or Trump's re-imagining of America's Republican Party, certainly capitalise on democracy's discontents, but do not prove that democracy is dying. Instead, these challenges trigger arguments that are intrinsic to democratic life: what democracy is, who should rule, and why they should rule. They remind us that it is not the task of democracy to resolve these debates, but to keep them peaceful.

While maintaining civility and the pragmatic accommodation of disparate views are highly desirable features of a democracy, they are not necessary – democracies can still function without them. What democracy must avoid is violent civil conflict, political violence and declension into authoritarian rule. Thus far, Brexit, for example, has not been civil but it has not been violent.

Similarly, Trump's unfortunate reign was more incompetent than authoritarian. His refusal to accept the result of the 2020 election, however, did have the effect, whatever his actual intentions, of inciting right-wing followers to take the law into their own hands, with the storming of the Capitol on 6 January, 2021. For the first time, a sitting President appeared to condone, or at least did nothing to prevent, a direct attack on democracy and its elected representatives. While civil disobedience and political violence have been endemic features of American democracy, this was the first time that a populist challenge ended up with an assault on the Capitol itself, and more importantly, with democratically elected officials from one party actively condoning or even encouraging the assault. This takes the populist challenge to democracy in a new and worrying direction.

In a number of democracies, Hungary, Venezuela, Nicaragua, Turkey and the Philippines, a democratically elected populist has succeeded in dismantling checks and balances and consolidated a single party state. In Hungary, Viktor Orbán has done so, it must be said, not by political terror and violence, but by manipulating democratic consent enough to win four straight electoral victories. Even in Hungary, however, the story is not over. If we write off its democratic prospects, we are dismissing the democratic aspirations and civic capacity of as many as 40 percent of the Hungarian population – the size of the opposition vote in the last election – who long to return to the European democratic mainstream. Orbán is not Hungary's final destination. Democracies can die, but they can also be reborn [6, 7].

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The Covid-19 emergency, grave as it has been, has demonstrated liberal democracy's intrinsic institutional strengths, while showing up the incoherence of the populists' distrust of experts and their weakness for telling aggrieved majorities what they want to hear. Epidemics are a time for truth, and they tend to punish the rhetorical exaggerations of populist demagoguery. It is too early to judge which societies and which democratic leaders managed the crisis well, but it is nearly certain that the list of those who did not do well will include two populists, the President of the United States and the President of Brazil.

Covid-19 has also shown that democracies can count on immense reservoirs of willing compliance if a crisis is seen to be sufficiently grave. To persuade people to stay home and self-isolate democracies did not need to put armies and police forces out on the street, as the overwhelming majority of citizens did so of their own accord. Even as citizens willingly self-isolated, they continued to scrutinise their leaders and their policies, vigorously debating how long these measures should last, what trade-offs should be made between economic life and public health, and who should be blamed for the failure to anticipate such a crisis. While some democratic leaders have been a tribute to democracy – they inform, they consult, and they act – others have failed miserably. In contrast to authoritarian systems, democracy has a remedy for such failure: free elections.

Authoritarian regimes like to claim they can act with ruthless dispatch but their governance in the pandemic crisis has shown a

preference for prevarication over efficiency. Such a performance by these regimes, hiding facts, manipulating statistics, and crushing dissent, will be unlikely to convert those living in functioning democracies to their cause.

## II

As well as challenging the functioning of democracies, the current populist revolt is challenging our normative assumptions as to what being a democracy means. In our standard conception of liberal democracy, its liberal nature requires the rule of the majority to be constrained by the rule of law. In turn, the decisions made by democratic institutions acquire their legitimacy from two sources: the will of the people and from conformity to the law. These sources are supposed to be complementary. Power in a democracy expresses the will of the people while simultaneously protecting the people by being exercised in conformity with law.

Liberal democracy enforces a line of demarcation between the empire of politics and the empire of law. A line between the area of public decision-making that must be left to elected politicians, and the areas that must be left to courts and judges. A line between the exercise of popular sovereignty and the rule of law.

The populist challenge has exposed the extent to which these two empires – rights-based rule of law and majority rule – conflict. Instead of lamenting that populists are trampling on the previously well understood demarcations between law and politics, it is worth observing that these demarcations are always in question in any functioning democracy. They are simply more visible now.

Liberal democracy also contains a range of actors – lawyers, judges, politicians, civil servants and the media – who have distinct roles to play. Each of these professions, in defending their own professional prerogatives, are supposed to constrain the power exercised by the government in the people's name. Such competition ultimately protects the freedom of ordinary citizens, who retain fundamental authority over the elite through the sanction of regular elections.

Just as the rule of law implies a caste of professionally-trained jurists and bureaucrats who police the boundary between law and politics, so the idea of representation – the second constituent of liberal democracy – implies a professional caste of politicians who broker and interpret the interests and values of the majority.

Liberal democracy is 'elitist' in this sociological sense: it requires trained professionals to accomplish key democratic tasks. This is the feature of liberal democracy that populists most attack, but it is anything but obvious how a highly complex modern society can be governed at all, unless by a combination of trained elites and the people's representatives, with the latter ultimately held to account by the people. Attacks on elites may be popular, but are incoherent, and populists have no answer to the question of how to govern without expertise-based representation. This incoherence, however, does not mean that the argument does not have influence, so the real challenge for democracies is to ensure that elite recruitment is open to all and accountable – in some way – to the electorate, rebutting the presumption of an 'elite class'.

What populism has also laid bare is the degraded state of liberal democratic representation: the powerlessness of most elected representatives, their subservience to executive control and party discipline (at least in parliamentary democracies based on the British model), and the erosion of their capacity to represent the people who elect them. This shift of power, from the legislature to the executive, is a rarely acknowledged factor behind populist movements, with citizens feeling under-represented in the very institution supposed to represent them. In Britain, the adoption of a single, superficial populist mechanism – the referendum – was supposed to relieve this pressure, with expectation that the country would vote to remain a member of the EU, allowing the status quo to continue. Instead, it caused – and is causing – political chaos, a clear reminder of the axiom that referendums are a bad mechanism to resolve existential questions. The right way is to strengthen parliaments' hand against executive power, to weaken the grip of party discipline, and to enhance the capacity of representatives to understand and articulate the concerns of voters. The inevitable consequence, of course, would be that parliaments become less stable and less reliably controlled by ruling parties and their leaders.

The populist challenge extends beyond an attack on representative institutions to the sanctum of the law. Populists have capitalised on a truth: the rule of law is, for most people, an abstract fiction. To those who operate inside it – lawyers, judges and politicians – it is beyond reproach. To those on the outside, it can seem like a game played for the benefit of the insiders, with prohibitive barriers to entry and arcane rules that benefit nobody but the players. This populist critique of the rule of law



has brought home to liberals the reality that the rule of law is, for most, a remote ideal celebrated by elites, rather than a meaningful tool that protects the people's rights and freedoms.

Liberal democracy works when a majority of the public believes, more or less, that those professions who operate in parliament and in the courts are doing so for the benefit of the majority. The populist challenges to such elites, attacking their income, their privileges, and their expertise, have sapped the people's confidence that they are acting for the greater good.

In normal times, the guardians of law and politics respect the boundary that lies between them. For instance, when judges overturn a law, they usually take care not to be prescriptive about remedy, leaving it to political authority to determine how to fix the situation. However, this line remains a matter of legitimate dispute. Populist criticism about judges overreaching their authority, or attacks on the legitimacy of 'judge-made law' are a standard feature of political polemics in a healthy democratic society. We should not suppose that President Trump's fulminations against the courts, such as the court that outlawed his Muslim immigration ban, are unusual. US Presidents before Trump were also often dismayed to find their hands tied by the courts. Franklin Roosevelt was widely viewed as a populist of the left when he tried to 'pack' the US Supreme Court in 1938 to ensure passage of critical New Deal legislation.

The rule of law is not a sacred high altar before which all right-thinking liberal democrats should genuflect. Once seen as it should be, as a constantly contested terrain, it becomes less surprising that populists should attack the law and its supposedly anti-democratic aspects.

Over Brexit, the boundary between the empire of law and the empire of politics became a battleground. In the country that invented liberal democracy, influential voices argued that popular sovereignty should mean freedom from the undemocratic influence of 'judge-made law'. In a famous example of populist rage at judges, Britain's largest selling newspaper, the *Daily Mail*, denounced the high court judges who ruled against the wishes of the Brexit faction as 'enemies of the people' [8].

Equally at stake in the Brexit debate was whether the rule of law meant conformity to European-made law and international human rights law. Attacks on transnational and international law in the name of democratic sovereignty are a dominant feature of the populist revolts in Italy, Hungary, Poland and Britain. Across Europe, these populists argue, European law and European judges have too much power. For democracy to be renewed, it needs to be taken from the judges and given back to the people, so that the populist renewal of democracy requires enhancing the power of majority opinion. That is what the rhetoric of 'taking back control' means; this also implies privileging majority rule over the rule of law as the basis of democratic legitimacy.

All of this is a frightening development only to those who take international law's domestic legitimacy for granted. There are robust traditions, mostly on the right, that insist that law's legitimacy must be anchored in domestic national traditions of jurisprudence, rejecting the argument (most often proffered by liberals and progressives) that there are universal standards and norms that must be aspired to. Populism did not invent these conservative arguments: they merely used them as a rallying cry. In the process, populists have forced a belated recognition, at

least among some liberal elites, that the arguments for the legitimacy of international law and supranational legal supervision need to be made to fellow citizens, rather than assumed to be self-evident truths.

### III

In the same way the boundary between law and politics in liberal democracies is fraught with controversy, so are the rules governing political competition between parties. In normal times, the political competition in democratic systems is a competition between adversaries, not a war to the death between enemies. As I have argued in *Fire and Ashes*, an adversary is an opponent today but a possible ally tomorrow [9]. An enemy can never be an ally, for he wants to destroy you. Even in ordinary times, it is difficult to treat an opponent as an adversary rather than an enemy when you are both in the midst of a competition for power. However, the stability of democratic competition depends on maintaining this distinction. A healthy democracy depends more than it realises on the salutary hypocrisies – ‘My honorable friend, etc.’ – in the politics of adversaries.

Despite this inherent difficulty, maintaining this distinction is easier during times of tranquility. In times of crisis – war, pandemic, depression – polarisation will erode the tacit trust and respect that regulates competition among elites and permits competitive institutions to co-operate. Not only does this fracture the combative but productive relationship among parties, it can fracture parties themselves, with leaders believing that they can only hold the party together (and resolve the crisis) by purging enemies within the party. This twofold fracturing can result

in legislatures becoming dysfunctional as the party systems that broker interests and ensure the legislative system functions break down altogether.

It is not surprising that periods of crisis result in polarisation. In modern conditions, in which technology forces the pace of decision-making and speeds up the feed-back loop of negative reactions, crisis management becomes endemic to liberal democracy. Our concepts of liberal democracy theorise a system at rest rather than under strain, but this ignores the reality that it is always under strain. Its legitimacy is performative – a permanent work in progress. Our expectations of ‘normality’ – expectations of stasis and equilibrium – make it difficult for us to identify when liberal democracy is truly in crisis, rather than being subjected to the vicissitudes inherent in being a liberal democracy.

A state of crisis would mean that the state’s very legitimacy would be in question among such large numbers of people that an authoritarian challenge to the rules would become credible. This threshold of crisis is crossed when the political system is paralysed: coalitions cannot be formed, elections do not produce clear results, parties fragment. When such paralysis takes place the situation generates electoral impatience with checks and balances and with legal restraints on power. This produces demand for a politics in which a leader, acting as the voice of the people, will defeat the people’s enemies at whatever cost to the democratic system itself. This is the moment of populist opportunity. The ambition of populist parties is to incite such an opportunity: they work to disrupt liberal democracy and to foster hostility towards the self-dealing elites who have

supposedly corrupted the representative function and who use the law to frustrate the people's will. Populism thrives on a politics of enemies. They take the crisis they provoke as a proof of the need for their authoritarian prescription.

If we need to distinguish conflict – normal – from crisis – abnormal, we also need to distinguish crisis from collapse. Here the crucial marker that points to collapse, and the crucial point about the kind of danger populism actually represents, is the likelihood of political violence.

In the Great Depression, economic crisis fragmented and destroyed the liberal constitutional system in Germany. Hitler rose to power by exploiting disillusion with Weimar democracy. Today in Europe, there is fascist language aplenty in politics, and fascist violence at the margins, but no fundamental threat to the stability of the political system itself. No political movement in Europe is overtly deploying brown-shirt private armies in the streets. The political violence that there has been so far occurs in isolation: the *gilets jaunes*, some unpleasant demonstrations in East Germany, racist attacks on Hispanics in the US. These are repellent phenomena, but none of this is organised political violence of the type associated with fascism in the 1930s. The Catalan challenge to Spanish democracy has been public, popular, *and* peaceful.

The attack on the US Congress on 6 January, 2021, however, takes the populist challenge to liberal democracy into new territory. For the first time, an attack on a democratic institution received support from elected representatives inside the institution itself. It remains to be seen whether this pattern of condoning anti-democratic violence persists. If it does, populism in the United States will become a direct threat to the constitutional order.

Elsewhere, in Europe in particular, the populist challenge has remained within the limits of the constitutional order. This absence of violence in the populist challenge to liberal democracy has occurred because the economic system has not visibly broken down. No populist political movement is actually mounting a real challenge to the constitutional order of liberal democracy itself. Wage stagnation, inequality, unease at large-scale migration, and erosion of the welfare state are all a source of discontent, but none of this has yet produced a movement seeking to replace liberal democracy with dictatorial rule.

There are, of course, no guarantees here. If the Covid-19 crisis is short and economic life resumes, democracy may not be damaged. Indeed, it may come out of the crisis stronger than before. If the economic crisis lasts and results in frightening hardship, then the 1930s should warn us that democratic collapse might become possible. Yet we should not assume that economic dislocation will necessarily precipitate democratic collapse. Whether economic dislocation combined with populist mobilisation against discredited elites leads to fascism turns on whether liberal institutions and the liberal professions prove strong enough to enact reforms that defuse populist anger. How this struggle will turn out will vary from country to country.

Leaders – or would-be leaders – in liberal democracies should also be wary of turning to authoritarian forms of governance as a remedy to their economic woes. Authoritarian regimes are no safer than democracies from the pressures of economic dislocation, and the ruling party may miss the release valve that elections in democracies offer to reduce this pressure. Instead, they face increasing resistance and resentment, but gradually run

out of enemies to blame. As they accumulate power, they gerrymander the institutional systems, bringing them under their control in perpetuity, forcing their opponents into the streets. Even if such authoritarians might wish to surrender power, they cannot do so, because they know the consequences may be imprisonment, or worse. Eventually, however, the nemesis of succession awaits them all, and then they will have to choose between surrendering to the inevitable or fighting to the last. This is logic that could transform them from authoritarian populist regimes into fascist ones.

Regimes like those of China, Russia, and now Hungary understand that an independent apparatus of the rule of law would threaten the very survival of the single party state. At the same time, these regimes understand that their own capitalist elites do not trust governments that have the power to seize their assets at a moment's notice. Hence these regimes allow their own native-grown elites to offshore profits and property in states, such as the United States and Britain, where rule of law does provide these elites with protection from seizure by their regimes back home. In this roundabout way, the rule of law in liberal democracies provides a stabilising mechanism for the single party regimes who are their geo-strategic competitors.

To return to where we started, the populist revolt against mainstream politics highlights tensions between majority rule and rule of law that are intrinsic to any version of democracy worth defending. Provided – and this is a big if – these questions are debated and resolved within the institutions of democracy itself, then the conflict is not a negative phenomenon, but a positive one, a sign of the inherent vitality of democracy. The real

threat to democracy occurs in two circumstances: first, when, as in the United States, constitutional political parties and their members aid and abet, or refuse to denounce, violence against the democratic system itself; second, when executive power, as in the case of Hungary, sets out to weaken the courts, the media, the universities, indeed, all the counter-majoritarian institutions of a society. Then, but only then, does authoritarian populist majoritarianism set a country on the path to a single party state and exit from democracy itself.

### Competing Interests

The author has no competing interests to declare.

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