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Populism and Liberal Democracy: Populists in Government in Austria, Italy, Poland and Switzerland

The enduring electoral success of populist parties across Europe and the increasing opportunities they have gained to access government in recent years bring once more into relief the question of whether populism and democracy are fully compatible. In this article we show how, despite playing different roles in government within very different political systems, and despite the numerous constraints placed upon them (for instance, EU membership, international law and domestic checks and balances), populist parties consistently pursued policies that clashed with fundamental tenets of liberal democracy. In particular, the idea that the power of the majority must be limited and restrained, the sanctity of individual rights and the principle of the division of powers have all come under threat in contemporary Europe. This has contributed to the continuing erosion of the liberal consensus, which has provided one of the fundamental foundations of the European project from its start.

THE GROWTH AND DURABILITY OF POPULISM IN EUROPE

SINCE THE PUBLICATION IN 1969 OF GHIȚĂ IONESCU AND ERNEST Gellner's seminal edited collection on populism, both the success of populist parties on the old continent and the literature focusing on them (recent additions being Albertazzi and McDonnell 2008 and Mudde 2007) have grown considerably. To understand the differences between the end of the 1960s and today, we need only to remind ourselves of the following:

- The populists' sustained electoral success across the continent from east to west, and the many differences between European political and electoral systems notwithstanding, has dispelled the myth that populism is, by nature, not durable (as Taggart 2000

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and Mény and Surel 2002 have argued). Indeed, populist parties have sometimes been able to position themselves among the largest parties in their respective countries, when they have not become *the* largest parties of all (as in Italy and Switzerland), and in successive elections. Moreover, as the 18 per cent vote share achieved by the National Front (Front National, FN) in the first round of the French presidential elections of 2012 shows, some populists have achieved their best results in recent years.

- Where support for these parties has fluctuated, also because they failed to be seen as effective at governing after being given the opportunity to do so (see the case of the Austrian Freedom Party (Freiheitliche Partei Österreichs, FPÖ) discussed below), the setbacks have not necessarily caused the demise of populists (indeed, the Freedom Party would have received 21 per cent, had a vote been held in September 2012, according to recent surveys; *Profil* 2012). The case of the Netherlands – where, following the decline of the List Pim Fortuyn (Lijst Pim Fortuyn, LPF) from 2003 onwards, the Party for Freedom (Partij voor de Vrijheid, PVV) has also successfully campaigned on themes such as Islam and immigration – also shows that opportunity structures favourable to populism can be successfully exploited by different challengers (Lucardie 2008). Despite the setback suffered by the Party for Freedom in the Dutch parliamentary elections of September 2012, it still retained the support of 10 per cent of the electorate (compared to 15 per cent in the previous election).
- Importantly, populism is continuing to spread to countries that, for one reason or another, seemed ‘immune’ from its ‘virus’. A recent example, fuelled by the post-2008 international financial crisis and the European Union’s (EU) inability to deal with it effectively, is the extraordinary success achieved by the True Finns (Perussuomalaiset) in the 2011 Finnish general elections on an anti-bail-out platform (plus 15 per cent – thus reaching 19.1 per cent of the vote, only 1.3 per cent behind the largest party).

The electoral strength of populists, coupled with the corresponding erosion in support for mainstream parties, has meant that they (together with other former ‘outsider’ parties, such as the Greens; McDonnell and Newell 2011) are increasingly accepted as coalition partners by mainstream parties, or are at least being asked to provide

external support to governments (as in the cases of Denmark and the Netherlands).

Within the literature on populism, numerous studies (for example, Arditì 2007; Canovan 1981, 1999; Mény and Surel 2000, 2002; Mudde 2004, 2007; Panizza 2005) have stressed the need to analyse the uneasy relationship between populism and democracy (especially *liberal* democracy). Interestingly, in Europe populists have invariably presented themselves as the saviours – not the challengers – of democracy against political and economic elites at the national and supranational levels, which have been accused of having ‘stolen’ from the people what rightly belonged to them (in Eastern Europe these normally include the former communist *nomenklatura*, see the Polish case below). Krastev (2008: 4) has argued that, ‘in the current epoch, European elites secretly dream of a system that will deprive irresponsible voters of the power to undermine rational politics, and . . . they are more than ready to use the European Union to realize this dream’. Such European elites appear to have found their match in those populist parties that have reclaimed the ‘sceptre’ of full sovereignty on behalf of ‘the people’.¹ As Margaret Canovan (1999) explained, populists have never limited themselves to suggesting practical solutions to people’s problems – including in those countries in which they have been able to serve in government. On the contrary, they have offered nothing less than a ‘politics of redemption’, in contrast to the establishment’s ‘politics of pragmatism’, which includes the promise to return power to where it belongs: the people. However, as one considers the initiatives championed by populists in recent years (and especially what populists in power have done in actual fact), doubts inevitably arise on whether populism and *liberal* democracy are fully compatible.

This article aims to further this discussion by moving from the theoretical level (at which it has generally been conducted) to the empirical one. Our main thesis is that if populism’s inherent incompatibility with liberal democratic principles does not become apparent when populists are given a chance to implement their policies as members of an executive, then the case must have been overstated. We therefore consider policy proposals and legislative acts championed by populists in government in four countries: Austria, Italy, Poland and Switzerland (on case selection, see below). Here populists either ‘cohabited’ in government (the cases of Italy and Poland) or took part in governing alliances as junior partners

(Austria) or were members of a consensual collegium (Switzerland). We will show that, despite these differences and numerous other constraints (such as EU membership, international law and domestic checks and balances), populists in all cases kept putting forward proposals and championing initiatives that repeatedly, consistently and purposely clashed with the fundamental tenets of liberal democracy. We are, however, not interested in why some populist parties were more successful than others, or why some policy areas were more successfully focused upon by them than others. What we aim to contribute to is rather the debate on the ideological inconsistency of populism with liberal democracy and how this translates into governmental action.

The next section identifies the key principles of liberal democracy and populist ideology. We then proceed by assessing the policy record in all four European countries in which populist parties have been part of national executives.

POPULISM AND LIBERAL DEMOCRACY: KEY PRINCIPLES

Democracy and populism are complex and contested concepts, and this is not the place to rehearse debates about their respective definitions. Of the six conceptions of democracy identified by Coppedge et al. (2011: 253–5), we focus on the liberal type, which ‘stresses the intrinsic importance of transparency, civil liberty, rule of law, horizontal accountability (effective checks on rulers), and minority rights’ (Coppedge et al. 2011: 253). In order to identify the key principles of liberal democracy in the context of the present discussion, we rely on Giovanni Sartori (1987) and Larry Diamond (1999), drawing on the work of Albertazzi and McDonnell (2008) for a definition of populism.

Besides being an electoral democracy (that is, one in which regular, free and fair elections, the outcome of which is uncertain, are held, and in which citizens enjoy full voting rights), a liberal democracy must also guarantee some fundamental civil and political rights. These are individual and group liberties, such as the freedom to pursue one’s legitimate interests, to hold political, social and cultural beliefs, and to be able to express them without interference from the state. It is because of the inviolability of these liberties that minorities, no matter how ‘unpopular’ they might be, must be

respected, their rights usually being enshrined in a constitution or otherwise protected by law. As for political rights, these include the opportunity for citizens to participate fully in the political life of their country, by associating, lobbying, protesting, and so on. The citizens' enjoyment of full political rights nurtures (and is in turn strengthened by) political and civic pluralism, freedom of speech and pluralism of information. All these necessary 'ingredients' of liberal democracy are underpinned by what is arguably the most fundamental principle of all, perfectly embodied in the US Constitution: the notion that power can never be absolute, no matter how large a majority may be at a certain moment in time. While in a sense sacred, as the democratic principle requires, the rule of the majority thus needs to be limited and restrained, too (Sartori 1987: 32), so that it can never translate into tyranny over others (Dahl 1956: 6). The primacy given to constitutions in liberal democratic regimes, the territorial and functional separation of powers, the need for office holders to be accountable to one another and to the electorate and the subjection of citizens and institutions (including the government) to the law are means through which the power of the majority is constrained. Crucially for us here, as Sartori (1987: 32; original emphasis) explains: 'if the majority *criterion* is turned (erroneously) into an absolute majority *rule*, the real-world implication of this switch is that a part of the people (often a very large one) becomes a *non-people*, an excluded part'. The important point to be stressed is that this would actually mean a dramatic loss of freedom for *every* citizen, including those who presently happen to agree with the political majority of the day on most issues, since they would be prevented from ever changing their minds, under penalty of losing their status as 'one of the people'.² This is precisely what puts liberal democracy on a collision course with populism, to which we now turn.

As Peter Wiles (1969: 166) wrote in Ionescu and Gellner's volume: 'To each his own definition of populism, according to the academic axe he grinds'. Even today, 'the term is often employed in loose, inconsistent and undefined ways to denote appeals to "the people", "demagoguery" and "catch-all" politics' (Albertazzi and McDonnell 2008: 2), while its usages in the media have hardly been less varied and imprecise (Bale et al. 2011). Like Donald MacRae (1969), another contributor to Ionescu and Gellner's 1969 book, we see populism as an 'ideology', however 'thin' it might be (Freedman 1998),

and we follow Albertazzi and McDonnell (2008: 3) in claiming that its core is the pitting of 'a virtuous and homogeneous people against a set of elites and dangerous "others" who are together depicted as depriving (or attempting to deprive) the sovereign people of their rights, values, prosperity, identity and voice'. As this definition suggests, while the elites are neither virtuous (they never can be, in fact) nor necessarily homogeneous, the 'people' of populist discourse – an 'imagined community, much like the nation of the nationalists' (Mudde 2004: 546) – are, by necessity, both. Foreigners, those perceived to be on the margins of society (such as homosexuals) and those who are not 'common people' are seen as 'other' since they do not belong to the community on either ethnic or cultural grounds, or due to their status as members of the elite. Only those who belong to the people can contribute to the definition of what Jean-Jacques Rousseau called the *volonté générale* and exercise sovereignty over the affairs of the community. Every deviation from what is posited to be the will of *this* people, populists argue, is *ipso facto* a betrayal of the democratic principle.

Liberal democracy, however, assumes that the 'people' and the 'majority' do not in fact coincide, since the people are not seen as a homogeneous entity characterized by the same single, identifiable will of populist discourse.³ In liberal democracies the majority is seen as transient, and also as constrained in two important senses. Firstly, its power is *mediated*, that is, exercised by a variety of institutions whose respective responsibilities have been assigned to them in advance and are normally vested in the people's representatives. Scholars have often highlighted populism's uneasiness with 'representative politics' (Taggart 2000; see also Mény and Surel 2002); in our view, while this may have been true of American populists, as far as contemporary European populists are concerned the case has been overstated. Supporters of populist parties are happy to be represented by leaders whom they perceive to be 'like them'. It is the distance between the elites *here and now* and 'the people' that constitutes a problem, not the idea of representation per se (Mudde 2004: 558).

What cannot be squared easily with populism is rather the second, fundamental liberal democratic principle: that the power of the majority is always *limited* – hence the insistence on checks and balances – and that it can never be exercised at the expense of individual liberties, no matter how numerically overwhelming the majority is, or how strongly its members feel about an issue. This is

what is so irreconcilable with the most strongly held belief of populist ideology, according to which, once identified, the will of 'the people' must be realized immediately and fully. It is now time to consider populists in government to see whether and how this belief translates into specific policy actions.

ASSESSING THE CHALLENGE TO LIBERAL DEMOCRACY: THE EMPIRICAL EVIDENCE

In the remainder of the article, we discuss populist governmental actions in three areas: individual rights, freedom of speech and the separation of powers. These correspond to the areas where we expect populist ideology to clash most strongly with liberal democracy. The sanctity of individual rights means, by definition, that there is no 'hierarchy of rights' – that is, the rights of the many cannot have primacy over those of the few. Moreover, freedom of speech dispels the myth of the people's unity, by providing a constant reminder that 'the people' are far from being homogeneous and are, in fact, constituted by a myriad of different constituencies voicing different interests. Finally, the separation of powers places constraints on how executives are allowed to implement the 'will of the people' who have voted them into office.

We shall analyse policies championed by seven populist parties in four countries: the Austrian Freedom Party; the Italian Northern League (Lega Nord, LN) and Forza Italia (FI), renamed People of Freedom (Popolo della Libertà, PDL) after its merger with the post-Fascist National Alliance (Alleanza Nazionale, AN); the Polish Law and Justice (Prawo i Sprawiedliwość, PiS), Self-Defence (Samoobrona, SO) and the League of Polish Families (Liga Polskich Rodzin, LPR); and finally the Swiss People's Party (Schweizerische Volkspartei, SVP). Our selection of parties covers the entire universe of formal populist government participation in Western Europe, given that both the Danish People's Party (Dansk Folkeparti, DF) and the Party for Freedom only ever provided external executive support (Akkerman and de Lange 2012: 574–5). The Polish case is representative of Eastern Europe in this analysis, without claiming to cover the entire spectrum of cases there. We are also aware that, by covering only populist parties, our research design might seem overly deterministic. However, we do not claim that populist parties

are alone in pursuing policies that clash with liberal democracy – indeed, populist success has made many of their proposals politically acceptable (see the Austrian case below). Our purpose is rather to show that where populists have accessed government, a subsequent erosion of liberal democratic principles has not been a mere accident but was constant, unrelenting and, most importantly, fully consistent with these parties' ideology. Only a qualitative discussion of a small number of cases can uncover the threat inherent in government participation by populists. We now discuss the four countries in alphabetical order to substantiate this claim.

Austria

The new millennium was marked by the appointment of three 'Wise Men' by the EU to deliberate on whether the Austrian Freedom Party, which had become a member of the Austrian government in 2000 with the Austrian People's Party (Österreichische Volkspartei, ÖVP) (Müller 2004: 346), posed a threat to key democratic principles (see Ahtisaari et al. 2000). After a first spell in government, in the early elections of November 2002 the Austrian Freedom Party's support collapsed (from 26.9 per cent to 10 per cent of the vote), while the Austrian People's Party registered the largest gain of any Austrian party ever and reached 42.3 per cent of the vote (Luther 2003: 145). The People's Party retained the important position of chancellor and continued its coalition with the Freedom Party, but to the latter's governmental inexperience and tensions between ministerial pragmatism and grassroots radicalism under the first chancellorship of Wolfgang Schüssel (2000–2) was now added a significant numerical inferiority. This turned the second Schüssel government (2003–6) into a de facto single-party government (Luther 2011: 465–6). Moreover, in April 2005 most MPs and all ministers plus the Carinthian branch of the Austrian Freedom Party joined the Alliance for the Future of Austria (Bündnis Zukunft Österreich, BZÖ), a new party founded by Jörg Haider to avoid relinquishing government participation (as many grassroots activists wanted), thus further weakening the Austrian Freedom Party's policy effectiveness (Heinisch 2008: 51). Nevertheless, and despite these setbacks, in the years following its entrance into government the Austrian Freedom Party, defined by Mudde (2007: 42) as a 'populist radical right party', remained faithful to its ideology and identity.

In fact, ever since Haider had assumed the party leadership in 1986, immigration and asylum seekers had topped the party's agenda and the populists had not refrained from openly dismissing the rule of law as being contrary to their understanding of democracy. At the regional level, the saga of bilingual road signs shows this very clearly. As governor of Carinthia (1999–2008), Haider refused to implement a ruling issued in 2001 by the Constitutional Court (and reiterated several times in the years to follow) which demanded that more signs in Slovenian be installed in the region, due to the presence of a Slovenian minority there. Haider called the ruling 'unduly political' and 'a mistake' (Preglau 2012: 38), ordered local authorities not to implement it and proceeded to move (on television) some of the signs written in German by a few metres, thereby mocking the court's demand that they be replaced by bilingual signs. The party's illiberal approach to human rights and its lack of respect for the principle of the separation of power were justified by claiming that 'in a democracy, it is the will of the people that matters', not that of the courts (Preglau 2012: 171; see also Fallend 2012: 133).

At the national level, the Austrian Freedom Party steered an equally confrontational course with independent sources of criticism, both institutional and those arising from civil society. For example, Haider suggested that MPs who had allegedly refused to 'defend their country abroad' should be held criminally liable, referring to those who had not spoken out against the sanctions imposed on Austria in 2000, following his party's accession into government (Fallend 2012: 126). But the best-known example of the Austrian Freedom Party's disregard for freedom of speech is the lawsuit brought against the political scientist Anton Pelinka, who was eventually fined for accusing Haider of being 'close to national-socialism' without, so the court ruled, citing adequate examples, nor rendering a quote by Haider in full (Noll 2000: 381). Pelinka appealed against his sentence and won (*Der Standard* 2001), but it is worth noting the concern expressed by the 'Wise Men' about the Freedom Party's 'systematic use of libel procedures to suppress criticism' (Ahtisaari et al. 2000: para. 103) in cases such as this one. Another high-profile example is the libel case brought against Wolfgang Neugebauer, then director of the Austrian Documentation Centre on Resistance, who had suggested that the Austrian Freedom Party's rhetoric had contributed to the rise of anti-Semitism in the country (Schiedel 2012).

As for policy-making, even though the Austrian populists' effectiveness was hampered by internal fragmentation and lack of experience (Luther 2011: 465–6), the Austrian Freedom Party managed to put significant pressure on its coalition partner, notably on immigration and asylum law (Fallend 2012: 127). The differences between the Austrian Freedom Party and the Austrian People's Party on these topics were not great anyway (rather a matter of degree, as a comparison of party manifestos reveals; Duncan 2010: 343), although the rhetoric certainly did not coincide. In fact, it was a directive issued by the Interior Minister Ernst Strasser of the Austrian People's Party that in October 2002 provided for the automatic withdrawal of state support for asylum seekers coming from any country other than Afghanistan and Iraq – regardless of the outcome of their applications, and thereby unduly anticipating a negative decision (Preglau 2012: 36). This was eventually found to be in breach of fundamental human rights by the Austrian High Court, as it discriminated against applicants on the basis of their nationality (*Der Standard* 2003). In response to this ruling, parliament approved a new measure determining the withdrawal of state support from all asylum seekers that had accepted help from non-governmental organizations (Preglau 2012: 144). However, this was thrown out, too, this time by the Constitutional Court (Preglau 2012: 148).

Following the accession of the Austrian Freedom Party to government, all Austrian parties – bar the Greens – adopted a harder stance on asylum to avoid being perceived as being too soft on the matter (Duncan 2010: 364). For example, a measure approved under the second Schüssel chancellorship, extending the period during which asylum seekers could be deported and introducing measures to deal with hunger strikes, was backed even by the Socialists (Fallend 2012: 131). However, the Austrian Freedom Party asked for more: one of its representatives even proposed that the state rent an island on the Adriatic Sea where asylum seekers could have been 'assembled' (Preglau 2012: 146). The two coalition partners also agreed to 'favour integration over immigration' (ÖVP-FPÖ 2000: 57). This principle was embedded in an 'integration contract' (*Integrationsvertrag*) that foreigners had to sign, which included the agreement that they would be fined, and even deported, if they were unable to achieve fluency in German (Heinisch 2003: 106; Preglau 2012: 35). Again, Austrian Freedom Party representatives suggested even more radical measures, such as

the immediate expulsion of foreign criminals (Heinisch 2003: 131) or that the fingerprints of all foreigners should be taken (Preglau 2012: 30). That these ideas were never translated into proper policy initiatives demonstrates the lack of policy efficacy of the Austrian Freedom Party. However, the Austrian Freedom Party's accession to power did lead to a general radicalization of the rhetoric on immigration and asylum and several tough measures on these issues: for instance, in 2004, asylum seekers were barred from presenting new evidence when appealing against the rejection of their applications – a measure that was once more struck down by the Constitutional Court (Fallend 2012: 131) – and by 2005 even non-EU nationals born in Austria could be deported (Duncan 2010: 346).

Italy

Italian populist parties were in government for eight years in the period between 2001 and 2011. The Northern League was the minor partner in this alliance, as its share of the vote fluctuated between 3.9 per cent in 2001 and 8.3 in 2008, while its partner Forza Italia gained 29.4 per cent in 2001, and the People of Freedom 37.4 in 2008 (Albertazzi and McDonnell, 2010: 1320). However, the Northern League was essential to the survival of the government between 2008 and 2011, which put it in a strong position and enabled it to drive the agenda on issues it cared about (Albertazzi et al. 2011). We define the Northern League as a 'regionalist populist' party (McDonnell, 2006: 126) and Forza Italia/People of Freedom as populist and personal parties – 'personal' in the literal sense that they either belonged (Forza Italia) or still belong (People of Freedom) to their founder, Silvio Berlusconi (Albertazzi and McDonnell, forthcoming).

Of the two themes that the Northern League has been seen to 'own' in recent years (federalism and immigration), the second is what concerns us here. Besides launching headline-grabbing campaigns such as those against the construction (or mere existence) of mosques (among the many examples, see *La Repubblica* 2008a, 2008b, 2008c), in its electoral manifesto of 2008 (the 'Resolutions' of the 'Parliament of the North'), the Northern League put forward measures such as the following:

- making it compulsory for Muslims to celebrate rites in Italian, an obligation that was not extended to the followers of any other religion;

- granting permits for the construction (or enlargement) of mosques only following local referendums, which would have made the practising of Islam dependent on what a majority of local citizens thought of it;
- banning the construction of Romany traveller camps, even when these were not on illegal sites, thus discriminating against individuals on the basis of their ethnicity; and
- granting mayors the power to deport illegal immigrants, turning deportation into a politically motivated act and thus bypassing proper judicial process.⁴

The illiberal approach that was evident in these proposals concerning not only foreigners, but also Italians belonging to Islamic and Roma communities, is reflected by the most high-profile law on migration and law and order sponsored by the Northern League and passed by the populist coalition after the 2008 election: the ‘security package’ approved in July 2009. Alongside measures such as the authorization to organize citizen patrols in urban centres, the most important provision of this law in the context of the present discussion was the introduction of the ‘crime of illegal immigration’. This measure, thrown out by the European Court of Justice in April 2011 for breaching EU legislation safeguarding the rights of people facing deportation (*La Repubblica* 2011), meant that those without valid residence permits had to serve time in prison. As the party in charge of the Interior Ministry between 2008 and 2011, the Northern League also launched a barrage of initiatives on immigration that have been judged to pose a threat to fundamental human rights by several European institutions. High-profile examples are: the *respingimenti* (‘rejections’ of boatloads of mainly African migrants), which in February 2012 were judged to be in violation of Article 3 of the European Convention on Human Rights by the European Court of Human Rights (*La Repubblica* 2012); and the census and fingerprinting of members of the Romany community (including children), which was severely criticized by the general secretary of the Council of Europe in June 2008, by the commissioner of the same institution in July and by a motion passed by the European Parliament, also in July (see de Stefano 2008).

If foreigners have been the focus of the Northern League’s initiatives, challenges to freedom of expression have instead come mainly from the Northern League’s larger partner in government,

Berlusconi's Forza Italia/People of Freedom. As a prime minister owning three major television channels, Berlusconi's influence has been especially obvious on terrestrial television (Cepernich 2009). Like every Italian prime minister before him (Hibberd 2008), Berlusconi made sure that public television and radio (Radio-televisione Italiana, RAI) were run by a politically sympathetic administrative council. However, uniquely, he constantly intervened to influence the daily running of public service broadcasting and radio and to secure positive coverage for his party (Mauro 2007; Randacio and Galbiati 2007). In some cases, the prime minister brought about the removal of high-profile journalists and actors who had been critical of him (Boria 2009; Rothenberg 2009), as well as bringing libel suits against newspapers. As a consequence, the Berlusconi governments have attracted fierce criticism from organizations monitoring media freedom, such as Freedom House (which downgraded Italy to 'partly free' in its 2009 report).

Like the 'fourth estate', the judicial system was also targeted by the executive, especially through legislation aimed at curbing the power of judges. This was, of course, due to Berlusconi's unique position as a prime minister who was subjected to a very extensive series of investigations (by both Italian and foreign judges) and one who had to stand trial on numerous occasions; however, what is important for us here is that these initiatives (which received the unwavering support of the Northern League) were always justified with reference to fundamental populist principles. Among these, the most consistently cited in the party's communication has been the alleged 'right' of the elected leader to govern on behalf of his people without interference from unelected, and allegedly unrepresentative, bodies. For instance, Forza Italia's 'Charter of Values' (2004: 9) lists judges (defined as 'self-referential' and 'unaccountable') among the elites threatening the power of the people. Berlusconi himself often reiterated his conviction that the winner of an election should be regarded as 'anointed by the Lord' (Benedetti 2004: 57), while also insisting on the need for radical constitutional reforms aimed at strengthening the executive. In addition to this, the People of Freedom leader has criticized parliament (calling it unproductive) and prosecuting magistrates (branded as subversive, including the Constitutional Court), and has clashed with the president of the republic (often accusing him of getting in the way of the acts of government – by refusing to countersign them, for instance).

Following this logic, successive Forza Italia/People of Freedom-dominated governments have passed legislation directly challenging the power of the judiciary and helping Berlusconi and his associates in some of their trials. This has led to the erosion of two principles: that all citizens are equal before the law; and that institutional powers should not be employed to pursue personal advantage.

A selection of some of the most significant laws would include the following; however, the full list is much longer:

- In June 2003 the approval of the ‘Lodo Schifani’ halted all trials involving the highest offices of the state – including the prime minister – until it was thrown out by the Constitutional Court in 2004. The proposal was defended by its proponents on the basis of the alleged need to guarantee that the beneficiaries of this legislation be allowed to perform their duties without undue interference.
- In December 2005 the ‘ex-Cirielli’ law modified the statute of limitation (leading in 2012 to the collapse of the trial in which Berlusconi stood accused of having bribed the British lawyer David Mills) and introduced a norm stating that people over the age of 70 would no longer be required to serve their sentences in jail (unless they posed a threat to society). The latter norm led to Berlusconi’s very close associate Cesare Previti (a former minister of defence) not having to serve time in prison. Previti had been found guilty of bribing judges to influence two takeover battles, one of which had favoured Berlusconi’s own company, Fininvest.
- In July 2008 the ‘Alfano’ law again granted immunity to the four highest offices of the state, but was again struck down by the Constitutional Court in 2009.
- In response to this, in November 2009 a proposal was deposited in the Senate for the introduction of the ‘short trial’, a norm setting a time limit of six and a half years to legal proceedings, allegedly to make it possible for Italian citizens to reap the benefits of ‘faster justice’ in a country in which endless legal delays (in both the penal and civil courts) are estimated to cost up to one percentage point in Italian GDP growth (*The Economist* 2012). The gravity of this problem is not to be doubted – so much so that the Monti government, which took over from Berlusconi’s fourth government in November 2011, also passed legislation aimed at addressing it (*The Economist* 2012).⁵ However, simply setting a time

limit of six and a half years to legal proceedings without radically reforming the justice system would have merely led to the collapse of many trials, including three of Berlusconi's own. In the end the president of the republic refused to countersign the law.

In short, the challenges posed by the populist alliance to liberal democratic principles in Italy are well documented; moreover, they have had implications for all areas considered in this study. Firstly, they have concerned human rights, mainly through the legislation and government initiatives sponsored by the Northern League, which targeted ethnic and religious minorities; secondly, freedom of speech, mainly due to the prime minister curbing freedom of expression and freedom of information; finally, the separation or independence of powers within the state, as well as the principle that all citizens are equally subjected to the law – because of the People of Freedom's only partially successful attempts at introducing legislation that would favour its leader. The important point to stress here is that, while perhaps an emblematic case, Italy has not been an exception in contemporary Europe, as our next example also shows.

Poland

As in Italy, in Poland we are also dealing with a coalition of several populist parties: Law and Justice, Self-Defence and the League of Polish Families. Following Pankowski (2010), we define Law and Justice as traditionalist, Self-Defence as agrarian (since it had roots in a social movement set up to defend indebted farmers; Wysocka 2010: 6) and the League of Polish Families as ethno-nationalist. We additionally regard all three as populist (Pankowski 2010; Wysocka 2010). At the general elections of September 2005, Law and Justice secured 27 per cent of the vote, Self-Defence 11 per cent and the League of Polish Families 8 per cent. Moreover, Lech Kaczynski, the leader of Law and Justice, won the presidential race a month later (*Warsaw Voice* 2005). Initially, Kaczynski's party led a minority government with tacit support from the League of Polish Families and Self-Defence; this led to the signing of a formal 'stabilization pact' between these parties and eventually the creation of a coalition in May 2006 (*Warsaw Voice* 2006a, 2006b). The new Law and Justice leader, Jaroslaw Kaczynski – the twin brother of the president – became prime minister in July 2006, and the coalition survived until

the following summer, when it collapsed due to infighting between the allies. This led to elections in October 2007 in which the League of Polish Families and Self-Defence disappeared from the parliamentary scene, partially swallowed by Law and Justice, which increased its vote share to 32 per cent (Stanley 2011: 267).

As they entered government, the democratic credentials of the League of Polish Families and Self-Defence were still very much in doubt. The League of Polish Families had fuelled anti-Semitism ever since its inception, and its youth wing (All Polish Youth – Młodzież Wszechpolska, MW) was staffed by large numbers of skinheads, quite open about their Nazi sympathies and responsible for attacks against gay and feminist groups, members of ethnic minorities and others (Pankowski 2010: 114). As for Self-Defence, in the early 1990s it had been set up as a militia aimed at defending farmers from debt collectors and it had not been a stranger to violence in the past (Pankowski 2010: 132). Perhaps not surprisingly, the governing alliance became known for the radical, discriminatory and illiberal policies that it put forward during those years, of which there are many examples.

One issue on which the League of Polish Families extensively focused was homosexuality, which Roman Geirtych, the minister of education, described as ‘deviation’ and ‘perversion’ (cited in Sadurski 2007: 24). While other non-populist parties may harbour similar views, what distinguished the League of Polish Families was the way it justified its position on this issue, portraying homosexuals as posing a threat ‘to Poland’s cultural identity’ (cited in Jasiewicz 2008: 7). This is a by-product of the party’s ‘homogenizing and exclusivist’ (Jasiewicz 2008: 7) conception of the (Polish) people. Consequently, in May 2006 access from schools to websites covering homosexuality, including those run by associations campaigning in favour of gay rights, was barred (Pankowski 2010: 182). One month later, Geirtych fired the staff member who had introduced educational material from the Council of Europe into Polish schools, and replaced parts of it with a chapter written by himself which ‘links homosexuality to . . . a lack of a proper idea of love and a hedonistic attitude, as well as prostitution’ (Council of Europe 2007: paras 53–4). The minister’s behaviour was consistent with the repeated verbal attacks against homosexuality launched by other party members (*Warsaw Voice* 2006c) and the president himself (Human Rights Watch 2007) – attacks that contradicted the Polish

constitution and its rejection of all forms of discrimination (Sadurski 2007: 24). Indeed, the European Court of Human Rights found Poland to be in violation of the right to freedom of assembly in relation to the banning of marches by pro-gay activists (European Court of Human Rights 2007: para. 27). Finally, the government's outright disregard for the principles of equal treatment and equal opportunities was reflected in the abolition of the post of 'government plenipotentiary for the equal status of men and women' (Sadurski 2007: 24).

One reason why the government went along with the League's approach to matters related to homosexuality was the social conservatism of the three allies; another was that the conservative media conglomerate, Radio Maryja – the support of which had been crucial to Law and Justice's success in the double victory of 2005 (Pankowski 2010: 156) – had expressed similar views. To mark its distance from the 'liberal' media, notably the Warsaw-based newspaper *Gazeta Wyborcza*, and to signal the government's appreciation for Radio Maryja, the executive 'introduced legislation providing tax exemptions for "social broadcasters", Radio Maryja being the sole benefactor of this formal status' (Pankowski 2010: 175). If this measure can be regarded as unduly advantaging one organization at the expense of pluralism, two other government initiatives concerning the media posed even more obvious challenges to freedom of information. First, the law on the National Broadcasting Council (NBC) was modified on 29 December 2005 to bring this body overseeing the public media under tighter government control. Two consequences of these changes were that loyal League of Polish Families supporters and former skinhead fanzine editors were given jobs as journalists and board members (Pankowski 2010: 178), and that the National Broadcasting Council was now officially tasked to 'safeguard the principles of journalistic ethics' – a measure eventually thrown out by the Constitutional Tribunal (2006: 5) because it would have granted powers of censorship to a politicized body. The second initiative was a 'lustration law', passed by parliament in October 2006 (*Warsaw Voice* 2006d) – the term *lustracja* meaning 'systematic vetting of public officials for links with the communist-era security services' (Szczerbiak 2002: 553). Since the new law defined journalists as 'public figures', it subjected them to a vetting process alongside some 700,000 people in other professions (Kochanowicz 2007: 5). In May 2007, the Constitutional

Tribunal ruled against this extensive definition of ‘public figures’; as far as journalists were concerned, the norm was judged to infringe ‘the principle of freedom to express opinions as well as to acquire and disseminate information’ (Constitutional Tribunal 2007: 22).

These decisions by the Constitutional Tribunal are emblematic of a climate of tension between this institution and the government during the period under discussion. As constitutional judges were standing in the way of the executive, members of the government attempted to exert pressure on them and influence their decisions, and refused to implement the tribunal’s verdicts (Sadurski 2007: 25–8). In addition to this, Law and Justice blamed the criminal courts for what it saw as a high level of criminality in the country, and used this argument to pass legislation curtailing the independence of the judiciary (Bodnar 2010: 36). Justice Minister Ziobro (Law and Justice) in particular intended to ‘revolutionize’ the justice system (Bodnar and Zilkowski 2007: 49). Thus, an Act passed in March 2007 increased the influence of the prosecutor general (the same minister of justice) on prosecutors (Bodnar and Zilkowski 2007: 49–50), and another passed in June 2007 gave him the power to suspend and/or to move judges between courts, thereby opening the door to politically motivated removals of judges (International Bar Association 2007: 26).

This was not entirely surprising since it was, again, consistent with the ideas put forward by these parties before the election – for instance, Law and Justice’s pledge to fight ‘legal impossibilism’, meaning the constraints placed on the executive by ‘liberal’ laws (including the constitution) and by the ‘corporations of lawyers and judges’ (cited in Kucharczyk 2007: 11). Unhappy with the 1997 constitution, Law and Justice had advocated the creation of a ‘Fourth Republic’ based on Catholic and ‘social’ values (Pankowski 2010: 153), a reform predicated on the need for systemic change and moral and political renewal, after the years in which corrupt, self-serving and unpatriotic elites had allegedly ruled the country (Stanley 2011: 266). The proposed changes would have posed a further threat to liberal values, since it was envisaged that the president would have enjoyed the power to legislate even against the wishes of parliament (Sadurski 2007: 16–17), not to mention that all references to the rights of ethnic and religious minorities in the current constitution would have been removed (Pankowski 2010: 154). If, in the end, the populist alliance lacked the necessary

support to change the constitution, the kind of 'Fourth Republic' that was advocated during those years provides further proof of its illiberal stance. Therefore, Poland arguably provides (with Italy) the textbook example of the threats posed by populism to liberal democratic values.

Switzerland

Switzerland defies the majoritarian logic of government vs. opposition because of its consensual political system. Nevertheless, comparisons with the other cases of populists in power are possible if we accept that: (1) the Swiss People's Party is a 'right-wing populist' party (Albertazzi 2008: 106), the growth of which has been spurred by the Zurich wing since the early 1990s; and that (2) this 'new Swiss People's Party' effectively only entered government with the election to the federal executive in 2003 of the Zurich wing president, Christoph Blocher (Mazzoleni and Skenderovic 2007: 96), due to the party's electoral success (from 12 per cent in 1991 to 26.7 in 2003). In 2003 the Swiss People's Party thus gained a second seat in the seven-member collegium for the first time in its history. When Blocher failed to be re-elected four years later, his party withdrew into 'opposition' for about a year (Vatter and Church 2009), until the election of another of its leaders, Ueli Maurer, into government in late 2008.

In what follows we do not just look at the Swiss People's Party's actions in government, however, but also extend our discussion of the party's challenge to liberal democracy to its referendums and initiatives, given that direct democracy gives all political parties in the country the chance to introduce or repeal legislation against the will of both the executive and parliament.

The consensual constraints typical of the Swiss political system are such that it is always problematic to identify government initiatives with one member of the executive. However, one major reform that is uncontroversially attributed to Blocher as the minister of justice and the police is that of the system for asylum seekers (EJPD 2006; Mazzoleni and Skenderovic 2007: 100). This included the following measures: (1) an obligation placed on asylum seekers to prove their identity exclusively by producing a passport or identity card; (2) the restriction of the definition of 'refugee'; and (3) the reduction of the period during which to appeal against unfavourable decisions

on asylum applications (from 30 to four days) (EJPD 2004). According to legal advice requested by the United Nations Refugee Agency, measures of this kind were in breach of Switzerland's international obligations, notably the Refugee Convention on minimal procedural standards (Kälin 2004: 10). This is because refugees rarely carry official means of identification and because the observance of the 'non-*refoulement* principle' could not have been guaranteed.⁶ However, the reform was passed, and a referendum launched by left-wing parties and human rights non-governmental organizations to repeal it was defeated by a large margin in September 2006 (BK 2012), which further boosted the Swiss People's Party's claim to have acted in the name of the people. During Blocher's time in government, the Swiss People's Party even proposed expelling the foreign parents of minors convicted of crimes – a clear breach of the principle whereby nobody should be punished, and so severely, for someone else's deeds. This proposal was later rejected by the parliamentary majority (National Council of Switzerland 2008).

However, it is not government participation, but rather direct democracy that has provided the Swiss People's Party with the most efficient means to further its agenda (Skenderovic 2007: 172), as the party has launched numerous initiatives (which can propose constitutional changes) and referendums (which veto federal laws) on the theme of 'foreigners' (*Ausländer*) and 'non-Swiss' identities and cultures. For instance, in November 2009 a constitutional ban on the construction of minarets launched by the Swiss People's Party was approved by voters, despite the Swiss executive having argued that the provision breached Article 9 of the European Convention on Human Rights (BR 2008: 7638), and despite numerous other organizations agreeing with this view (for example, the United Nations special rapporteur on freedom of religion or belief, Asma Jahangir; see United Nations 2009). A second initiative launched by the Swiss People's Party, and approved exactly a year later, is also relevant to our discussion. This time, voters accepted a proposal on 'the deportation of criminal migrants', stating that, if convicted of some very serious and also less serious offences (examples of the latter being social insurance fraud), foreign nationals would have to be immediately deported. Since all the other major parties and the federal authorities had recommended a 'no' vote, this victory again strengthened the Swiss People's Party's claim to be the only party

that spoke on behalf of ‘the people’. Furthermore, as the government started a public consultation on how to implement this new constitutional provision, the Swiss People’s Party put forward a proposal again stipulating that expulsions should be automatic in all cases, including for those who had committed minor crimes (BR 2012: 33–4). While both this proposal and an alternative, ‘softer’ one sponsored by the government would have breached the bilateral treaties on the free movement of people that Switzerland had signed with the EU (as these did not allow states automatically to expel EU nationals in *any* case), the Swiss People’s Party’s draft was also in breach of the principle of proportionality, ‘a fundamental principle of the rule of law’ (BR 2012: 10–11). However, the Swiss People’s Party argued that the will of the people should prevail over international law, and in July 2012 launched an ‘implementation initiative’ (*Durchsetzungsinitiative*), anticipating that parliament would endorse the ‘softer’ approach.⁷

Like the parties already discussed in this article, the Swiss People’s Party has also had a conflicting relationship with the domestic judiciary. Since in Switzerland the sovereignty of the people (and the cantons) is exercised directly, the Federal Tribunal does not have the power to rule on the constitutionality of federal laws. But when in 2003 the tribunal concluded that naturalizations could not be decided by local citizens’ assemblies since they did not provide for the constitutionally guaranteed administrative appeals procedure (Helbling 2009: 105), the Swiss People’s Party launched a popular initiative (which failed in June 2008; BK 2012) to overrule this decision. On this occasion, Blocher’s party openly criticized the ruling of the Federal Tribunal as an expression of the ‘republic of jurists’ and as a direct attack against Switzerland’s century-old direct-democratic tradition (D’Amato and Skenderovic 2009: 86; also Zuppiger 2003). Thus, despite the first decrease in the party’s vote share for 20 years in the federal elections of 2011 (Mueller and Dardanelli 2013), the Swiss People’s Party keeps showing great skill in pushing the issues it cares about (Europe, law and order and immigration) to the top of the political agenda, especially by making heavy use of direct democratic means.

The question to be addressed, therefore, is where all this evidence leaves us when thinking about the health of liberal democracy in Europe today.

CONCLUSION

Populists across Europe are challenging the idea that the liberal version of democracy should be regarded as the 'final' form of human government (Fukuyama 1989: 4), exactly as it goes through a crisis, manifested in steadily falling turnouts across Western Europe, declining party memberships and ever-greater numbers of citizens citing a lack of interest and distrust in politics and politicians (Webb 2007). The challenge posed by populists to liberal democracy has become most apparent in the anti-judiciary and anti-minorities policies approved in Italy, as well as the threats to freedom of expression that have been waged in that country by the populist alliance. Polish initiatives against homosexuality, the independence of the judiciary and freedom of speech have also gone in the same direction. In Switzerland, the most anti-liberal policies (automatic expulsion of criminal foreigners and an outright ban on minarets) came about via referendums (through which the collegial government and parliament could be circumvented), while in Austria populist rule, at least at the provincial level, was marked by a willingness to openly challenge the rule of law. None of these policies in any of the four countries discussed was initiated or implemented in undemocratic ways. Therefore, it must be acknowledged that, although very dangerous to the *liberal* element of contemporary European democracies, populism is also well embedded in the rules and procedures of electoral democracy. Populist parties take part in elections (often quite successfully, as we have seen) and make use of perfectly democratic procedures (such as referendums, or legislation passed by the people's representatives) in order to pass and implement their preferred policies. At the same time, however, in their determination to champion 'the will of the people', they end up stifling criticism, challenging the rights of 'undesirable' individuals and rejecting the slow and complicated procedures and division of roles through which liberal democracies must operate. Therefore, in all the cases covered above, it has largely been left to the courts to safeguard the rule of law, freedom of information and fundamental human rights. Whether reminding the government of essential constitutional guarantees (such as non-discrimination in Austria or appeal rights in Switzerland), removing anti-constitutional legislation (Italy and Austria) or protecting journalists from undergoing a vetting procedure (Poland), a positive

conclusion to our analysis would thus crown the third branch of government as the real winner in this contest with populists. Europe-wide laws, conventions and institutions (from the European Convention on Human Rights, to the Council of Europe, the European Parliament and the European Court of Justice) have equally been essential to foster liberal values. However, where a constitutional tribunal keeping 'the sovereign' in check does not exist, as in Switzerland, referendums can indeed turn the majority criterion into a 'majority rule' and challenge the rights of minorities, to recall Sartori's observation (1987: 32). This being the case, we would argue that democracy in its most radical form (direct democracy) offers a formidable opportunity structure through which populists can sometimes implement their favourite policies (Albertazzi 2008: 107–11).

The evidence provided fits into a larger picture: populists thrive on the current dissatisfaction with the euro and the alleged lack of democratic legitimacy of the European project driven by the institutions of the EU. Speaking of a 'democratic federation of nation states', Commission president José Manuel Barroso (2012) recently tried to reclaim the 'national' from populist discourse. The examples he could have been referring to are numerous: from the Hungarian prime minister Victor Orban accusing the EU of 'colonialism' (Taylor 2012) to the Dutchman Geert Wilders placing anti-EU slogans at the heart of some of his electoral campaigns, not to mention the True Finns, who have defined the EU as a 'heart of darkness' (*Der Spiegel* 2011). However, all across the continent, the most dangerous threat emanating from populist discourse – and, more importantly, also from populist policies, which are fully consistent with the former – is not so much what is said about the relationship of nation states with the institutions of the EU, but rather the unrelenting erosion of the liberal consensus that has provided one of the foundations of the European project from its very start. Populists both thrive on this erosion and further contribute to it, as this article has shown. It is therefore not the 'national' that Barroso and the EU should reclaim but rather the 'democratic' in its liberal interpretation.

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NOTES

¹ Opposition to the EU has been growing in recent years, also due to the campaigns launched by populists. When voters have been asked to approve either the (now abandoned) European Constitution, or the subsequent Lisbon Treaty, in 50 per cent of cases they have declined to do so, and Eurobarometer surveys show that support for EU membership has declined steadily across the continent since the beginning of the financial crisis (see http://ec.europa.eu/public_opinion/index_en.htm).

² An added problem, of course, is that in real life majorities are variable.

³ This is why in mature liberal democracies the newly elected holders of executive positions feel the need to reassure voters immediately that they will exercise power in the interest of all, and not just those who supported them (for example, George W. Bush's and Barack Obama's acceptance speeches of, respectively, 2004 and 2008).

⁴ Measures severely limiting individual rights have been implemented at the local level by several Italian councils. These include the prohibition to marry for those who do not speak Italian, the prohibition to use languages other than Italian during public events, the closure of mosques, and others (Ambrosini 2012: 75–82).

⁵ As Pulella (2012) writes: 'In 2010 the European Court of Human Rights ruled against Italy 53 times for violating the European Convention's article protecting the right to a fair trial, and 44 of those condemnations were for the excessive length of proceedings'.

⁶ According to the principle of 'non-refoulement', refugees should not be sent back to countries where their lives or rights could come under threat.

⁷ See 'Sammelstart der Durchsetzungsinitiative', official press release, at www.durchsetzungsinitiative.ch.

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