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POPULISM
IN THE FRAMEWORK OF THE EUROPEAN UNION:
A COMPARATIVE CONSTITUTIONAL ANALYSIS
BETWEEN ITALY AND HUNGARY

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Introduction

From Europe to the Americas, from the Philippines to New Zealand, a common reality seems to be characterizing the political life of the entire globe: populism¹. One could even speak of a populist *Zeitgeist* (Mudde 2004) persuading the world. It is no coincidence that *The Washington Post* summed up 2016 as the ‘year of populism’² (Heinisch, Holtz-Bacha, and Mazzoleni 2017). But if 2016 was probably the capstone of such a phenomenon in Northern America – with Trump being elected at the presidency of the USA – the following years (and actually also the preceding ones) have seen many populist parties gaining *momentum* in an unimaginable way in Europe, with no distinction between East and West. The populist label, one has to notice, is rarely used in a self-referential way, being rather attributed by third parties to indicate subjects and realities regarded in a pretty negative fashion. It is sufficient to give a look at newspapers’ headlines to realize that such a phenomenon is more often than not stigmatized and discredited. Just to give a couple of examples: ‘The populist drift [is] a danger for Europe’³, ‘The European Union claims to be more popular than ever, but it is being slowly destroyed by populism’⁴, ‘All dangers of populism’⁵, ‘Intellectuals’ appeal to save Europe: “It is time to move so as to stop populists”⁶, ‘How populist uprisings could bring down liberal democracy’⁷, ‘Populisms: the dark side of democracy’⁸ – and the list could continue.

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- 1 The phenomenon of populism is not, as we shall see, a new one. In the case of Latin America, for example, it is a consolidated feature of the political system. This notwithstanding, its recent success in the Old Continent has raised much concern, for according to many populism would threaten the very values upon which European democracies are grounded.
 - 2 See Adam Taylor, ‘The global wave of populism that turned 2016 upside down’, *The Washington Post*, 19 December 2016, <https://www.washingtonpost.com/news/worldviews/wp/2016/12/19/the-global-wave-of-populism-that-turned-2016-upside-down/>.
 - 3 See Adriana Cerretelli, ‘La deriva populista pericolo per l’Europa’, *Il Sole 24 Ore*, 17 June 2015, <https://st.ilsole24ore.com/art/commenti-e-idee/2015-06-17/la-deriva-populista-pericolo-l-europa-072058.shtml?uuid=ACmL51B>. Translation by me.
 - 4 See Matthew Goodwin, ‘The European Union claims to be more popular than ever, but is being slowly destroyed by populism’, *The Telegraph*, 28 October 2018, <https://www.telegraph.co.uk/politics/2018/10/28/eu-claims-popular-ever-slowly-destroyed-populism/>.
 - 5 See Jordan Kyle and Yascha Mounk, ‘Tutti i pericoli del populismo’, *Il Foglio*, 20 January 2019, <https://www.ilfoglio.it/esteri/2019/01/20/news/tutti-i-pericoli-del-populismo-233461/>. Translation by me.
 - 6 See ‘L’appello degli intellettuali per salvare l’Europa: “È tempo di mobilitarsi per fermare i populisti”’, *La Repubblica*, 18 November 2016, https://www.repubblica.it/esteri/2016/11/18/news/appello_degli_intellettuali_per_salvare_l_europa_e_tempo_di_mobilarsi_per_fermare_i_populisti_-152242198/. Translation by me.
 - 7 See Yascha Mounk, ‘How populist uprisings could bring down liberal democracy’, *The Guardian*, 4 March 2018, <https://www.theguardian.com/commentisfree/2018/mar/04/shock-system-liberal-democracy-populism>.
 - 8 See Renée Fregosi, ‘Les populismes: côté obscure de la démocratie’, *Le Figaro*, 28 February 2017, <https://www.lefigaro.fr/vox/societe/2017/02/28/31003-20170228ARTFIG00274-les-populismes-cote-obscur-de-la-democratie.php>. Translation by me.

Because of the extent it has come to have in Europe, and because of the oftentimes alerting comments expressed about it, it is my opinion that populism needs to be analyzed in a proper way so as to understand what it really is and what it does imply. The present work is an attempt in this direction. More precisely, it will try to give an answer to the question ‘how and with which effects has populism manifested itself in the framework of the European Union?’. The object of my research question, then, is populism, and more precisely populism in Europe. Indeed, as mentioned above, the phenomenon has become reality in most of the Old Continent’s countries, sometimes even making it to the government. At the same time, most of such European countries are also part of the European Union, the most unique example of supranational democracy in the world. This means that by influencing the national policies and public debate of their respective countries, European populisms inevitably impact also on the European Union, being the latter modeled on its components, and relying on its member states’ common identity for its existence. It is my belief, then, that the relationship populism-EU needs to be understood in an adequate way.

To find an answer to the research question, a reconstructive analysis of populism in Europe will be carried out, focusing in particular on the Italian and Hungarian cases. Such manifestations of populism will be analyzed mainly from a legal perspective, taking into account their implications for constitutionalism and modern (liberal constitutional) democracies. Of the different populist parties existed in the two countries over time, then, particular emphasis will be given to those which have set up their own governments, producing significant policies: Forza Italia, the Lega (also in its previous configuration as the Lega Nord), and the MoVimento Cinque Stelle as far as Italy is concerned, and Fidesz as far as Hungary is concerned. Such instances of populism will be compared on the basis of their ideology and tangible political actions, by investigating how they approach public law and what legal outputs their *modus operandi* produce on the same and on the system of their respective countries.

Italy and Hungary have been chosen as units of analysis because of their peculiarities. Italy is geographically located in Western Europe, it is a consolidated democracy, and one of the founding fathers of the project of European integration. On the other side, Hungary is situated in Eastern Europe, it has only recently undergone a process of democratic transition, and is a member of the European Union for only some twenty years. The point of departure for the development of populism is therefore very different in the two cases. Additionally, Italy has been the first Western European country to

deeply experience the consequences of that crisis of politics which is at the heart of the populist rise (Orsina 2014; Orsina 2018), and the first and (for the moment only) Western European country to have had a government made up exclusively of populists⁹ (Orsina 2019). For its part, Hungary is the only European country where populism has been able to profoundly alter the democratic system of the state, starting from its constitution, thus showing its dangerous nature in an unlimited fashion. Both Italy and Hungary are characterized by very special circumstances. Their populisms have behaved in very similar ways, using similar approaches, and implying similar legal effects as far as constitutionalism is concerned. On the other side, however, the concrete outputs they have produced differ a lot in terms of intensity and systematic character.

The present work is divided into 5 chapters. Chapter 1 deals with the concept of populism, analyzing the ways it has been defined, the implications of its ideology, how it relates to secondary ideologies, where it first developed, what are the causes triggering its rise, and how it manifests itself around the world. Chapter 2 specifically tackles European populism, analyzing its development in both Western and Eastern Europe since it first arose, to end with an overview of all the populist parties active in the member states of the European Union. The focus of Chapter 3 is Italy. It investigates Italian manifestations of populism and compares them from a legal perspective, analyzing in particular the effects produced by the Forza Italia-Lega Nord cabinets and the M5S-Lega one on the constitutional system of the peninsula. Chapter 4 follows the same approach focusing on Hungary. Chapter 5 makes a comparison of the Italian and Hungarian populist cases, relating their legal effects to the core values of the European Union. The chapter ends with a reflection on the main grievances denounced by populism, suggesting that these are not to be dismissed without being previously listened to. Finally, in the conclusion, the main findings of the work will be put together, in an attempt to answer the research question.

⁹ I am referring here to the M5S-Lega coalition government, set up after the 2018 national elections (and dissolved already at the end of the following year).

CHAPTER 1 POPULISM

A specter is hunting the world – populism. [...] There can, at present, be no doubt about the *importance* of populism. But no one is quite clear just what it *is*. As a doctrine or as a movement, it is elusive and protean. It bobs up everywhere, but in many and contradictory shapes. Does it have any underlying unity, or does one name cover a multitude of unconnected tendencies? [...] *Is there one phenomenon corresponding to this name?*

(Ionescu and Gellner 1969)

Nowadays, the term ‘populism’ has become a catch-all definition to describe phenomena for which no other label would seem appropriate. The term has lately been used and abused by newspapers, journals, TV news, talk-shows, internet blogs and the likes, to label – among other things – political movements, parties and leaders with nothing in common but their populist *passe-partout*. Despite being the notion of populism no more exclusively related to the academic domain – everyone talks about it in every context – its essence remains still unclear. Such a phenomenon started to be scientifically studied from the mid -1950s, with sociologist Edward Shils paving the way with the first modern description¹⁰ (Allcock 1971). It has thus become a subject of investigation in different scientific fields – from sociology to economics, from history to political science – putting together scholars coming from all over the world. The transformation of populism into a global development has been accompanied by a growth of scholarship on the subject, which instead of clarifying the nature of such a heterogenous manifestation, has only contributed to create further confusion and disagreement. No consensual unequivocal definition has been found for a long time to describe this concept which is simultaneously inclusionary (as in the case of Latina America), and exclusionary (as in the case of Europe) (Mudde and Rovira Kaltwasser 2012; Mudde and Rovira Kaltwasser 2011; Custodi 2017; Custodi 2016). Until very recently, scholars have been having difficulties in elaborating a more or less universal definition of such a phenomenon, to be applied to the analysis of diverse geographical and historical developments across the globe: populism has eventually been characterized as impalpable, slippery, mercurial and “chameleonic” (Taggart 2000). If it is true that populism is not the first contested concept in the social sciences, it is even more true that it has been contested both in essence and usefulness (Mudde 2017),

¹⁰ According to him, populism was to be regarded as an ideology postulating that “the will of the people as such is supreme over every other standard, over the standards of traditional institutions, over the autonomy of institutions and over the will of other strata. Populism identifies the will of the people with justice and morality” (Shils 1956).

to the point that there is no common agreement on its definition even within the same scientific circle. Paradoxically, the scholarship has recently come closer to a phase defined by Moffitt and Tormey (2014) as “a whole new level of meta-reflexivity”, that is, a phase where it is mainstream to approach the issue of populism, by starting to lament “the lack of clarity about the concept” (Panizza 2005). The academic debate is still suffering from a “Cinderella complex” (Berlin 1968), and scholars are still looking for the specific phenomenon which fits the term in a perfect and unique way. The contested nature attributed to the concept of populism may be interpreted in two ways: either has the term been so broadly used that it has lost its inner meaning and value, or is there something so special about it, that the disagreement surrounding its core is just a sign of its intrinsic potential and vitality (Moffitt and Tormey 2014). In any case, since a definition is essential for any kind of analysis in any field – this one being no exception – the need to identify the core of populism – those features which persist no matter the world region, the historical period or the ideology we consider – is indisputable and pressing.

1.1 What is populism? A definition for a highly contested phenomenon

Until the 1980s, scholars have agreed that there was simply no imperative core of populism. The 1967 international conference on populism, organized by the journal *Government and Opposition*¹¹, ended up without the identification of an essential set of features common to any such manifestation (Taggart 2000). More than ten years later, Margaret Canovan (1981) was stuck at the same dead point: she could not find a common nucleus for the phenomenon, because it was, essentially, fragmentary and fractured. Any definition was indeed, at best, a simple description of the specificities of the case under investigation.

Recognizing the objections that could potentially be addressed to his formulation, MacRae (1969) made sense of the populist manifestation as an ideology, although specifying that it was not only that. He considered populism’s non-European stem, which is a political development of modern Russia and the USA, while at the same time acknowledging that its essence had evolved and transformed over time, incorporating also elements of Western Europe’s thought. The crucial points of such an ideology were the restoration dream of a good passed time, a feeling of belonging, and an anti-progressive stance. Populism was, accordingly, a-political in essence, because it was not about politics, but not even about economics, rather “it [was] about personality, and about personality in a moral sense”.

11 The result of the conference was an anthology, edited by Ghita Ionescu and Ernest Gellner in 1969 under the title *Populism: Its Meanings and National Characteristics* – a book which is to be regarded, following Paul Taggart (2000), as “the *definitive* collection on populism” (emphasis in original).

Analyzing Latin America during the 1940s and 1950s, and following a structuralist approach, the phenomenon was defined as a particular regime administered by strong leaders who integrated marginalized people in society (Cardoso and Faletto 1979; Hawkins and Rovira Kaltwasser 2019). It was alternatively considered as a ‘political syndrome’ with some socialist implications, whose foundation was to be found in the ‘simple people’, bearer of all virtues (Wiles 1969). Consequently, populism was a moralistic creed with anti-intellectual and anti-science trends, profoundly opposed to the establishment; traditional; and nostalgic of a lost past which it attempted to project in the near future. Populism was also identified as a political movement, and more precisely as ‘a certain structure of feelings which convinces people that they are part of something greater than themselves’ (Minogue 1969). Ionescu and Gellner (1969) suggested to interpret the phenomenon as ‘a sort of recurring mentality appearing in different historical and geographic contexts as the result of a special social situation’.

The interest in the formulation of an acceptable and agreeable definition of the subject intensified anew starting from the 1990s – period in which a new wave of populism made itself feel – and it became an almost exclusive feature of the political science. Since then, the phenomenon has been categorized in every possible way and continues to be. The difference in precision between conceptualizations elaborated before and after the 1990s, is to be found in the number of available cases of populist manifestations to study during the two different time periods. Before such a date, scholars’ elaborations of what the phenomenon might be, relied only on the examples of classical and twentieth century populism. On the other hand, those academics who engaged with the populist development from the 1990s, had available more instances to consider, many of which belonging directly to their present time: populism was thus a live reality to analyze. What is interesting of such last phase of definitions is the fact that scholars tried to compare populist examples from different countries, linking Latin America to Europe and so on.

Following an economic focus, populism was conceptualized as ‘an approach to economics that emphasizes growth and income distribution and deemphasizes the risks of inflation and deficit finance’ (Dornbusch and Edwards 1990), or alternatively, as ‘the implementation of policies receiving support from a significant faction of the population, but ultimately hurting the economic interests of the majority’ (Acemoglu, Egorov, and Sonin 2013). Going on a different route, Jansen (2011) suggested to conceive of populism as a flexible means rather than as a thing, and more precisely as a ‘mode of political practice’. Reconceptualizing it as a specific project of mobilization, he defined the

phenomenon as any “sustained, large-scale political project that mobilizes ordinary marginalized social sectors into publicly visible and contentious political action, while articulating an anti-elite, nationalist rhetoric that valorizes ordinary people”. What makes of a popular mobilization a populist one is the distinct populist rhetoric adopted by it.

Remaining in the domain of politics, populism has been alternatively described as “a political strategy through which a personalistic leader seeks or exercises government power based on direct, unmediated, uninstitutionalized support from large numbers of mostly unorganized followers” (Weyland 2001). This definition concentrates on populist actors’ deeds rather than words (Weyland 2017) and therefore paramount importance is attributed to the figure of the leader, able to bypass institutionalized organizations and attract people on the basis of his personal charisma. The populist leader, the only one able to combat the enemy and save the nation, is supported by the mass of ordinary people, women and men with whom he has established quasi-direct connections. Also Betz (2002) understood populism in strategic terms, delineating it as being “primarily a political strategy, whose political rhetoric is the evocation of latent grievances and the appeal to emotions provoked by them”.

Definitions which conceive of populism as being either an ideology, a political discourse, a language, a political frame, a political style, a kind of communication, a rhetoric or a political argument, are connected by the same belief that such a development has to do first and foremost with ideas, and more precisely with ideas about the concepts of ‘people’ and ‘elite’ (Mudde 2017). Even though one cannot currently speak of an “emerging consensus” in the academic world, today the ideational approach is doubtless the most used (Mudde 2017). For this reason, it is worth giving a look at the detail of the aforementioned definitions before finally deciding which one is the most appropriate for the analysis of the populist phenomenon.

The discursive categorization, which follows Ernesto Laclau’s thought, “understands populism as an anti-status quo discourse that simplifies the political space by symbolically dividing society between ‘the people’ (as the ‘underdogs’) and its ‘other’” (Panizza 2005 – emphasis in original). According to Laclau (2005), the phenomenon emerges when the social space is divided in a dichotomous manner by an internal delimitation, and a set of unfulfilled demands is shared by the marginalized social sector. Out of this situation, populism discursively creates an enemy (institutions, the establishment) and an oppressed party (the people): what counts here, is not the content of the vision but the way in which it is articulated. Since for Laclau this scenario is also the basic functioning of the political realm, for him populism is a synonym of politics.

Approaching the concept of discourse, Aslanidis (2015) better understands the populist manifestation as a discursive frame, i.e. as “the systematic dissemination of a frame that diagnoses reality as problematic because the ‘corrupt elites’ have unjustly usurped the sovereign authority of the ‘noble People’”. Frames are interpretation devices used to recognize and name complex events (Goffman 1974; Aslanidis 2015), allowing people to opt for a specific perspective in the understanding and labeling of their experiences.

Knight (1998) denotes populism as a political style which does not “relate to a specific ideology, period or class alliance”, and which “implies a close bond between political leaders and led”. He recognizes that specific historical circumstances and events may appear a more fertile ground for such a development, nonetheless clarifying that it “can exist in ‘normal’, ‘non-critical’ times” (Knight 1998). Stressing the primary role of performative repertoires over ideological content, in a time of increasing “mediatization of the political” and ‘spectacularization’, where politicians tend to be increasingly regarded as ‘pseudo-celebrities’, also Moffitt and Tormey (2014) found in ‘political style’ the best label to identify populism. Accordingly, the central elements of the phenomenon would be the evocation of the people, the perception of a situation of crisis, and the disregard for good manners in the political realm, while the focus of the definition would lie on the style adopted by populists in order to depict a certain scenario. Since the way concepts are performed creates links of relation between the performer and the audience, the action of performance has to be regarded as highly impacting, in that it can transform or shape “the audience’s subjectivity” (Moffitt and Tormey 2014).

Putting ideas at the center of the stage, the *genus* of populism has been equivalently found in a “unique set of ideas” emphasizing a Manichean vision of the world, a homogeneous virtuous people, and corrupt elites (Hawkins and Rovira Kaltwasser 2019). Regarding it as a *forma mentis*, Tarchi (2016) proposed to understand the phenomenon as a “distinctive mentality which identifies the people as an organic totality artfully divided by hostile agents; ascribes to it natural ethical qualities; sets up its realism, its industriousness and its honesty against the hypocrisy, the inefficiency and the corruption of the political, economic, social and intellectual oligarchies, and claims the primacy of the people as the source of legitimacy of political power, over all forms of representation and mediation”.

Following a similar stance, populism may even be labeled as a distinguished “moralistic imagination of politics¹² [...] that sets a morally pure and fully unified [...] people against the elites[,] who are deemed corrupt or in some other way morally inferior” (Müller 2016).

12 Emphasis in original, removed here.

For the purpose of this work, I have decided to embrace the definition proposed by Mudde (2004), according to which populism is a thin-centered ideology¹³ “that considers society to be ultimately separated into two homogeneous and antagonistic groups, ‘the pure people’ versus ‘the corrupt elite’, and which argues that politics should be an expression of the *volonté générale* (general will) of the people”. A thin center distinguishes populism from full ideologies which envisage a more comprehensive and broader vision of the world. The populist ideology is thus limited in content and can attach itself to other thick or thin ideological trends. Populism, defined in these terms, encompasses two opposites: elitism and pluralism (Mudde 2004).

As any other definition in the academic debate, also this one has been subject to criticisms¹⁴. However, since it delineates some basic features of populism widely shared by almost any other label (the elite and the people), while minimizing the explanation of the phenomenon to an essential core not encompassing characteristics of secondary importance like organizational aspects, leadership and contextual backgrounds, it seems the most valid definition to use. The usefulness of Mudde’s definition is witnessed by the large use made thereof by scholars: the thin-centered ideology formulation is indeed the dominant theoretical framework in the study of populism.

1.2 Understanding populism

Mudde’s definition of populism is made up of three central elements: the people, the elite and the general will. Since such concepts lends themselves to very subjective interpretations, it is fundamental to understand how they are intended by the populist mind. In the final section of the present chapter, then, an assessment of the consequences of the populist general will will be provided.

1.2.1 Who are *the people*?

The core of the entire populist formulation is represented by the notion of ‘the people’, a notion which in turn defines the other two as its opposite (the elite) and its manifest expression (the general will) (Mudde 2017).

One has soon to recognize that the concept of ‘the people’ is a rather vague one, being any description thereof extremely subjective. The people is not a previously given reality, but rather and always a social

¹³ The concept of thin-centered ideology is derived from Michael Freeden’s understanding of ideology. He defined a thin-centered ideology as “one that arbitrarily severs itself from wider ideational contexts” and which has “a restricted core attached to a narrower range of political concepts” (Freeden 1998; Aslanidis 2015). Freeden, however, never mentioned populism when giving examples of thin-centered ideologies in his works (Aslanidis 2015).

¹⁴ See, among others, Aslanidis (2015) and Moffitt & Tormey (2014).

construct. It is for these reasons that most academic attention has been focused here, to understand what was meant, if anything, with such a term.¹⁵ The expression ‘the people’ does not come alone in the populist slogan: it is indeed accompanied by some moral reference or description – the people is always ‘pure’, ‘authentic’ (Mudde 2017) and honest. Despite these connotations, however, the underlying problem remains – what is the people? Who does the term identify? The implicit abstraction of the notion makes it open to redefinitions, disputations, and even blurred uses. The notion is ‘unusually intractable’ and its only fixed point is that it is extremely flexible (Canovan 1984). ‘The people’ can refer to a specific cultural section of the entire population of a state, to a certain ethnic or religious group, to a particular social class, to the indistinct mass of citizens: the term can be regarded as an ‘empty signifier’, to use Laclau’s words (2005), a box to be filled with whatever specificities the populist actor finds useful for his/her goals. Corollary of what just stated is that ‘the people’ might refer to different entities according to how the term is denoted and by whom it is denoted: as a consequence, there is no universal meaning in it which is common to any populist use. ‘Who the people are will probably vary from place to place’ (Berlin 1968). ‘The people’ might thus be a certain societal segment in Latin American populism, and a completely different one in Western European populism.

Paradoxically, the notion of ‘the people’ has in populism both inclusionary and exclusionary meanings (Mudde and Rovira Kaltwasser 2012; Mudde and Rovira Kaltwasser 2011; Custodi 2017; Custodi 2016).

Following Canovan’s analysis of the word in the English language, it is possible to describe ‘the people’ as referring to three diverse entities: the nation, the underdogs, and the common men/women. The implications are that populism might appeal simultaneously to different categories, highlighting respectively the unity and homogeneity of the community, the non-richness and non-high education of the audience, and ordinary human values like family and simplicity (Canovan 1984). This is possible because populist leaders tend to switch from one identification to the other according to the context they have to deal with: in any case, the appeal to the people is a sounding one, for at the end of the day, every human being feels to be part of such a group.

By claiming to speak in the name of ‘the people’, however, if populism aims at being politically appealing, it has to explain such a concept in terms of some of the peculiar features of the target community (Mudde 2017). Populism defends the ordinary people, those who are not taken into

¹⁵ Even though some scholars have investigated the concept of ‘people’, this specific imaginary community has been understudied in comparison to the other imprecise conceptualizations of ‘nation’, ‘class’ and ‘individual’ (Canovan 1984).

consideration, the majority of the state. The expression may hence designate “those left out”, “those who have somehow been damaged”, “the have-nots” (Berlin 1968). The unified group is described as comprising “ordinary, simple, honest, hard-working [...] and patriotic” (Lee 2006) men and women. ‘The people’ can, at times, refer to the *demos*, the sovereign people unheard and unsatisfied by politicians and institutions, or to the ‘small’ people, those who are not part of big business companies and the likes; but it could also be a community defined via its linguistic, cultural, religious and ethnic marks (Zanatta 2002). The populist people might additionally be interpreted as an organic body which imposes itself on all persons (Mény and Surel 2000; Zanatta 2002), being thus “intrinsically linked to super-individual actors” (Kögl 2010).

Taggart (2000) explains the abstract notion with reference to “*how many* they are, *who* they are *not*, and *where* they are” (emphasis in original). The same word ‘people’ highlights by itself the numerousness of the subject, to indicate that they are indeed in the majority – and that, as a consequence, the populist leader represents the majority of the community. The implicit concept of number, however, is not to be held as a synonym for plurality, pluralism or heterogeneity, for the people is always conceived as a “monolithic” bloc (Taggart 2000). There are neither differences nor divisions inside such a group, and every single component is equal and the same as the others. Given the lack of a specified identity, the populist people is generally described by subtracting features not recognized as belonging to it. So, for example – especially in right-wing inclinations of populism – ‘the people’ is neither made up of migrants, nor of minor ethnic groups; it does not believe in a God who is not historically related to the country; and does not have multicultural traditions. The community in which such a populist people resides is the “heartland” (Taggart 2000). The heartland is a space where positive, simple and traditional values are to be found, an imagined territory invoking the past golden years which populists would like to bring back. The specialness of this fantastic land is given by the fact that it can be attached only to an undifferentiated people, whose values and beliefs are those defended by the populist leader; a land which is interested only marginally – if at all – in the cosmopolitan and international influences coming from outside its borders¹⁶. The concept of the heartland helps to emphasize how the people of populism are not “real” but “mythical” (Mudde 2004).

16 It is important to distinguish here between such a sentiment of attachment to the land, and nationalism. Nationalism is indeed about love for the entire nation, at the expenses of the external world. The feeling recalled in this context by populists is instead a different one: its pride does not relate to the entire national community, but rather only to a part of it – the pure people (Taggart 2000).

It is clear at this stage, that ‘the people’ to whom populism refers, does not include the totality of individuals living in a certain territory: ‘the people is not everybody’, indeed it is ‘[e]verybody of a certain kind’ (Berlin 1968). To ‘the people’ does not belong, for example, that part of society which does not share historical or blood ties with the majority of the population, or those individuals who do not contribute directly to the development of their community, but rather live on the efforts done by the majority. The main outsider, the main alien in the process of ‘extracting’ the people from within the people (Müller 2015) is doubtless the elite. The elite is understood as a particular segment of society which does not really fit in ‘the people’ because of its antithetical nature. The distinction between elite and people might be realized following ethnical lines, although this is not always the case. What is sure at any rate is that current politicians, bureaucrats, journalists, oligarchs, international multinational corporations’ officials and the likes, are not to be treated as belonging to the people. The populist people is not to be understood as following a special class-division line, as it was the case in the past for communism and other -isms. Members of ‘the people’ therefore do not belong only to the working class, nor are their appealed using just this reference – in practice they come from very different social strata, cutting across any possible class division. ‘The people’ are thus not necessarily the poor, but simply those individuals who feel ‘disenfranchised and excluded from public life’ (Panizza 2005). This reality is emblematic to show how the populist people is, in fact, a heterogeneous one, contrary to what is repeated all the time by populists. Homogeneity and equivalence in ‘the people’ can be built only with the creation of a common opposite/enemy: ‘the people’ becomes the group which antagonistically opposes something bad (Arato 2013). Speaking of the supposedly *real* unity embedded by ‘the people’, it is not only artificial and not representative of reality, but also a pure form of pluralism denial. The people *cannot* be mixed, cannot have different ideas or ideologies, different religions or ethnicities, because admitting their heterogeneity would be tantamount to admitting that they have variegated interests and needs, and that consequently they might feel better represented by a different political figure than the populist one, who instead claims to speak in the name of the whole population.

Despite the many analysis carried out by scholars to grasp the inner meaning of the concept, no unilateral description can be found which fits simultaneously all the peoples addressed by populist leaders. For this reason, Mudde (2017) reminds that populism defines the people simply as ‘pure’, and that any other descriptive label attached to the concept is to be regarded as a feature coming from the

host ideology populism has coupled with: it could be, for instance, class or nation, in turn shifting the connotation focus of the group from class division to ethnic lines.

1.2.2 Who are *the elites*?

The second element of the definition of populism we are considering is ‘the elite’. If the concept of ‘the people’ has been more or less broadly investigated by the scholarship, the notion of ‘the elite’ has instead remained theoretically marginal. Indeed, despite the attention reserved to the topic by sociologists like Pareto or Mosca, the notion has not been so broadly investigated following a specifically populist perspective. The way the elite is defined is antithetical to the people, and also in this case the main connotation is moral: the elite is corrupt and disinterested in the needs of the population. Even though it is usually defined ‘*ab negativo*’ (Mudde 2017), it can be described using secondary features as well – however, also here one has to recognize that these characteristics are borrowed from the host ideology attached to populism and are not typical of the phenomenon. For example, the elite might be designed in ethnic lines, thus marking the difference between those in power and those governed (this could happen in territories where many nationalities or ethnicities are found to co-exist, colonization being an instance). There is only one circumstance in which ethnicity and nativism are to be understood as independent elements of the populist ideology: the special case of Latin American ‘ethnopolitism’, merging nativism and populism¹⁷ (Mudde 2017).

The elite is intended, broadly speaking, as incorporating any kind of elite: it can be political, economic, intellectual, related to the media. It always stands for the ‘evil’, being only interested in the accomplishment of its own privileges, and inevitably bearing the shame of having failed to satisfy the citizens.

The existence of ‘the elite’ is possible only if also ‘the people’ is present and vice-versa, being the two concepts complementary. Populism is hence founded on the antagonistic relationship existing between the two groups (Stanley 2008). The way elite and people are conceived allows to approach the world in a bilateral way, creating a dichotomous strategy which is typical of the phenomenon. This Manichean vision of the world always pits the good against the evil, the pure people against the corrupt elite, highlighting the moral character which defines the populist concept. Populism has indeed been portrayed as a moralistic rather than a programmatic conception (Wiles 1969; Mudde 2004). Entities which are in reality multifaceted and changeable, become this way eternally bound to be something that

¹⁷ For instance, Bolivian president Evo Morales uses to distinguish and oppose the mestizo (corrupt) elite to the indigenous (pure) people (Mudde and Rovira Kaltwasser 2017).

would otherwise be temporary – pure and corrupt. In this sense, populism has even be compared to a sort of ‘secular religion’ endowed of sacred messages and speakers, and acting not in the name of a God but in that of the people (Zanatta 2002). The distinction between ‘the people’ and ‘the elite’ is not so much empirical as normative (Mudde 2004). Specifically, the elite is corrupt not only because it does not take into account the people’s demands, but also because it promotes unacceptable conditions, defending, for example, segments of society which are not considered by populists as being part of their group. Corruption moves along the lines of work or ethnicity, according to the social contexts in which populism takes place (Müller 2015).

The Manichean logic of the phenomenon is typical of all approaches which divide reality into two groups – an in-group and out-group – where the members of both clubs become stereotyped, and the defense of the place of belonging is essential along identity lines (Hawkins and Rovira Kaltwasser 2019).

1.2.3 The real meaning of the *volonté générale*

The third and final point of the populist definition I am considering is the general will of the people. By being this a unitary community with common preferences and needs, also its *volonté générale* will be articulated in a compact, homogenous fashion (Mudde 2017). The general will is basically an expression of what is perceived by the homogeneous in-group as the common good. The exclusivity of the people in the identification of the common good is paralleled by the exclusivity of the populist leader in the proposition of specific policies responding to the needs of citizens: any solution presented by mainstream parties advocates for special vested interests, while those advanced by the populist leader are instead for the ultimate welfare of society. The populist leader plays a central role in the political game because he *knows* what the general will is – after all he is one of ‘us’. The people sees itself represented by someone who shares the same ordinariness and simplicity, or, to say it better, by someone who gives the impression of being like us (it is indeed sufficient to think about Donald Trump or Silvio Berlusconi to understand how the populist leader is anything but ordinary). So, if with the notion of ‘people’, ‘the partial group embodies the whole’, with the figure of the populist leader, ‘the leader embodies the partial group’ (Arato 2013).

Populist leaders are rather different from mainstream representatives, embracing a behavior that is not usually seen as appropriate in the political realm. Part of their ‘bad manners’ are ‘the use of slang, [...] political incorrectness’ (Moffitt and Tormey 2014), colorful and vernacular expressions, simplistic

speeches, and the wearing of casual clothes. To be somehow credible in his/her battle against the elite, it is essential that the populist guide is not a part of such a group – he/she is usually an outsider¹⁸.

1.2.4 The people and the general will: populism vs. democracy

Populism, by claiming to speak for the people, aims at restoring a system where popular sovereignty, in its purest form, be the guiding principle. Its objective is the realization of the general will, a will which cannot be contained or controlled by any other check, for the people and only the people is the legitimate locus of power. From such a mission, it seems that populism enhance democracy¹⁹ by encouraging its basic component, that of the *demos*²⁰. Canovan (1999) shares this opinion, conceiving of the phenomenon as a highly democratic one, for whatever the meaning of democracy, it surely implies also power to the people. Modern democracy is understood by the scholar as displaying two faces, a ‘pragmatic’ and a ‘redemptive one’: the first aspect would peacefully cope with individuals’ conflicting interests, while the second would aim at implementing ‘‘a government of the people, by the people, [and] for the people’’, following the *vox populi vox dei* equation. Despite giving rise to a certain tension, both faces are indispensable for democratic regimes, Canovan purports, to be called in such a way. She claims that populism emerges precisely when the pragmatic aspect prevails over the redemptive one, hence helping democracy to come back to its vital principle. Following her argument, this means that even though populism does not support liberalism, it undoubtedly enhances democracy. Such a reasoning evidently presupposes that ‘‘democracy can be liberal or illiberal’’ (Halmai 2018). Accepting Canovan’s argument with some reservations, Arditì (2003) regards populism as a kind of ‘‘politics at the edges of democracy’’. Accordingly, it surely has democratic principles (the continuous claims done in the name of the people, the goal of restoring people’s power), but their exasperation may also turn them into authoritarian values (like pluralism rejection or disregard for checks and balances), despite maintaining a certain ‘‘democratic façade’’.

18 The status of outsider can be attributed on the basis of a party/politician’s position with respect to the party system. Basically, an outsider is someone who gains visibility as an independent candidate or via a newly established party, and not through his/her association with a mainstream organization (Barr 2009). As an outsider can be classified also someone linked to a party which is not new but marginal to the political system, or someone who was previously known to be connected to a mainstream organization but who later distanced himself/herself from it, by becoming independent, associating himself/herself with a marginal/new party, or profoundly reshaping his/her own originally mainstream movement (Barr 2009).

19 The notion of democracy – as that of populism – is a highly disputed one in the academic debate (Rovira Kaltwasser 2012; Plattner 2010; Canovan 1999).

20 The word ‘democracy’ – from the Greek *demos* – indicates a practice whereby the people govern, following the principle of majority rule (Spadaro 2006; Plattner 2010).

Similarly, it has been said that populism cannot be defined as intrinsically anti-democratic (Mény 2005; Mény and Surel 2002; Mudde 2013); or that it is neither democratic nor anti-democratic *per se*, being surely compatible with democracy for it promotes the interests of the majority (Worsley 1969).

If, on the one hand, Tånnsjö defends with no limitations the phenomenon we are considering – assessing it as the best form of democracy that can exist – on the other, Rovira Kaltwasser is of the idea that populism can be either positive or negative for democratic regimes, in that it simultaneously fosters the inclusion of previously unheard societal segments, while opposing political contestation (Rovira Kaltwasser 2012).

An important part of the doctrine, however, seems not to support such approaches, and referring to a conception of democracy which is profoundly based on constitutionalism and liberalism, it has less reasons to conceive of populism as a corrective for democratic regimes, judging it instead as a degeneration inherently conflictual with modern democracy (Urbinati 1998; Halmai 2018; Pinelli 2011; Rummens 2017; Abts and Rummens 2007; Spadaro 2016; Huq and Ginsburg 2018; Akkerman 2003; Plattner 2010).

Accordingly, populism arises from within democratic regimes (Urbinati 1998), but its understanding of democracy is limited to the only principle of people sovereignty intended in a majoritarian sense²¹ (Mény 2005; Abts and Rummens 2007; Plattner 2010; Mény and Surel 2002; Blokker 2019b). The modern interpretation of democracy, on the other hand, claims that majority will is not sufficient to have a democratic regime (Kolakowski 1990; Plattner 2010), for one also needs liberal constitutionalism²² (Plattner 2010; Mény 2005; Mény and Surel 2002; Halmai 2018). The latter is, “broadly defined, [...] the practice and method whereby limits on governmental powers are established and maintained [...] [in a way that promotes] the rule of law over the rule of men” (Hasebe and Pinelli 2013). Essentially, liberal constitutionalism makes it so that constraints on the will of the majority, checks and balances, and fundamental rights are guaranteed (Müller 2017; Halmai 2018). In a sense, one may conceive of modern constitutional democracy as stemming from a perfect tension between majoritarianism and respect for minorities’ and individuals’ rights, that is a “democratic pillar” and a “liberal pillar” (Abts and Rummens 2007; Spadaro 2016; Plattner 2010; Mény 2005; Mény and Surel

21 Akkerman (2003) notes how the populist notion of unconstrained and non-limited popular will has nothing to do with democratic principles.

22 Liberal constitutionalism is based on the rule of law. Even though it is understood as an essential component of modern democracy, it is in reality an independent concept from that of democracy intended in its pure form (Mény 2005; Mény and Surel 2002; Spadaro 2016). However, it is noted how pure democracy, intended as a mere procedure, could not work without the limits imposed by constitutionalism – thus indicating the latter’s extreme weight in the functioning of the democratic process (Spadaro 2016).

2002). It is important to emphasize, however, that such pillars are marked by “co-originality”, meaning that they cannot exist separately in a liberal democracy, being rather dependent on each other, and essential for each other (Rummens 2017; Abts and Rummens 2007). The emphasis on majority will typical of the phenomenon under investigation – coupled with its non-consideration of minority groups (the protection of whom is usually guaranteed by liberal constitutionalism) – brings with it the risk of what de Tocqueville calls the “tyranny of the majority” (Rovira Kaltwasser 2012). It is essential, in a (liberal) democratic system, that the people be not treated as a homogeneous community, but as equally important and free individuals (Urbinati 1998; Rummens 2017). Since persons’ needs, opinions, beliefs and perceptions change continually, it is not possible to identify them all in a single will of the majority whose endurance is more or less eternal (Abts and Rummens 2007; Rummens 2017). These latter elements of liberal democracy are, however, absent from populism, which indeed holds the people as a monolithic bloc whose aspirations can be caught by a single leader. Populism is, consequently, deeply at odds with liberalism (Urbinati 1998; Mudde 2013) and constitutionalism (Spadaro 2016; Plattner 2010, Akkerman 2003; Müller 2017; Müller 2015b). Despite the phenomenon’s claims to be democratic, as noted above, it is not possible to conceive of democracy on the only base of the majoritarian pillar, for also the liberal one is essential (Rummens 2017). More precisely, liberalism is “a constitutive precondition for democracy”, and so intended it makes no sense to talk of ‘illiberal democratic regimes’ (Halmai 2018). But even when concentrating on the majoritarian/democratic pillar, populism’s communitarian approach toward the people – never regarded as individuals but always as a homogeneous group – poses some problems. Indeed, majority will implies that rule be in the hands of the most, not in those of the equals. The same observation was expressed by no less than Montesquieu, according to whom “democracy is corrupted [...] when the spirit of extreme equality is assumed [...]” (Urbinati 1998), for democracies derive instead from political conflict (Lefort 1988; Rummens 2017; Corrias 2016).

Urbinati (1998) notes that populism – in light of its disregard for the separation of powers, the system of checks and balances, and minorities’ rights – cannot be defined “an expression of democracy”, in that it lacks its basic principles. The populist understanding of democracy is thus “irreconcilable” with that promoted by liberal constitutional democracy; and democracy intended without liberal constitutional constraints becomes weaker (Akkerman 2003).

Analyzing more in detail the institutions of liberal constitutional democracy, then, there emerge further incompatibilities between the same and populism. First of all, liberal constitutional democracy can be

understood as a regime where the rule of law prevails, and where free and fair elections are carried out (Pinelli 2011; Huq and Ginsburg 2018). In such a system, representation through elected politicians plays a crucial role, for it allows (all) individuals to have their differentiated interests taken into consideration. But as Pinelli (2011) observes, such a safeguard has its costs in terms of people sovereignty, for it implies that MPs cannot be deprived of their mandate during its implementation, even if their actions go too far from what electors expected from them (the so-called prohibition of the imperative mandate). On its side, populism – which does not question representation per se (Pinelli 2011; Müller 2017; Müller 2016; Müller 2015; Müller 2015b; Müller 2014) but rather regards it as just a formal act, in that the people have all the same interests (Corrias 2016) – is at odds with the rationale of the imperative mandate’s prohibition, preferring at its place a system of MPs recalls, for politics must always be aligned with people’s will (Pinelli 2011). Another feature of liberal constitutional democracy of paramount importance for the diffusion of pluralism, is the separation of powers. As we shall see more in detail in sections 1.5.2 and 1.5.3 of the present work, the power of judges and constitutional courts has increased much starting from the 1970s, thus triggering the opposition of populists (Akkerman 2003). Indeed, by being these bodies non-majoritarian, they contrast with populism’s focus on majority will in that they cannot represent the majority because never elected by the people, thus lacking democratic legitimacy (Pinelli 2011; Corrias 2016).

Another fundamental institution for the functioning of a liberal constitutional democracy – derived from the principle of separation of powers – is the Parliament, intended as place of representation and locus of legislative procedures. Recently, such an institution has experienced a decline in importance and a decrease in power, due mainly to the effects of globalization, the diffusion of technocracy, the crisis of politics (see section 1.5.2), and the rise of populist forces (Fasone forthcoming). Populism, indeed, tends to have a certain disregard for the legislative branch: its representation-related component is totally disregarded – for the Parliament takes into account also those segments of society not usually considered by populist parties, thus lacking a real representation function – and its functioning is deemed too slow and opaque (Taggart 2002; Fasone forthcoming; Urbinati 1998). Populists’ favorite way to draft bills is indeed the decree, for the latter does not need going through complex phases of discussion, and is not the result of a plural (and uncomfortable) debate among different opinions (Urbinati 1998). As a consequence, when populists reach the government, the legislative production of their country is switched onto the executive at the expenses of the Parliament, and decrees become the ordinary way to govern (Blokker 2019; Blokker 2020). As Spadaro (2016) notes, when populism is in

power, there is an abuse of urgency decrees – a point upon which we will focus broadly when analyzing Italian populist governments in chapter 3.

In conclusion, therefore, if populism has a certain tendency to hinder all other institutions but the executive – which is indeed strengthened and centralized – the legislative branch is probably the most affected one, being as it is, almost completely bypassed and replaced (Urbinati 1998).

1.3 Historical birth of populism

The phenomenon of populism is not a new one emerging for the first time in the twenty-first century, but rather a development of the second half of the nineteenth century, taking place ‘‘on both sides of the Atlantic’’ (Rovira Kaltwasser et al. 2017). The first historical examples of populist movements are to be found in Russia and the USA, and are named ‘‘founding populisms’’ (Hermet 2001; Skenderovic 2017).

1.3.1 The American People’s Party

The scholarship agrees on identifying the first populist manifestation in the American People’s Party, also known as the Populist Party (Skenderovic 2017; Canovan 1981; Taggart 2000). Such an organization was born out of the conflicts left by the Civil War (1861-1865). The USA was at the time divided between a rich and developed North, and a poor and underdeveloped South. More precisely, political and economic power was concentrated in the industrial, urban North; while the rural South relied on agriculture as its main form of subsistence. The social, political, and economic tensions emerging from such a divide were mirrored also in the values embraced by the people living in the two areas. The Southern ordinary farmers regarded themselves as a ‘‘morally superior community’’ because of their link with tradition and the land, while the bureaucrats and decision-makers living in the North were considered decadent and vicious (Zanatta 2002). The most contested issue of the period was money. After the introduction of paper currency during the war, post-Civil War public opinion was divided into those in favor of making greenbacks representative of gold reserves, and those in favor of making paper money itself have value. The party system was made up of two giant parties, usually voted according to regional lines: the Republicans – supported by the North – and the Democrats – the party of the South (Taggart 2000). The conservative Republican Party was inclined to keep the gold standard; the Democrats, on the other hand, initially tried to propose a compromise formula with silver, to eventually stand for the gold standard as well. Southern and Western American commercial farmers,

agricultural workers and lower middle-class merchants felt that neither their party, nor its rival, were truly representative of their interests (Taggart 2000). They also felt cheated by the system. The recent railroad system – which was supposed to facilitate the transportation of agricultural products across the continent – by being handled by monopolistic corporations, imposed on the farmers impossibly high costs of use (Canovan 1981). Additionally, farmers – in need of credit to finance their working tools – were heavenly dependent on banks, and very often fell into debt (Müller 2016; Canovan 1981). The gold standard policy proposed by the two main parties had important economic consequences for the common people, for, if implemented, it would have meant that the farmers were to work more just to maintain the economic situation they already had. The People’s Party was thus founded in 1891/1892 as a protest party fueled by feelings of “anger and resentment” (Müller 2016), deriving from the convergence of many farmers’ alliances in the South and Midwest of the country (Skenderovic 2017). The party was supported by farmers and merchants from the South and the West, hard-working people devoted to the family, who found themselves exploited victims of a system of vested interests. It was them to carry the tax burden, it was them to excessively pay for credit, it was them to be deprived of workable land because of the increasing power of the corrupt railroad corporations (Hofstadter 1969). They cultivated a kind of hostility toward bureaucrats, plutocrats and politicians, depicting them as unmoral, vicious, betrayals wrecking the original project of a representative America. They conceived their country in a dichotomous way, having on the one side people who worked hard, and on the other, a numerically small elite who did not. Via the People’s Party, they demanded the regulation of currency on a national base; state-ownership of railways; limited taxation and a progressive income tax; the redistribution to settlers of excess non-used land owned by corporations; the direct election of the Senate; the introduction of direct democratic devices; and immigration restrictions (Postel 2007; Skenderovic 2017; Taggart 2000; Canovan 1981; Hofstadter 1969). Acting in the name of the common people, the People’s Party was seriously convinced that it had the capacity to change the situation: the people were overwhelmingly more and united, while the elite was just a couple of men. At the 1892 elections, the movement received important support for being just a third-party force, but eventually its leader never made it to the executive. Even though the party claimed to speak on behalf of the whole American population, its appeal was in fact rather limited: the middle class was not persuaded by it, nor were many farmers outside the Southern and Western regions of America, whose agriculture was more diversified, and who were not so dependent on the world market as the farmers in the South and West

(Hofstadter 1969). Four years later, for strategic reasons²³, the movement decided to nominate a Democratic candidate – choice which will mark its death²⁴.

The People's Party was a real bottom-up organization advocating for change in the direction of the common people. Set up in a spontaneous way, it is remarkable how the party was neither driven by a specific doctrine postulated by some American theorist, nor was it led by a charismatic leader (Berlin et al. 1968).

The party's populist message was embodied in the Omaha Platform's preamble:

“[We] meet in the midst of a nation brought to the verge of moral, political and material ruin. Corruption dominates the ballot-box, the Legislatures, the Congress [...] The fruits of the toil of millions are boldly stolen to build up colossal fortunes for a few [...] We have witnessed for more than a quarter of a century the struggle of the two great political parties for power and plunder [...] [W]e seek to restore the government of the Republic to the hands of the ‘plain people’ “.

(People's Party 1978; Taggart 2000)

The assessment of the People's Party has been divergent and controversial. The organization has, at times, been described as a ‘healthy’ phenomenon (Hicks 1961; Canovan 1981), as a very democratic experience (Goodwyn 1976; Taggart 2000), as a progressive movement (Pollack 1967; Canovan 1981). But – especially after the advent of McCarthyism in the early 1950s – it has also been portrayed as reactionary and nativist (Hofstadter 1995; Taggart 2000), a sort of ‘political neurosis’ (Hofstadter 1964; Canovan 1981).

1.3.2 The Russian *narodnichestvo*

The second phenomenon identified as founding father of populism comes from Russia. Here populism was born in a movement later named *narodnichestvo*²⁵ (the word *narod*, from which the term is derived, means ‘people’/‘folk’). At the time of its development, between the 1860's and 1870's, Tsarist Russia was a backward, autocratic region in which tyranny was the norm. Political parties and organizations were forbidden, and radical activities could be carried out only in ‘small conspiratorial,

23 In order to nominate a Democratic candidate, who would in turn accept the nomination, the People's Party abandoned its radical agrarian program to concentrate on the only issue of money, supported also by the Democrats: the free coinage of silver (Taggart 2000; Hofstadter 1969).

24 Populism in the US, however, will not die with the dissolution of the People's Party – it will re-emerge in the twentieth century with Louisiana's governor Huey Long and Alabama's governor George Wallace, to last until our days.

25 The word has been translated into English with ‘populism’ because of the same semantic origin of the two expressions – the ‘people’. This translation has, however, been contested by some scholars, for whom it would be unsuitable (Taggart 2000). Among those who regarded *narodnichestvo* as a phenomenon of its own, there was Walicki (1969), who showed opposition to categorize it as a form of populism.

circles” (Canovan 1981). Industrialization still had to take root, and the nine-tenth of the Russian population lived on agriculture (Berlin 1994). Those being confronted with the worst life conditions were the rural people: until 1861 peasants were subdued to their owners, having no rights at all; and even when, after a decision of Tsar Alexander II they were emancipated, they still had to pay a fee in order to become possessors of the land they had been working forever. This notwithstanding, the peasantry showed a certain loyalty to the Tsar, and its situation was deemed unacceptable only by a small percentage of the Russian population, namely the educated youth making up the elite of the country – the intelligentsia (Hawkins 1999). It will be exactly this learned segment of society that will enact the first manifestation of Russian populism.

The *narodnichestvo* was made up of students going to university, with a certain Western orientation of thought. The theoretical background of the populist movement was deeply influenced by some of the radical ideas spread in Russia since the beginning of the century. More precisely, the *narodniki* (those who went to the people) were inspired by the Slavophiles²⁶ for their idea of the peasant commune – the *obshchina*²⁷ – as a place of “cooperation and fraternity” (Canovan 1981); and by Herzen, for his invitation to take care of the miserable people. In his words, indeed: “[t]he people suffer much [...] [T]hey are [...] waiting for [...] apostles – [...] men who will never divorce themselves from them; men who do not necessarily spring from them, but who act within them and with them” (Venturi 1960; Canovan 1981). Russian populists were inspired also by Chernyshevsky, whose main goal was the wellbeing of the people; by Lavrov’s reasoning that the education of the elite had been possible only thanks to the efforts of the mass; and most importantly by Bakunin, one of the founding fathers of anarchism, who truly believed that the people only needed a push to start a revolution (Canovan 1981). None of them was a populist, nor had they in mind to set up a fully-fledged populist movement, yet their ideas proved fundamental. The decisive spark bringing the intelligentsia to act came from Bakunin’s creed that the young students had with no doubt to “go to the people” (Wortman 1967; Ulam 1998; Taggart 2000). It was because of this persuading invitation that in the summer of 1874 the students decided to leave their books, go to the countryside, and preach the people on how they were the legitimate owners of the land. Maintaining a very romanticized idea of the peasantry, the young

26 The Slavophiles were a conservative, nationalist group active in the 1840s and 1850s, defending Russian traditions against any form of modernization imported by the West (Walicki 1977; Taggart 2000). In light of the developments unfolded in the Western world and of the consequences thereof on the people, the group accused the West of having lost a social harmony that Russia still preserved (Canovan 1981). For the Slavophiles, the only way for westernized Russians to spiritually recover, was to come back to the people and learn from them the traditional values of “community life” (Walicki 1977).

27 The *obshchina* is more broadly described as an “idealized egalitarian peasant community” (Taggart 2000).

intellectuals expected them to be truly longing for a revolutionary moment (Skenderovic 2017), so that it was pretty disappointing when they realized that their aspirations were not shared by the rural population (Canovan 1981). This brought about a change in the movement's strategy: instead of showing themselves as leading the masses toward a revolution, the intelligentsia had to take as an example the attitudes and wisdom of the peasants, to learn from their almost sacred life. Also this experiment failed²⁸, with many students being arrested – sometimes delivered by the same suspicious peasants (Rovira Kaltwasser et al. 2017; Canovan 1981).

The *narodniki* conceived of the peasants as being innocent paladins of the truth, ‘‘martyrs’’ (Berlin 1994) close to a kind of lifestyle and moral practices which Russia was to preserve in order to save itself from decadence. An ethnic line can be discerned in Russian populism, portraying the country's values as better than Western ones – the *narodnichestvo* was indeed a left-wing oriented movement with an emphasis on nationalism.

Considering its particularities, Russian *narodnichestvo* might, at first sight, be regarded as something other than populism. The idealization and ‘‘glorification’’ (Hawkins 1999) of the rural people was carried out by the outside: it was not the peasants who wanted to make themselves heard, but the young women and men coming from the cities who suggested them to realize their potential. Russia's late nineteenth century populism is in fact the only example of populism carried out by an intellectual elite and not by ordinary people. For this reason, it has been described as ‘‘peculiar’’ and even ‘‘paradoxical’’ (Zanatta 2002). However, one should not be persuaded to adopt a simplistic reasoning, for by analyzing the phenomenon more deeply, it becomes clear that *narodnichestvo* was exactly a form of populism. The *narodniki*, indeed, acted in the name of the people to realize their will and opposed the at-the-time-current political establishment because of its exploitation of the rural masses for its own interests.

The Russian term *narodnichestvo* has oftentimes been abused, being associated with a variety of diverging meanings and phenomena – for this reason, it is pressing to clarify such a semantic issue (Walicki 1969). To the expression is usually ascribed more or less any revolutionary activity carried out in Russia from the late nineteenth century until the 1917 socialist revolution, thus creating analytical

28 After the failure of the ‘go to the people’ movement, the students realized that the only way to stop the oppression perpetuated by the state on the peasantry was to attack the state itself, for the people were not ready to engage in a revolution (Taggart 2000). As a consequence, what had been until that moment a peaceful populist movement, turned into a terrorist machine, to split and reshape in different ways as time went on (Taggart 2000). The divisions were mainly due to ideological differences concerning the use of violence – initially vehemently opposed because alien to the idea of going to the people. The successive reformulation of the original *narodnichestvo* – whose ‘‘link to populism was only fragmentary’’ (Taggart 2000) – reached its highest point in 1881 with the assassination of Tsar Alexander II, after which the movement disintegrated (Berlin 1994).

confusion. Pipes (1964) identified two meanings for *narodnichestvo*: the first one conceived of it as a theory praising the poor, uneducated people over the elite; while the second one regarded it as an elitist conviction that Russia could “by-pass capitalism”. Both understandings seem, however, to go in the wrong direction, as also Walicki (1969) noted. Keeping the second acceptance of the term aside because of its clear reference to Marxism, and considering only the first one – that which focuses explicitly on the relationship between the people and the elite, without centralizing the economic question – it is clear that in it no distinction is done, for example, between the ‘going to the people’ movement of the first second half of the 1800’s and the terroristic organizations created in a second moment. Following this interpretation, both groups would fall under the same label, despite the obvious differences in actions and thought. For this reason, by relying on an approach abundantly followed by scholars in the last 30 years, Russian founding populism is here understood as indicating the ‘go to the people’ movement which originated in the mid 1870’s, relying heavily on pre-existing theoretical streams which cannot be defined populist, and which had as a goal the accomplishment of a social revolution carried out in the name of the people, by the people and for the will of the people.

Russian and American populisms have been regarded, despite the many differences between the two phenomena, as two cases of agrarian radicalism (Canovan 1981). The two phenomena have indeed some common features: both appealed to the virtuous and honest people – celebrating it as a homogenous body – and both opposed the corrupt establishment, trying to overturn it. The divergencies between the two cases might thus be attributed to the diverse geographical, historical and social contexts in which the two movements developed (Rovira Kaltwasser et al. 2017). Also, both populist instances embodied a left-wing orientation coupled with a feeling of nationalistic pride.

1.4 Marriage between populism and ‘host’ ideologies: different families

As explained above, populism is a thin-centered ideology which uses to combine itself with full ideologies. Following the classical left/wing divide, populism can thus attach itself to either the right or the left of the political spectrum, creating different theoretical articulations – left-wing populism and right-wing populism. By coupling with the left or the right, populism adopts some of the values embodied by the ‘host’ ideology which are not inherent in its nature, shaping and adapting them according to its vision of the world. Since populism is not a comprehensive ideology, the reliance on right/left approaches allows it to formulate a broader understanding of the world. This does not mean,

however, that each populist movement adopts exactly the same left/right features. Populism's volatility is evident also in the selection of specific issues and refusal of others, while its changeability manifests itself in the temporary adoption of ideological elements which might eventually be dropped. However, even recognizing that not all right/left-wing populist parties in the world focus on exactly the same agenda issues, and that some of them may adopt more left/right items than others, it is still possible to outline what appears as the most common features of populism once it becomes left- or right-wing oriented.

But right-wing and left-wing political ideologies are not the only ones to which populism can attach itself to, for it can indeed rely also on legal doctrines coming from the law world. The best example in this sense is provided by the ideology of constitutionalism, which populism not only embraces but profoundly changes. At the end, constitutionalism is completely deprived of its natural identity and becomes a tailored version of the populist phenomenon: populist constitutionalism.

1.4.1 Right-wing populism

An anti-immigration stance is undoubtedly the most important approach adopted by right-wing populism, coupled with a deep nationalistic stand (Fenger 2018). As a consequence, right-wing populist parties tend to reject a multicultural understanding of society and to oppose cosmopolitanism and globalization (Rovny 2013), while emphasizing security issues and law and order (Betz 1994). In the specific case of Western Europe, to fight against immigration means most of all to fight against non-European immigration; while rejection of globalization implies especially opposition to the process of integration of the European Union. Right-wing populist parties are usually conservative with regard to family values and traditional gender roles. They defend the so-called 'traditional family' made up of mother, father and children, generally opposing same-sex marriages and adoptions by homosexual couples. In this sense, it has been noted by Akkerman (2015) that right-wing populist parties tend to be even more conservative than mainstream right-wing parties, which are instead rather liberal as far as gender and family issues are concerned. However, even though right-wing populism is not in the frontline regarding gender issues, the story is different when such an item is connected to immigration. Since the beginning of the century, migrants arriving to Europe have been predominantly Muslim. They have brought with them the customs and habits of their countries of origin, including the wearing of the veil for women. Right-wing populist parties have thus opposed such a practice on grounds of discrimination, submission and security reasons. Right-wing populism has an Islamophobic stance, it

defines Islam as a dangerous, backward and oppressive religion, incompatible with the superior values of Christian civilizations. Concerning gender issues, therefore, right-wing populist parties are somehow “Janus-faced”: they instrumentally emphasize gender equality and freedom of choice when these are related to immigration; otherwise they are conservative about abortion, childcare and women’s opportunities in the labor market (Akkerman 2015).

What is less clear about these parties is their stance on economic matters, for some scholars have noted contradictory and even incoherent approaches to economic issues (Fenger 2018). Early studies of right-wing populist parties agree on considering this party family as promoter of neoliberalism, advocating for little or no intervention of the state and tax reduction. This situation has changed, however, and today’s parties seem instead to be increasingly more oriented toward an approach of welfare-chauvinism, legitimizing state intervention in the economy only for compatriots but not for foreigners/immigrants. Right-wing populist parties’ position is now one of economic nationalism, in favor of an active state in the economy (Mudde and Rovira Kaltwasser 2011). However, it could also be the case that these parties adopt simultaneously economic policies of a liberal kind and economic policies which have nothing to do with liberalism – this in order to broaden their electoral support (Mudde 2007). On this regard, Germani noted how the coexistence of right-wing and left-wing ideological elements has never been so much accentuated as in the case of populism (Curtis 1985). According to Rovny (2012), trying to understand the economic stances of right-wing populist parties in order to categorize them as following a certain approach may not be useful at all, for these parties tend to focus on their most sensitive issues, avoiding clearness on other secondary items. By being deliberately ambiguous on specific questions, or avoiding talking about them altogether, right-wing populist parties would adopt a ‘blurred position’ (Rovny 2012). This strategic choice would indeed allow them to gain more votes, or conversely, to avoid losing some.

The basic declination of populism, the us versus them opposition, translates in right-wing populism into nativism and xenophobia: right-wing populism thus has an “exclusionary character” (Mudde and Rovira Kaltwasser 2011; Mudde and Rovira Kaltwasser 2012; Custodi 2017; Custodi 2016).

1.4.2 Left-wing populism

Compared to right-wing populism, left-wing populism has received far less analytical attention in the academic world. As March (2007) rightly noted, “the voluminous populism literature barely defines

‘left populism’ as a concept’. However, it is still possible to outline what different scholars regard as some characteristic items of this party family.

If anti-immigration stances are the key strength of right populism, left-wing populism moves in a different direction. Opposition to immigration seems not to be among the agenda items of left-wing populist parties, nor are identity-related issues. Left-wing populism is not nationalistic in the sense of right ideologies, rather it is nationalistic in a non-ethnic fashion, and for this reason it may be defined patriotic (Custodi 2017). Even though stances concerning family and gender issues are not usually exposed in a straightforward way, there seems to be a general tendency on the side of left-wing populist parties not to be conservative, especially in Europe. Concerning the economy, left populism attributes a central role to social and economic rights, advocating for state intervention and opposing neoliberalism (March 2007).

With regard to Western Europe and the specific institution of the European Union, scholars disagree on which is the precise stance adopted by left-wing populist parties toward it. Some authors suggest that these parties are, like right-wing populist parties, eurosceptic (Halikiopoulou et al. 2012). Some others, instead, regard left populism as encompassing a different approach toward the union than right populism. Left populism would indeed defend the communitarian project – even emphasizing further integration – while at the same time criticizing some of the working methods and results of the union (Custodi 2016; Custodi 2017).

Coming back to populism’s dichotomous vision of the world, it is maybe here that the two variants of the phenomenon differ the most – especially in the construction of ‘the people’. If right-wing populism conceives of the people as a unitary body made up of individuals sharing the same nationality, ethnicity, religion and language, and places all those who are not part of ‘the people’ in the category of ‘the other’; left-wing populism is more open-minded, more egalitarian. Accordingly, ‘the people’ is regarded as a heterogenous subject that can include ‘different social classes, ethnicities, religions and sexual orientations’ (Katsambekis 2017). Nativist features are not part of left populism’s conception of ‘the people’, nor are ethnic groups of any other kind relegated to the category of ‘the other’. For this reason left populism has been defined ‘inclusionary’ (Mudde and Rovira Kaltwasser 2012; Mudde and Rovira Kaltwasser 2011; Custodi 2017; Custodi 2016).

Finally, if out of the field of populism right-wing ideologies are usually opposed to left-wing ideologies, right-wing populism does not oppose left-wing populism nor vice-versa: both declinations oppose indeed ‘the elite’.

1.4.3 Populist constitutionalism

Political ideologies are not the only ideologies populism can couple itself with. Host ideologies can indeed be picked also from the legal arena, with constitutionalism representing the best case in point. The legal doctrine of constitutionalism is appropriated by populism in a so deep way that it becomes a tailored version of the same, namely populist constitutionalism²⁹. Populist constitutionalism is thus to be understood as “a type of constitutional practice or discourse that pursues, defends or encourages just that kind of moralistic imagination of politics [...] [that] involv[es] a binary opposition between “two homogeneous and antagonistic camps” “ (Walker 2019).

This variant of constitutionalism is extremely different from modern liberal constitutionalism (Blokker 2019; Blokker 2020; Corrias 2016; Mudde 2013), the latter intended, as we have seen, like “typically hing[ing] on a written constitution that includes an enumeration of individual rights, the existence of rights-based judicial review, a heightened threshold for constitutional amendment, a commitment to periodic democratic elections, and a commitment to the rule of law” (Ginsburg, Huq, and Versteeg 2018). Essentially, liberal constitutionalism might be understood “as pluralism-preserving and rights-guaranteeing” (Müller 2017).

Populist constitutionalism, instead, consists of four main dimensions: a focus on the popular will as a justification for intervention, a majoritarian approach as the main *modus operandi*, an attitude toward the law that can be called legal resentment, and an instrumental use of the constitution as concrete approach to the law (Blokker 2019; Blokker 2019b)³⁰. By focusing primarily on the popular will as far as the creation of constitutions is concerned, populist constitutionalism aims at elaborating laws totally and comprehensively representative of the people, being this considered by populism as the ultimate locus of power with no limitation of any kind. In this sense, the populist constitution is a constitution

29 The notion of populist constitutionalism may seem a “contradiction in terms” (Müller 2015b). Indeed, constitutionalism supports “the rule of law over the rule of men” (Hasebe and Pinelli 2013); while populist constitutionalism is instead so organized as to prefer the rule of men over the rule of law (Corrias 2016; Urbinati 1998). The combination of the two notions appears, consequently, incoherent (Walker 2019). This has been clearly expressed, for example, by Halmai (2018) who finds the combined expression an “oxymoron altogether”.

30 For the explanation of populist constitutionalism, I have relied on the theory proposed by Blokker (2019b; Blokker 2019). Before Blokker, however, Corrias (2016) already analyzed such a combination, de-structuring it into three main inherent and related components. Accordingly, populist constitutionalism would claim a specifically delineated constituent power, a certain and very extensive scope of popular sovereignty, and a precise constitutional identity. As far as the constituent power is concerned, populism vindicates an “absolute primacy” of the people over the same constitution and its rules, thus advocating for “the primacy of politics over law”. Consequently, the scope reserved to popular sovereignty is very extensive, indeed absolute. The concept of constitutional identity is intended mainly in nationalistic, historical and mythical terms, being the constitution regarded as a document representative of the people as one entity with its own unitary and totalitarian features and values.

marked by a majoritarian – and consequently an exclusionist – rhetoric, which places itself in open opposition to pluralism (for the people are, following a populist conception, just one homogeneous people). Legal resentment, then, is expressed by populist constitutionalism in its non-consideration of laws as neutral and *super-partes*. Any legislative bill, constitution included, is indeed contemplated as a partisan and political legal act, available for the accomplishment of the national interest. As a consequence, the constitution is not anymore a rigid document intended in an almost eternal way, but rather an object to instrumentally amend and modify in order to make it responsive to the pure people's temporary aspirations.

Populists can have two different approaches toward the constitution: a strategy of 'circumvention', whereby uncomfortable constitutional norms are bypassed by the government; and a strategy of 'commandeering', when important parts of the fundamental law are amended, or the text is rewritten altogether (Walker 2019). To circumvent the constitution, populists usually rely on decree legislation, ignore courts' judgments, exploit the media in a partisan way, and appoint 'friends' to political offices (Walker 2019). Commandeering the constitution, that is abusing of the constitution, usually involves creating norms that make it harder to change the text, and weakening the role and the independence of the judiciary through specific amendments (Walker 2019). The objective is usually that of keeping populists in power (Müller 2015b). Basically, populist constitutions end up being partisan texts³¹ (Walker 2019).

It is clear that populist constitutionalism not only contrasts with liberal constitutionalism, but even proposes a counter-interpretation of it, in a non-liberal direction³² (Blokker 2019b; Blokker 2019). Populist constitutionalism, indeed, conceives of the people as a 'pre-political entity' (Blokker 2019b; Blokker 2019) – rather than as a politically constituted one – whose need of representation is only formal, in that they make up a homogeneous and unitary group³³ (Corrias 2016). Representation and protection of minorities are not present in populists' constitutional or political programs, in that

31 Following a liberal constitutional perspective, instead, constitutions should be felt as belonging to every citizen because of the protection they offer to everybody's rights and interests. In this sense, they are supposed to be grounded on a 'meta-ethics' endorsable by the whole population (Spadaro 2016).

32 On the other side, Walker (2016) recognizes that populist constitutionalism "necessarily but problematically connects with a broader tradition of "popular constitutionalism" " for their strong emphasis on the central role of the people in the constitutional life of a country is indeed the same. Popular constitutionalism is intended here as that part of constitutionalism which emphasis the *demos* over liberalism. Likewise, also Blokker (2019b) points to a similar centrality of popular sovereignty in populism and constitutionalism. On the contrary, Bugarcic distinguishes populist constitutionalism from popular constitutionalism (without giving a definition of the latter) in that the second – conversely to the first – would be compatible with liberal democracy (Bugarcic 2017; Halmai 2018).

33 The liberal understanding of representation is thus rejected for it leads to a fragmentation of society in stark contrast with the populist understanding of the national community as a homogeneous group (Blokker 2019).

minorities are not part of the real people. Such a stance evidently contrasts with the way representation and rights protection are understood by liberal constitutionalism (Corrias 2016), for the latter regards them as fundamental. By not recognizing minorities, populism is necessarily anti-pluralist, thus distancing itself from those traits of constitutionalism which are liberal and personalistic. But populist constitutionalism takes the distance from those same liberal and personalistic features of legal constitutionalism also in the way the people (intended as the majority) is considered. The populist majority tends to be equated to the nation, while a liberal conception of majoritarianism unavoidably includes a group whose boundaries are continuously modifiable according to the people's changing interests (Blokker 2020). The valorization of people both as individuals and components of a collective societal fabric, typical of modern constitutionalism, is lost in populist constitutionalism, where the individual does not exist if not as a member of the general majoritarian group (Walker 2019). In this sense, human rights protection – with its exclusive focus on the individual – is regarded as hindering the realization of the collectivity (Blokker 2019b). Majority will predominance further entails a disregard for non-majoritarian institutions, where independent judges and courts are usually mistrusted and considered illegitimate, for they are not an expression of the same general will (Blokker 2019). Since populist constitutionalism ‘heightens the *arbitrary nature* of the political system’, it cannot but put in danger also the most important principle of constitutionalism, that of the rule of law (Blokker 2020). A principle which is already weakened, as seen above, by the populist understanding of any legislative act, constitution included, in a partisan and political fashion (Blokker 2019b). The ‘juridification and rationalization of society’, distinctive of the rule of law, are indeed opposed by populist constitutionalism (Blokker 2019b; Blokker 2019), for which society cannot but be the expression of the majority will of the country³⁴. The non-limitation of the general will implies also a skeptical attitude toward the possibility of power division, typically embedded in the rule of law's principle of separation of powers (Blokker 2019b), and upon which the system of checks and balances is directly dependent. Finally, the instrumentalism of the constitution – a marking feature of populist constitutionalism – is at odds with liberal constitutionalism, for the first tackles the constitution as an ordinary document expressing only the will of the majority, while the latter defends it as a supreme document which has to represent the grounding values of the whole population, and whose endurance is for this reason of paramount importance (Blokker 2019b; Blokker 2019). As a consequence, the

34 Blokker (2019b) compares the populist understanding of constitutionalism to Schmitt's one, for also in the latter's view constitutions should be the political expression of a unitarian people. Both approaches have a certain anti-normativism stance.

contrast with liberal constitutionalism derives from populist constitutionalism's "absolute primacy of politics over law" (Halmai 2018).

In sum, then, populist constitutionalism does not foresee any limitation to popular sovereignty – as already explained, the people is the ultimate locus of power and therefore cannot be controlled by anything else if not itself – hence going in the very opposite direction of liberal constitutionalism, whose main goal is instead precisely that of limiting popular sovereignty and majority rule (Mudde 2013). Therefore, while liberal constitutionalism has the objective of containing political power through judicial constraints (Ginsburg, Huq, and Versteeg 2018; Spadaro 2016; Corrias 2016; Blokker 2019), populist constitutionalism objects against it in the name of an unconditioned majority will, free from any non-majoritarian body control. The incompatibility between the two versions of constitutionalism lies in the very understanding they have of the legal doctrine:

populist constitutionalism questions the principle of separation of powers, the universal scope of the rule of law, the non-partisanship of the state and its institutions; while liberal constitutionalism defends and promotes these same ideals (Blokker 2019b). This means also that populist constitutionalism "leads to a rule of law crisis" (Blokker 2019).

Similarly to what we have seen when tackling the link between democracy and populism, populist constitutionalism – by emphasizing the *demos* component of constitutionalism over the liberal one – threatens the very same foundations of democracy intended in a liberal and constitutional way. To use Blokker's words (2019), it creates a sort of "democratic dictatorship"³⁵, where the majority is democratically represented and minorities are irremediably oppressed. In this sense, Müller (2017) deems populist constitutionalism – in light of its manipulative creation of the constituent power, its partisan representation of the people, and its excessive specificity in the way it writes laws – essentially problematic for (constitutional liberal) democracy.

1.5 Why does populism develop?

Any phenomenon is triggered by a specific cause and so is also populism. In order to understand it better, it is fundamental to grasp the particular circumstances which have allowed its rise. Many theories have been elaborated over the years, analyzing the historical, economic and social processes which, taking place at the regional, international or global level, could have brought about such a

35 Aa Halmai (2018) notes, the idea that a dictatorship can be democratic is pretty problematic. Following the same line, the scholar shows skepticism also concerning Blokker's understanding of populist constitutionalism as a category of constitutionalism on the only bases of the existence of a constitution.

phenomenon in different parts of the world³⁶. Broadly speaking, these theories can be divided into two groups, the first one focusing on the process of modernization, and the second one emphasizing a perceived situation of crisis. Theories of the first group stress either the process of industrialization (mass-society theory), or that of globalization (globalization losers theory) as triggering factors for the rise of populism. The cultural backlash theory might also be included in the first group. The theoretical explanations of the second group, instead, concentrate either on economic crises or on crises of political representation. The latter then, is understandable as consequential to a wider crisis which has affected, at least in Western Europe, politics more in general, and which is in turn linked to an important growth of technocratic, non-majoritarian institutions.

1.5.1 The causes behind the populist rise

Modernization theories support the idea that every society dealing with modernization is either challenged or threatened by it because of the socio-economic changes which the process brings about (Berlin 1968).

According to the mass-society theory, the shift from non-industrial societies to industrial ones, would bring with it not only more technology and a change in economic and production patterns, but also a transformation of psychological identification. People would consequently perceive their identity as undermined. Populism would rise from this feeling of norms loss. The mass-society theory has been recently put aside, in that many societies experiencing populism since the 1990s are far from having recently faced an industrialization process. Reformulating, many scholars have pointed to the shift from industrial economy to service-based economy as the grounding cause for populism. The reasoning would be the same as outlined above: the change in societal structures would cause a feeling of disorientation among the people, making them prone to populism (Hawkins and Rovira Kaltwasser 2019).

A similar logic can be found in the process of globalization, according to the relative theory.

Globalization has changed completely the world, making nation states otherwise geographically far from each other, interconnected and interdependent. Globalization affected not only the economy, with the formation of transnational financial and good markets, but also individual societies and their culture. To this transformation, people would react in contrasting fashions, showing either appreciation or rejection. Since globalization would request flexibility and adaptation, a sort of natural selection

³⁶ Also in this case, many explanations have ended up being geographically specific. This is, in a sense, a sort of recurring narrative in the study of populism, whose theoretical universalization has proved challenging to demonstrate.

would follow, distinguishing the people in ‘losers’ or ‘winners’. The ‘winners’ of globalization would thus be those individuals who, having a high education, important skills and the knowledge of languages, would find themselves in the position of offering their talents and survive in such a competitive world. Conversely, globalization ‘losers’ would be those persons who, having mainly manual skills and low or no education at all, would find themselves surpassed and unable to be taken into consideration in today’s globalized and competitive world. According to the globalization losers theory, populism would emerge from this zero-sum game.

Also this theory has been criticized as non-appropriate to explain populism’s rise in the world, in that not all countries are exposed and react to globalization in the same way – the globalization losers theory would thus limit its value by failing to account for national differences (Mudde 2007). It would also fail to take into consideration the long-term presence of populism in Latin America (Hawkins, Read and Pauwels 2017).

Related to the globalization losers theory is the cultural backlash theory proposed by Norris and Inglehart (2019). This theory focuses on post-industrial societies, where a ‘counter revolution’ led by people born in a historical period with different values, would react against the recent cultural liberalism of the last decades. The values typical of the mid 1900s – grounded on faith, family, a sovereign nation state and fixed social identities – have been replaced by new post-materialist ones, like human rights, gender equality, respect for the most vulnerable segments of society and environmental defense, which would appear alien to non-millennials. Through the opposition to this new social framework, populism would develop as a force reacting to liberal attitudes. While the cultural backlash explanation might be valid for the Western world, it does not surely determine why populism emerges as a general phenomenon.

The bunch of theories explaining populism’s development as a consequence of a situation of crisis, tend to focus either on the economy or on the realm of politics and representation. Relying on the first issue, some scholars have suggested that the rise of populism has been caused by an economic crisis related to the Great Recession, manifesting itself in high levels of unemployment – sometimes worsened by immigration – and stagnation. Accordingly, populism would emerge after that a deep economic crisis unfolds. This explanation has been contested as space-limited: indeed, as Greskovits observes, it would not be able to explain populism in Latin America (Mudde 2007).

Additionally, many scholars have attributed the ascent of populism to a political crisis: the crisis of representative democracy. Disillusionment would not question democracy itself but rather the main

representatives of the people in the democratic game: mainstream parties. It thus makes sense to speak of a crisis of traditional, mainstream parties (Martinelli 2016; Bickerton and Invernizzi Accetti 2017; Ignazi 1996; Daalder 2002; Delwit 2011). Traditional parties have become catch-all organizations where ideological differences are not so strong anymore (Pinelli 2011), for at the end of the day their only concern is not representation but the ‘maintenance of power’ (Bickerton and Invernizzi Accetti 2017). Such a view has been mainly expressed by Katz and Mair in their so-called ‘theory of the cartel party’ (Enroth 2017)³⁷. The decrease of party identification has caused less mobilization and even political apathy, in that eventually all parties tend to converge on the major issues (Kriesi 2015). Traditional parties’ representatives are perceived as having different interests from those of the common people – a feeling which increases the gap between elected and electors (Pinelli 2011). What Mair has defined as the tension between ‘responsibility’ and ‘responsiveness’ (Kriesi 2015) has then further increased, exacerbated by the numerous scandals of party corruption.

By not feeling represented by traditional mainstream parties anymore, people turn toward populist ones, which on the contrary, appear to be more responsive. Populist parties are thus just organizations which by denouncing the unresponsiveness and disinterest of traditional parties toward ordinary persons and national interests (Taggart 2002), ‘understand’ the masses and provide representation to the unrepresented (Panizza 2005). To this aim, they are helped by the new media, which by bolstering the personalization of political leadership, favoring common sense over experts’ considerations, and enhancing a ‘spectacularization’ of politics through dramas, oversimplifications and reiteration, favor populist messages (Martinelli 2016; Kriesi 2015; Mazzoleni 2008).

Although different explanations have been proposed to justify the causes of populism, pointing each to different phenomena, it is clear that despite the various names attributed to them, what all theories have in common is the identification of a certain situation of crisis, be it of identity, values, economic or political. ‘Populism is [indeed] intrinsically linked to crisis (Kriesi 2015), and for this reason it should be taken seriously – not because of the ideology it proposes or the solutions it suggests, but because it do highlights a ‘symptom of democratic pathologies’ which should be addressed (Martinelli 2016).

1.5.2 The cause of the cause: the auto-destruction of politics³⁸ as origin of populism

37 According to such a theory, indeed, ‘the cartel party governs but does not represent, and thus fails to do what we expect of parties in a modern democracy’ (Enroth 2017).

38 The expression is taken (and partly re-elaborated) from Orsina (2019): ‘*L’autodestruction du politique, 1968-2008*’.

As seen in the previous section, populism emerges out of a situation of crisis, whose contingent reasons may change according to the specific historical and geographical context that one considers. The theory explaining the development of the populist phenomenon as consequential to a crisis of political representation – that is, a crisis of representative democracy – seems to be the most appropriate for the understanding of contemporary populism in Europe, especially in that part of the continent which is also involved in the European Union, our focus here. In this sense, it is fundamental to grasp the reasons behind such a crisis of political representation, and how they developed over time to reach the crucial point they have reached today.

The analysis carried out by Orsina (2018; 2019; 2017) follows precisely this trajectory, and individuates in the promises of liberal democracy as established after WW2, the starting point of a crisis which has to do with politics in general, and which would explain the rise of populism in Western Europe. Accordingly, at the end of the 1960s, baby boomers started to ask for an improvement of democracy in the name of more individual rights and citizens' involvement in the political game (which also meant less technocracy). They believed, indeed, that social and political perfection was just around the corner, and auto-determination in all possible fields was their aspiration (Orsina 2018). If, on the one hand, political elites tried to resist such subjective and individualistic claims, on the other they proved unable to do it, and ended up satisfying all advanced requests – always trying not to lose their legitimacy and public role in the social life of their respective countries (Orsina 2019; Orsina 2018). The granting of divorce-, abortion-, and welfare-related rights during the 1970s, brought with it a politicization of new issues, like family, sex, reproduction, and economic redistribution, thus enhancing the role of politics in daily life (Orsina 2019; Orsina 2018; Orsina 2017). Soon after these rights were granted, however, a wave of depoliticization occurred, for the afore-mentioned issues were not part of the political agenda anymore. The power of non-majoritarian institutions like judicial bodies had simultaneously increased – at the expenses of political entities – in that the protection of those same rights that had been conceded was to be guaranteed (Orsina 2019; Orsina 2018; Orsina 2017; Orsina 2019b). In the same way, also economic matters underwent a process of depoliticization (de Nardis 2020). Indeed, at the end of the 1970s and throughout the 1980s, the market was liberalized and new technocratic arrangements – initially in the form of central banks, and then in that of international mechanisms like the European monetary union – were set up, further depriving local elites of their decisional power (Orsina 2019; Orsina 2018; Orsina 2017). It is important here to understand that the transfer of power from the political to the technocratic dimension, was intentionally carried out by the

elites also in an attempt to halt the wave of subjective requests advanced by the people, for in this way politicians had a good ‘external bond’ to use in order to justify unpopular decisions (Orsina 2019; Orsina 2018). This notwithstanding, by granting civil, political and social rights, freeing the market, fostering decentralization and the use of referenda, and delegating increasingly more responsibilities to technocratic entities, it has been the elites themselves to foster the crisis of politics (Orsina 2019; Orsina 2018). It is consequential that by increasing the room for individuality, that for collectivity is reduced, and the room for collectivity is precisely that of politics (Orsina 2018). From an anthropological point of view, the events of the 1970s and 1980s have meant an exacerbation of social fragmentation, and the weakening of collective categories like class, ethnicity, nationality, and gender (Orsina 2018; Orsina 2019). Political ideologies, on the other hand, have lost their distinguishing features up to the point of convergence, displaying an almost unanimous consensus on major issues (Orsina 2018; Orsina 2019; Orsina 2017). Globalization, information technology, mass and social media – all phenomena that politics cannot fully control – have only strengthened such a process of political deterioration (Orsina 2018; Bickerton and Invernizzi Accetti 2017). The result of this is the situation we experience today, a situation where politics has lost room for collective intervention but is still considered responsible for everything (Orsina 2018; Orsina 2019; Orsina 2017). A situation where people keep on making requests and requests cannot be satisfied because of the elites’ lack of political means. A situation where political groups are not able anymore to represent people, partly because of their softened ideologies, partly because of the people’s extremely fragmented subjective mindsets. And it is from here, Orsina (2018; 2019) notes, that populism rises. From the crisis of politics which originated in the past fifty years of history, in the many concessions done by the elites at the expenses of their powers, in the general consensus reached by major parties blurring any ideological difference. Populism emerges from here, from the desire to give politics back its room for collective and identity-related action (Orsina 2018; Orsina 2019), from the desire to re-politicize what has been de-politicized (de Nardis 2020).

1.5.3 Technocracy replaces politics: the case of the European Union

An element of particular relevance for the purposes of the present work is evidently the growth of technocratic entities, initially in the form of judicial authorities and central banks, and then in that of international agreements and organizations. From 1980 to 2002, the number of independent regulation-

related institutions in Europe has gone from 15 to more than 90 (Orsina 2018), the most important one being doubtless the European Union.

The main distinction between political and technocratic bodies is that the first ones are elected by the people, while the second ones are simply appointed (Centeno 1993). As a consequence, political bodies have to be accountable to their electors (Bellamy 2010), while technocratic ones – by not being subject to the very election procedure – do not have to face such a commitment. Politicians draw legitimacy from elections, whereas technocrats' legitimacy comes from their expertise and scientific competence (Bickerton and Invernizzi Accetti 2017; Bickerton and Invernizzi Accetti 2017b; Bellamy 2010).

Conversely to political men, technocratic figures do not follow a specific ideology in the decisions they make, but rather act in the name of efficiency and pragmatism (Centeno 1993). Technocrats' way of solving problems is inherently non-partisan and objective, and for this reason they are usually convened to tackle situations out of political control: while politicians tend to focus on short-term gains in order to be re-elected, technocrats look at long-term solutions aiming at the common good (Centeno 1993). Now, it stands out in an unmistakable way that technocratic bodies – for the very fact that they are not elected, and that they do not have to represent any constituency – are inimical to the grounding principles of modern liberal democracies, namely elections and representation. Indeed, technocracy focuses on 'output' considerations at the expenses of 'input' ones³⁹, while democracy cannot be said to exist if also the first kind of performance is not present (Bellamy 2010).

Nowadays, as seen above, politics has lost much ground to technocratic arrangements, meaning that important decisions are not made anymore by politicians in the name of specific electorates, but rather by technocrats in the name of an objective science. On the other hand, populism claims to speak on behalf of the people who have been deliberately and unjustly deprived of their sovereign power, vindicating a coming back of the *demos* in modern political scenarios, and defending people's unlimited power. It is evident then, that there is a contrast between technocracy's *modus operandi* and populism's claims, and that the first one provides ground for protest to the second one. More precisely, populism can be regarded as a 'reaction [emphasis in original] against the growing technocratization of contemporary politics', "a response to the growing technocratization of public life" (Bickerton and Invernizzi Accetti 2017).

39 'Output' considerations concern 'the degree to which the substance of the decision may be said to promote collective interests in a manner compatible with the democratic goals of equal concern and respect'; while 'input' considerations refer 'to the democratic character of the decision procedure, and in particular the right of all citizens to participate on an equal basis in decision-making' (Bellamy 2010). The binary input/output logic in the domain of democracy is taken from Scharpf's 1999 work *Governing in Europe: Effective and Democratic?*, being the scholar the most associated one with such a dualistic logic of democratic performance (Goodhart 2007; Murray and Longo 2018).

Populism is even regarded as technocracy's altogether opposite (Centeno 1993; Bickerton and Invernizzi Accetti 2017). Accusations against technocratic bodies, usually in the form of international organizations, are a common trait of contemporary populist parties. In the geographical context of Europe, such accusations are generally addressed to the EU, considered the par excellence technocratic body of all times (Bickerton and Invernizzi Accetti 2017b; Leonard 2011) and for this reason harshly criticized by populists.

Originating in the economic realm by promoting liberalism, the *sui generis* regional organization of the EU has over time increased its sphere of action to touch also social and political items. The Union is made up of different bodies, the most of which are non-majoritarian and non-elected – the European Court of Justice, the European Central Bank (Bellamy 2010), the European Commission and all specialized agencies (Zweifel 2002). The only exception is the European Parliament, whose weight in the supranational apparatus is still small if compared to the power of other institutions, and which is for this reason regarded as weak (Goodhart 2007; Zweifel 2002; Kratochvíl and Sycra 2019; Chrysochoou, Stavridis and Tsinisizelis 1998). As a consequence, the decisions made by the EU – which are often legally binding for its member states – are perceived as (democratically) illegitimate, in that they are made by experts who have never been supported or backed by the people. The EU is accused of suffering ‘‘a democratic deficit’’ (Kratochvíl and Sycra 2019; Zweifel 2002; Leonard 2011; Chrysochoou, Stavridis, and Tsinisizelis 1998; Goodhart 2007; Schmidt 2005), mainly deriving from the fact that output considerations are present but input ones are not⁴⁰. From here the widespread conception, among many citizens, that the EU follows an undemocratic and authoritarian direction⁴¹ (Zweifel 2002). Indeed, in the nature of the regional organization there lacks that component without which democracy, intended in its pure original Greek meaning, cannot exist: a European *demos* (Kratochvíl and Sycra 2019; Goodhart 2007). The EU is on this basis criticized by populists, whose entire existence hinges exactly on that only point: the unconditioned rule of the people, the realization of the general will, the supremacy of the *demos* over any other check.

40 The debate on the supposed EU's democratic deficit became persistent in the political and public arena at the beginning of the 1990s, when a ‘‘shift from permissive consensus to [...] constraining dissensus’’ took place (Kratochvíl and Sycra 2019), that is, when the EU stopped being an elites' project and became a general public's one (Hooghe and Marks 2008), after a process of increasing politicization (Börzel and Risse 2018).

41 The perception of the European Union as a democratic illegitimate body has been increased by the Eurozone crisis (Kratochvíl and Sycra 2019) and even more so by the refugee crisis (Murray and Longo 2018), for both situations have seen the organization have a central decisional role in the management of such challenges.

1.6 Populism in the world

Populism has become a global phenomenon present in (almost) any region of the world, with major concentrations in Europe and the Americas. Its flexible nature allows it to adapt and grow strong out of the specific historical, geographical and social context in which it takes root, assuming some of its peculiarities. Although it may appear in typical and emblematic customs, it is fundamental here to recall that populism's essence is universal and the same for all of its manifestations: antagonism between the pure people and the corrupt elite, and the realization of the general will.

Latin America is probably the region which deserves most attention in terms of populist analysis: the country has indeed been experiencing populist manifestations for so much time that it has been nicknamed 'the land of populism' (de la Torre 2017). It is possible to distinguish three waves of populism: a first one, stretching from the 1940s to the 1960s, called 'classical populism'; a second one during the 1990s, defined 'neoliberal populism'; and a third and last one, named 'radical leftist populism', begun in the 2000s (Mudde and Rovira Kaltwasser 2013). 'Classical populism', to which belonged leaders like the Argentinian Juan Perón and the Brazilian Getúlio Vargas, has emerged in opposition to the corrupt and exclusionary regime of the oligarchy, and has been characterized by a left-wing economical approach (de la Torre 2017). A completely different trajectory has been instead followed by 'neoliberal populism', whose most prominent exponents were Carlos Menem in Argentina and the Peruvian Alberto Fujimori. As it can be intuitively grasped from the nickname, neoliberal populist leaders engaged mainly with neoliberal economic policies, replacing the nationalistic and statist ones carried out by their predecessors (de la Torre 2017). The third wave of populism, 'radical leftist populism' is associated with charismatic leaders like Bolivian Evo Morales and Venezuelan Hugo Chávez. Similar to classical populists, also radical ones advocated for socialist policies and the rejection of neoliberalism (de la Torre 2017). Latin American populism – no matter what ideological connotation one considers – has always distinguished itself for its very inclusionary character, which made it possible for marginalized individuals to be included in society. It has been predominantly left-wing and attached to a single figure rather than to an organized party (Mudde and Rovira Kaltwasser 2011). If, on the one hand, Latin American populism has increased participation, on the other, it has also tried to undermine democratic structures, pending toward authoritarianism. Often colored by anti-imperialist feelings and opposition to the United States of America, it has been deeply linked to phenomena of clientelism and corruption.

As stated above, populism was born in the USA, where it has ‘deep roots in mainstream politics’ (Mudde 2004). At the very beginning, American populism was a phenomenon on the left, but starting from the mid twentieth century, it became attached mainly to right-wing ideologies. Prominent populist figures in this region have been president Richard Nixon⁴² and businessman Russ Perot. Populism in the USA has manifested itself in individual leaders rather than in the two big parties’ orientations. After the 2007 economic crises, it has taken the form of the Tea Party, the Occupy Wall Street movement and the controversial figure of president Donald Trump (Mudde and Rovira Kaltwasser 2017).

In Australia, populism is a rather enduring phenomenon, originating as an agrarian movement. The most important contemporary figure of such an ideology is Pauline Hanson, leader of the populist One Nation Party. Even though it was mainly populist leaders to act in a populist way – usually from inside the two main traditional parties, as in the case of the USA – the country’s political mainstream organizations are not alien to the practice, showing a certain degree of populist rhetoric: issues usually supported by populists – like migration and identity – are thus adopted also by traditional parties (Moffitt 2017).

New Zealand has a long populist tradition as well. At present, the man identified with populism is Winston Peters, leader of the New Zealand First party. Such an organization has been many times part of the government, in coalition with the two large traditional parties of the country.

According to Moffitt (2017), it is possible to distinguish a form of antipodean populism typical of Australia and New Zealand, characterized by exclusionary features, a right-wing tendency, and a certain hostility toward neoliberalism. In the category of the enemy, antipodean populism places not only the elite, but also migrants (especially Asian) and indigenous groups (Aboriginal Australians in Australia and Māori people in New Zealand).

In East Asia, populism is not a widespread phenomenon. It emerged pretty recently, in 1997. In the Philippines, the par excellence populist leader is Joseph Estrada, former movie actor usually starring the role of Robin-Hood. Following his movie career, he elaborated a singular conception of populism according to which he was the one stealing from the rich to help the poor. His populist appeal simply

⁴² It was Nixon who coined the expression ‘silent majority’, referring to the majority of ordinary real Americans not considered by the elites. However, according to Mudde and Rovira Kaltwasser (2017), he was not a ‘populist at heart’.

divided society in moral terms, without providing a specific description of the members of the two groups (Hellmann 2017).

In Thailand, Thaksin Shinawatra was instead the leader of an agrarian form of populism which praised the peasantry as innocent, and city dwellers as non-virtuous.

Indonesia's experience with populism expresses itself in the figure of Prabowo Subianto, who drew heavily on Hugo Chávez for the construction of his ideology. This kind of populism was neither fully exclusionary nor fully inclusionary, for it tended to be nationalistic while fostering the inclusion of the poor (Hellmann 2017).

The reason why populism does not find fertile ground in East Asia relates to the ideational context of the region, which is a very typical one. Indeed, people do not attribute any importance to class-based conflicts, nor do they consider post-material values to play any significant role in society. As a consequence, dichotomous configurations showing the people on the one hand and the elite on the other, do not generally hold – they do so only when charismatic leaders are extremely able to articulate the world in such a Manichean way, relying on specific features of their own country (Hellmann 2017).

Populism is rare also in Africa. This is due to the fact that most countries in the continent have an authoritarian regime led by a charismatic individual, and no well-institutionalized parties (Resnick 2017). More generally, populism in Africa has been investigated either using cumulative definitions of the phenomenon, or by relying on very different conceptualizations – thus bringing about confusion and unreliable analyses (Cheeseman 2016). Some scholars have classified the military coups carried out in Ghana, Burkina Faso and Uganda during the 1980s as the first cases of populist manifestations. All were accomplished to realize people's welfare and to involve ordinary individuals in the decision-making process, and all denounced the corruption of the previous elite. African populism was in this period marked by strong nationalistic and anti-imperialistic feelings, but was not a form of populism compatible with democracy. Populism has then re-emerged at the beginning of the 2000s, assuming ethnic lines and no clear economic approach. Yoweri Museveni, president of Uganda, and Michael Sata, ex-president of Zambia, are considered examples of contemporary populism in the region. In both cases, populism is linked to authoritarian contexts (Cheeseman 2016).

It is important to highlight that in Africa modern populism appears often in politicians who are already part of the establishment (intended here as both the government and the opposition) (Mudde and Rovira Kaltwasser 2017).

In the MENA region, Egyptian president Gamal Abdel Nasser has been regarded for a long time the best example of Arab populism. However, starting from the 2000s, populism has become a more general trend in Arab politics (Mudde and Rovira Kaltwasser 2017). Although the mainstream approach of the literature is that of pinpointing every form of populism in the world at any cost, it is fundamental to remember that in the Middle East and Africa, populism is (almost) always associated with authoritarian leaders. There is thus an intrinsic difference between these regions and the Western world, where populism is broadly considered a phenomenon profoundly linked to democracy (Urbinati 1998).

Populism has hardly developed in post-Soviet states⁴³ (March 2017). After independence, such states have experienced a democratic transition, culminating into authoritarianism (despite their being – with the exception of Belarus – contracting parties to the Council of Europe). Even though many of these countries still pretend to praise democracy, daily praxis is in fact authoritarian. Since populism generally needs a minimum degree of democracy and pluralism to develop, the absence of these features explains why the phenomenon's rise has been limited in the region (March 2017). When some populist leader has appeared in the post-Soviet political scenario, this has ended up becoming authoritarian, acting in his own interests and in those of the elite, rather than in the interests of the people. Presidents in this region have usually been labeled populist, but this is a mistake. A common trait of post-Soviet countries representatives, as clearly shown by the figure of Russian president Vladimir Putin in the first three years of his first mandate, is that they use a certain populist rhetoric in their speeches, but in fact they pursue authoritarian ideologies and are against any kind of populism (March 2017).

One of the places in which populism has flourished the most is Europe, especially Western Europe. This will be the topic of the next chapter.

43 The expression is here intended as referring to those countries previously part of the Soviet Union, which are not members of the EU: Uzbekistan, Kazakstan, Kyrgyzstan, Azerbaijan, Tajikistan, Turkmenistan, Armenia, Ukraine, Georgia, Belarus, Moldova, and of course Russia (March 2017).

CHAPTER 2

POPULISM IN EUROPE

On the surface nothing trembled, no walls collapsed, even the windows remained intact, but the earth moved in the depths.

(Epstein 1996)

As we have seen, populism was not born out of a European context – the two most cited examples of foundational populism are indeed located in America and Russia. This notwithstanding, such a phenomenon soon arrived in Europe, and more precisely in France, unfolding in the form of Boulangism (Skenderovic 2017).

2.1 Genesis of populism in Europe: Boulangism

Since the activities of French General Georges Boulanger and the movement named after him, the phenomenon of Boulangism has rarely been regarded through the lenses of populism, being defined mainly as authoritarian and proto-fascist. For how bizarre it could seem, such a situation has presented itself more often than not in the study of populism, where many events and movements – especially of the past but not only – have rarely been straightforwardly classified as populist, partly because of the lack of analytical clarity of the concept, and partly because of an academic bias according to which populism would not be a fundamental concept in the social and political sciences. A re-analysis of many manifestations has taken place since populism has grown in importance, increasingly categorizing specific movements as populist, and consequently ameliorating the understanding of the phenomenon. Boulangism is clearly an example of populism, acknowledged as the founding form of the phenomenon in Europe (Skenderovic 2017; Hermet 2001; Winock 2007). It can be regarded as a phenomenon of the late nineteenth century, developing more or less between 1886 and 1889 – period in which General Boulanger was a key figure in the French political scenario. France was at the time in its Second Republic, characterized by a prominent parliamentary regime. Although such a form of government was established in reaction to the previous Second Empire, some old practices of the preceding *modus operandi* survived in the new parliamentary organization. For instance, despite the proclaimed neutrality of the government and the fact that mayors passed from being appointed to be elected, the minister of the interior still acted in an old-fashioned way deciding to fire the elected officials or to dissolve municipal councils if he deemed it necessary (Fulton 1991). In this period, France was

also evolving, with processes of urbanization and industrialization making themselves feel in the country, and needing specific political responses. The nation was undergoing a serious economic depression, affecting both industry and agriculture, and causing in turn unemployment and poverty growth (Betz 2019). From the point of view of international prestige, it had lost its Alsace-Lorraine region to the Germans during the Franco-Prussian War, consequently experiencing humiliation. Ordinary citizens felt threatened by such developments and unconsidered by the political elite, who did not seem to do anything in order to improve the mass's general welfare conditions. Indeed, France's Second Republic was still a very elitist regime. Boulanger benefited from this situation of discontent, and using people's grievances toward the government, he proclaimed himself defender of the French. He sided with the common people, making himself spokesman of their disenchantment, and promising work, social reforms and nationalistic gains. The movement named after him advocated for a republican system in its purest form, opposing France's elitist parliamentary regime because corrupt, made up of incompetent men interested only in the maximization of their interests, not representative of ordinary French, and responsible for the problems the country was having. The parliamentary regime had, according to Boulanger, 'disgrace[d] the Republic, and assassinate[d] *la patrie*' (Betz 2019). Boulangism further advocated for the participation of ordinary people in the political game, and for the establishment of a plebiscitary republic acting in the name of 'patriotism, egalitarianism and popular vigilance' (Hutton 1976). It was against the political elite and the emerging economic oligarchy – the capitalists grown out of industrialization – for both compromised the fraternal values of the Revolution. It wished to enact a political, social and, most importantly, moral reform of the country (Hutton 1976; Combeau 1993); striving for a renewed society, where the political game was better led by a strong executive on the model of the USA. The populist movement was not against democracy per se, but rather against parliamentarism. It claimed to fight for a *real* democracy against that set up by the oligarchs, stating that the same Constitution had no value and was to be substituted by one democratically approved by the people (Winock 1997). Antisemitism played only a marginal role in such a populist mobilization, with nationalism and the creation of a new identity being more important issues; but the movement was also hostile to the new immigrants who, coming from countries like Belgium and Italy, arrived in industrializing France in order to find a job – thus marking a clear delimitation of the people to whom it appealed (Eatwell 2017). Boulangism can be regarded as having been inspired by Jacobin values – namely democracy, a moralistic conception of society, egalitarianism and nationalism (Hutton 1976).

Its classification along traditional political lines is complicated, for it emerged from the far left, embodying and promoting the values of republicanism, but was economically financed by right-wing royalists. It advocated simultaneously for social reforms and plebiscitary participation, while cultivating anti-German nationalistic feelings for France's lost territories. For this reason Boulangism would, according to Betz (2019), promote itself as being "ideologically amorphous – neither left nor right". Originally, such form of populism has been linked to the right of the political spectrum, usually regarded as the starting point of the extreme right which developed during the late 1890s. Such an approach, however, has been recently revised in light of the connection between the movement and the French Left (Mazgaj 1987). This way, the relationship between Boulangists and royalists could be considered a marriage of convenience to prevail over the opportunistic government, without the two groups colluding on their respective ideologies (Mazgaj 1987; Irvine 1988).

In terms of support, the movement went strong especially among the urban working class, to whom its appeal was indeed directed: this was the class of ordinary citizens being damaged by the rapidly changing scenario of France, and feeling forgotten by the political parliamentary elite.

Even though Boulangism was set up following Boulanger's and his supporters' ambitions to change the corrupt system of the French Second Republic, its reform program was rather vague. In terms of economic policies, there was no specific project to enact in order to curb wild industrialization – the only point of consent being a greater intervention of the state in the economy, so as to improve ordinary citizens' benefits (Eatwell 2017). The movement's major objective was that of changing the Constitution, but also here no real constitutional revision program was ever presented nor implemented. Boulangism had thus no concrete plans concerning how to change the system: it just holds strong on the conviction that the regime was to be changed, and that parliamentarism was to be replaced by a more democratic form of government, presumably presidentialism. Despite its very abstract program – which, according to Joly (2008), did not propose anything precise to the French people – the movement was still able to gain an important support. Such an appreciation was made clear in the many French by-elections won by Boulangism until 1889. In the legislative ballots of that year, however, something changed and the populist organization was able to elect only a dozen candidates. Soon after, its leader was charged of conspiracy against the Republic and fled France. This marked the end of the movement, for deprived of its head, it started to decline. Boulangism's legacy was later elaborated and broadened by some of the group's deputies, thus creating the ground for a modern far right ideology.

2.2 Populism in Western Europe

After the experience of Boulangism, and more precisely in the years following WW2, only two populist parties developed in Western Europe: the Italian *Fronte dell'Uomo Qualunque* (Front of the Common Man) and the French Poujadist Movement. Regarding such two cases as pioneers in the development of populism in Western Europe, modern populist organizations will start developing consistently in this specific region only in the 1980s, to gain a central importance in the political life of their respective countries especially at the end of the 1990s, and even more so the 2000s.

2.2.1 Post-WW2 populist experiences in Western Europe

The Fronte dell'Uomo Qualunque was set up in the Italian peninsula soon after the country was freed from dictatorship. It was created after the ideas of Guglielmo Giannini, a journalist and playwright profoundly unsatisfied with the way his *Bel Paese* was being ruled by the current elite (Passarelli 2015). By claiming to represent all real Italians (Gambarota 2019), the front opposed both fascist and anti-fascist politicians, for the two groups were equally interested in realizing only their personal aspirations at the expenses of the people, being ultimately concerned only with the imposition of their own ideology on the masses (Gambarota 2019; Corduwener 2017; Orsina 2014; Orsina 2013). A detailed analysis of Giannini's Fronte is, however, to be found in section 3.1, where the specific issue of Italian populism is addressed.

The other Western European experience of post-WW2 populism developed in France in the form of Poujadism. After the liberation, France underwent a phase of accelerated industrialization, aimed at expanding the number of big companies in the country and eliminating local small-scale businesses based on agriculture and commerce, while also improving transportation. Such a rapid industrial development accelerated the pace of urbanization, leading to an almost de-population of small villages and rural areas. Additionally, in order to recover from the war, the French government decided to put a halt to inflation and to contain fiscal fraud and tax evasion – practices mainly carried out by the 'small people'. The country was therefore heading toward a state of modernization never experienced before, with the objective of increasing its technological and economical power in the world market. Such a process was, however, not without deficits. Indeed, those living on the revenues of their small commercial activities felt threatened by the perspectives opening to their society, and the limiting controls imposed by the state. The evacuation of people from small villages to big towns meant less

clientele for the shop owners of such centers; while the prospects of retail chains and supermarkets meant that small commercial activities' days were numbered. On top of this, there was the widespread perception that the government wanted to make poor people poorer – by tackling their small fraudulent activities – while closing an eye on the important biased transactions carried out by the big ones of the country, considered friends of the regime. In reaction to such dark developments, a bookseller from the district of Lot, Pierre Poujade, decided to launch his own movement of protest in 1953, the Poujadist Movement, soon supported by other local shopkeepers who felt threatened in the same way. Formally known with the name of *Union de défense des commerçants et artisans* (Union for the defense of traders and artisans) – to highlight the rights of the specific social categories it campaigned for – the movement advocated for more social rights and a fairer tax system. It opposed the establishment of Paris, politicians, big economic oligarchies, intellectuals and journalists, that is, all those elites sacrificing people's wellbeing "in the name of 'progress'" (Shields 2000). It opposed also the Treaty of Rome (Campani and Pajnik 2017), thus being the first populist movement in Europe to show hostile feelings for the European project of integration. The organization was defined by its leader as an innocent movement of civic and patriotic self-defense, engaged with the fight for people's rights: it was a movement which tried to keep France as it was before industrialization, striving for the preservation of its traditional lifestyle and values (Shields 2004). It gained popularity in the whole country, being supported by a heterogeneous public sharing the same socio-economic worries. In light of the 1956 elections, the Poujadist movement – now turned into a fully-fledged party named *Union et fraternité française* (Union and French Fraternity) – won 11.6% of the vote, an incredible result for a party which had just come into existence and had proposed no "formal electoral program" (Shields 2000). The newly named populist party stood essentially in opposition to the path France was going on, a path which had been exclusively decided by a corrupt and selfish elite, described by Poujade as "le gang des exploiters" – the club of exploiters – perpetuating the exploitation of the common people for their own advantages (Shields 2004). The only exception to such an abstract political program, advocating for direct democracy without really proposing a plan for action, was the defense of French Algeria (Winock 1997). As a consequence, once gained its representation in parliament, the party proved rather unready to deal with France's questions, and no Poujadist candidate was able to formulate a single law, not even on the central issue the organization had been advocating for: tax reform (Shields 2000). Believing that the real values of the nation were to be found in France's traditions and soil, the movement came to have a certain antisemitic character. But Poujade's conception of national

community was marked by cultural rather than racial borders, for it included all those individuals who had sacrificed themselves for the country, and shared memories coming from previous generations; while excluding at the same time those persons living off the efforts done by others as parasites, ‘those being only recently French’ (Shields 2004). The party was thus labeled ‘fascist’ and ‘nazi’ by the opposition, even though its leader never ceased to proclaim his beliefs in republicanism and the values of the Revolution, underlying how the party was to be considered external to the French political system. Poujade indeed insisted that his party did not belong to the right, nor the left, and not even to the center (Shields 2000). It would be incorrect to classify the Poujadist Movement as an anti-democratic one, for if it had a ‘philosophy’, that surely was direct democracy and the restoration of a representative republic. As Poujade put it ‘[p]eu importe si la IV République disparaît, pourvu que nous sauvions la République⁴⁴’ (Shields 2004). The movement has over the time passed from left-wing stances to right-wing ones, showing a certain opportunist inclination.

With the arrival of new members like Jean-Marie Le Pen and Jean-Maurice Dermarquet, the party seemed to move more to the right. However, it would be unfair to consider the personal inclinations of some of the organization’s members as the organization’s real ideology, for Poujade in person often distanced himself from the stands expressed by Le Pen. Their ideological preferences were so divergent that Le Pen eventually quitted the movement.

The Poujadist Movement did not last long, for at the 1958 elections it only gained 1.5% of the vote, being victim of internal dissensions – caused by the lack of a clear ideology – and the irresistible charismatic personality of General De Gaulle. This notwithstanding, the movement acted as a springboard to what has come to be regarded as the *par excellence* populist party in all Europe, namely the *Front National* (National Front).

2.2.2. The rise of modern populism in Western Europe

If, during the 1950s, populism was a sporadic phenomenon in Western Europe, the situation hardly changed in the 1960s and 1970s, when after the student protests and the creation of the ‘new left’, populist organizations in the continent remained few and scattered. Populist parties, indeed, started to consistently introduce themselves in the political arena of their respective Western European countries only in the 1980s, when they received a good percentage of votes during various elections. However,

44 ‘It does not really matter if the IV Republic disappears as long as we save the Republic’, intended here as a specific form of government. Translation by me.

for populism to become “a relevant political force in Europe” (Mudde and Rovira Kaltwasser 2017), one will have to wait until the end of the 1990s.

In 1959, the *Suomen Maaseudun puolue* (Finnish Rural Party) was founded by Veikko Vennamo with the main objective of criticizing the political elite of Finland, judged unconcerned with the growing problem of unemployment the country was facing in that period. The FRP stood out for its idealization of the common people and its defense of rural life (Tarchi 2018).

In 1972, after refusing to pay his taxes because too expensive, Danish lawyer Mogens Glistrup decided to set up a tax-protest party, named *Fremskridtspartiet* (Progress Party), advocating for tax reduction and government spending cuts. Ultra-liberalist, such a populist organization vehemently opposed the establishment and proclaimed to act in the name of the people (Tarchi 2018).

Deeply inspired by Denmark, in 1973 Anders Lange founded a party of the same kind in Norway, the *Fremskrittspartiet* (Progress Party). He demanded less taxes, the acceleration of market economy and the reduction of state bureaucracy for the benefit of the people (Tarchi 2018).

In the first years of the 1970s, also Jean-Marie Le Pen, no more member of the Poujadist Movement, decided to found his own party, the *Front National*. Locating itself to the extreme right, and even expressing the wish to be “the real right” (Winock 1997), the party was antisemitic and nationalistic. It opposed migration and the European project, reclaiming to defend ordinary citizens from the interests of a treacherous elite of technocrats, who was trying to perpetuate the imposition of a corrupt and unmoral system on the honest French people. Le Pen’s attachment to cultural identity went so far as to make him declare that his party was the people itself: “Nous sommes le peuple” (Winock 1997).

Although these populist movements were constituted in the 1970s, they will escape the marginality of the political panorama of their countries – to gain the support of a noticeable part of the population – only a decade later. So, for example, the Finnish Rural Party was at the highest of its support – reaching 10% of the votes – between 1970 and 1980. After the 1973 parliamentary elections, the Danish Progress Party became the second-most supported party of Denmark with 16% of the votes. The Norwegian Progress Party gained the same result, becoming Norway’s second-largest party in 1997. The Front National originally received 11% of the vote at the 1984 European elections, to subsequently gain 15% of national support at both the parliamentary and presidential elections of France in 1997.

In 1978, the *Vlaams Blok* (Flemish Bloc) – later to become the *Vlaams Belang* (Flemish Interest) – was founded in Belgium on linguistic and ethnic lines for the defense of the Flemish people. Marked by

nationalism, an anti-immigration stance and opposition to the elite, the party advocated for the independence of the Flanders (Tarchi 2018).

With the new leadership of Jörg Haider⁴⁵, the *Freiheitliche Partei Österreichs* (Austrian Freedom Party) became a populist party as well. Espousing nationalistic and xenophobic ideals, the party denounced the country's political system, and emphasized traditional family values. It started to gain prominence and support during the 1990s, to enter the government in a coalition with the right in 2000.

Also in Italy, the 1980s were flourishing years for populism. It was at the beginning of the decade that Umberto Bossi's *Lega Lombarda* (Lombard League) was set up on regional grounds, to later merge with the other regional leagues of the country, and create a single organization linking Italy's northern regions in a unique call for secession from Rome: the *Lega Nord* (Northern League) (see section 3.2.2).

The Lega experienced its first major success at the beginning of the 1990s, when it entered the government in a coalition with Berlusconi's *Forza Italia* (Go Italy) (see section 3.3 and ff.).

In the meantime, the Scandinavian populist parties established at the beginning of the 1970s had dissolved, but new heirs emerged from their legacies. Capitalizing on the Danish Progress Party (Campani and Pajnik 2017), the new *Dansk Folkeparti* (Danish People's Party) was established in 1995. In a similar fashion, the Finnish *Perussuomalaiset* (Finns Party) is considered to be the successor of the Finnish Rural Party which had emerged in the late 1960s, obviously playing in a different political and socio-economic context than its ancestor (Campani and Pajnik 2017).

During the 1970s, beginning from the Scandinavian countries of Northern Europe, modern populism started to make its way through the continent, although remaining confined to the periphery of the political scenario. In the 1980s, European right-wing populist parties made their presence felt for the first time, gaining important support for new-born parties in national elections. In the 1990s, the number of populist organizations increased, touching every single country of Western Europe. From the end of the decade, and even more so from the beginning of the 2000s, populist parties have been able to enter government formations⁴⁶ in coalition with other parties – mainstream and not – thus opening the way to a new ruling pattern. Indeed, populist leaders had never been in the government of a European country before that moment. This means that starting from the new century, populism's relevance has changed. The phenomenon is not a secondary one anymore: it has entered the mainstream of the political arena to such an extent that its rhetoric and language have been adopted – even though just for

45 Haider has been one of the very few populist leaders to accept the label of populist, even trying to confer it a positive connotation (Tarchi 2018).

46 It has thus been possible to notice that once in government populist parties do not de-radicalize, and can rule maintaining their extreme stances (Akkerman, de Lange and Rooduijn 2016).

strategic purposes – by traditional organizations which have nothing to do with populism. Moreover, if until the Great Recession Western Europe had been experiencing only right-wing populism, after the Euro-crisis the phenomenon started to develop also in a left-wing fashion. More precisely, this left variant of populism focused on the austerity policies imposed by the European Union to solve the crisis, and advocated for their end in the name of a more socialist union. Examples are parties like the Greek *Syriza* and the Spanish *Podemos* (Rovira Kaltwasser et al. 2017).

The kind of populism emerging in Western Europe since the 1990s has been called ‘new populism’ (Taggart 2000), or alternatively ‘neo-populism’ (Immerfall 1998; Taggart 2000). It is a kind of populism attached to the right of the political spectrum, emphasizing traditional values, anti-immigration stances, and the importance of cultural identity; a kind of populism which denounces the establishment and proclaims to represent the people, ultimate sovereign of any state; a kind of populism embodied by different parties which developed in different Western European contexts at the same moment (Taggart 2000). New populism is not external to the political system, nor is it a marginal phenomenon, for it has undergone a sort of normalization, becoming an ordinary feature of the political life of any Western European country. The reason why this wave of populism has been defined new, lies in the fact that it is really new, so to say, different from its previous manifestations because conditioned by the contingent historical circumstances in which it has developed.

At the end of the 1990s, Paolo Pombeni (1997) wrote that the notion of ‘European populism’ was a hasty one, in that neither the concept of populism, nor that of Europe as a homogenous geopolitical entity, were static. Excluding the most recent left-wing oriented manifestations of the phenomenon, however, it seems that in the last thirty years, Europe developed in a rather homogeneous way as far as populist parties are concerned. Indeed, all such organizations have adopted a right-wing ideology, showing to be particularly radical in the stances they defended. The core arguments of their programs are always portrayed in nativist terms, mixing nationalistic and xenophobic elements (Akkerman, de Lange and Rooduijn 2016). Western European populist parties advocate for moral change in society, claim to represent the whole population of the country in which they compete, and denounce the political establishment as too far from the interests of ordinary citizens. Their political agenda focuses on cultural and identity-related issues: socio-economic items are secondary, if present at all. Western European populist parties tend to engage with issues not traditionally associated with the right-left divide, becoming taboo-breakers of questions not usually addressed in an explicit way by mainstream parties. They tend, for this reason, to be regarded as organizations which are not afraid to tell people

what the true story is – even though this is generally done by using a politically incorrect language or apocalyptic narratives.

Even though each specific party strives for specific issues – its agenda being colored by the environment in which it acts and the socio-cultural history of the context out of which it developed – it seems that some issues “are touchstones for contemporary Western European populism” (Taggart 2017b). These are especially immigration and the question of European integration. Obviously, such issues are not in themselves populist, they are rather politicized in a populist manner (Taggart 2017b). The cornerstone of any populist party in Western Europe is doubtless immigration – sometimes one even has the impression that every other item is used in its function. The first party to emphasize so much immigration has been the Front National, setting an example to the others. Immigration is always fought because of the danger it implies. Migrants are often described in racist terms, regarded as the cause for law and order problems, insecurity, and terrorism (Taggart 2017b). This trend is more accentuated if they come from Muslim countries, as it is usually the case lately. Migrants are considered a threat also because of their cultural and religious differences, oftentimes accused of planning an invasion. Incumbents are in this setting accused because they are considered responsible for having authorized open-borders policies, thus preferring aliens to fellow citizens. Migrants can mean different things to different nation states, according to the nationality of the largest group hosted in the country in question, or arriving to it. Migration is politicized with the construction of the migrant as ‘the other’. Starting from the populist assumption that the people is one and homogenous, all those coming from outside are regarded as aliens having nothing to share with the heartland community. Migrants are thus different, their values being incompatible with those of the national group. They are therefore dangerous for the identity and the traditions of the nation.

Opposition to the European Union is another landmark feature of Western European populism (Taggart 2017b). Since the thin ideology we are analyzing is critical of any national elites and opposes technocracy, it cannot but be critical of the EU as well, being this handled by technocratic elites. In this sense, a feeling of nationalism is deployed against the idea of Europeanization. Criticism of the union has increased after the 2009 crisis of the Euro and the refugee crises brought about by the Arab Spring. Populists lament the austerity policies imposed by the Commission to tackle the eurocrisis and the Dublin Regulation with its implications of solidarity. This has manifested as in countries with a historical skeptical opinion of the process of European integration, like the UK, as in countries at the heart of the European project – like Germany (Taggart 2017b). Of course, the politicization of the

European issue is not exclusive of populists, for many mainstream parties are pretty skeptical of such integration process as well. What is populist is rather the denunciation of the union in light of its supposed disinterest in ordinary people, and the elite game through which it is administered. It is fair to say that oftentimes the EU becomes a scapegoat for decisions and circumstances at the national level that national politicians have difficulties explaining otherwise.

2.3 Populism in Eastern Europe

In Eastern Europe, populism made its first appearance in the interwar period, with features very similar to its Russian predecessor. Because of the communist regime set up in the region after WW2, however, the populist phenomenon did not have fertile ground for expression for a long time, being ultimately able to rise only after the end of the Soviet dictatorship, at the beginning of the 1990s.

2.3.1 Interwar populism in Eastern Europe

Eastern Europe had its first encounter with populism after World War I, and it was deeply influenced by the Russian *narodnichestvo*. Considered an agrarian variant of the phenomenon, populism emerged here in Bulgaria, Czechoslovakia, Hungary, Croatia, Rumania, Poland, Serbia and Slovenia with the objective of establishing a society based on rural traditions, family values and feelings of respect and cooperation⁴⁷. Such a populist manifestation has been defined by Canovan (1981) as a single ‘Green Uprising’, even though, as she also notes, the various movements originating in this period diverged a lot from the others because of the specific peculiarities of the national contexts in which they developed. What all these movements shared, however, was the central belief that peasants were examples to emulate because of their morality, and the conviction that urban elites were instead corrupt and to oppose (Trencsényi 2014). Aiming at maintaining a society of small family farms ready to help each other in a harmonic environment, these Eastern European manifestations of populism claimed that the peasantry’s agricultural lifestyle was to be adopted in order to escape corruption, decadence and mundanity (Mudde and Rovira Kaltwasser 2017). Eastern European populists argued that their respective national elites tended to favor ‘aliens’ over peasants, intending as aliens Jews and other ethnic minority communities (Held 1996). For example, following such an approach, Romanian

47 The most successful case of Eastern European populism is to be found in Bulgaria, in the form of the Bulgarian Agrarian National Union. The populist movements which developed in the other above-mentioned countries were, instead: the Republican Party of Farmers and Peasants in Czechoslovakia, the Croatian Republican Peasant Party in Croatia, the Smallholders’ Party in Hungary, the Polish People’s Party in Poland, and the National Peasant Party in Rumania. In Serbia and Slovenia, populist organizations remained small and marginal (Trencsényi 2014).

populists considered Germans, Hungarians, Gypsies and Armenians as enemies privileged by the incumbents; while in Bulgaria populism described Greeks and Turks as major members of the out-group (Held 1996).

In the countries of Eastern Europe affected by the populist wave, peasants represented the majority of the population, being at least 60% of the people. They were subjected to landlords and constituted the poorest stratum of society. After the Great War, most of Eastern Europe engaged itself with programs of land redistribution and decided to adopt democratic constitutions. Even though such governments were only formally democratic – being indeed characterized by corruption – they nonetheless allowed for the emergence of several peasant political parties. These were usually led by intellectuals – similarly to what happened in Russia⁴⁸ – and praised peasants for their special virtues deriving from their relationship with the soil. The objective of populist parties was the establishment of a society grounded on voluntary cooperation and made up of peasants, a society that could redeem itself without capitalism, industrialization and socialism. For this reason, Eastern European populists criticized both “Western liberal capitalism and socialist collectivism”, proposing instead a third alternative way (Trencsényi 2014).

Rural life was idealized and urban life harshly criticized: the peasantry was morally superior because of the common sense that only ordinary people have, and the elite was described as just a cheater, being rich without even working. Peasants’ superiority was expressed not only in moral terms, but also in more concrete ones. It was the peasants, indeed, with their working hours and skills to produce the goods for the whole territory. It was the peasants, then, to make life possible also for those living in towns and urban centers (Ionescu 1969). This wave of peasant populism was strongly anti-capitalist, criticizing both the alienating effects of such a development on the humanity of people, and its alien origins: capitalism was considered a system trying to be imposed on Eastern Europe by elites who wanted people’s illness (Mudde 2002). Towns were regarded in a negative way because of their link with industrialization. They were places where the elites lived, being thus automatically symbols of corruption, locations favorable to Western civilization, only looking for profit and alienating people (Held 1996). From a political point of view, the peasant populist parties were in favor of direct democracy in all its forms, decentralized administration and egalitarianism, advocating for reforms

48 Even though both manifestations of populism were somehow guided by elites, Eastern European intellectuals had “more experience of real peasant life than their Russian predecessor(s)”, in that many of them came from a peasant background and family (Canovan 1981), being thus closer to the category they claimed to represent. According to Ionescu (1969), the leadership of such Eastern European populist parties was “a mixture of young intellectuals and genuine peasant personalities”, with the main representatives coming very often from the latter milieu.

along constitutional lines (Canovan 1981). Eastern European afterwar populism was not extremely chauvinistic, although being marked by feelings of anti-Semitism. Even if every organization was ultimately responsive to the social setting of its country, all populist leaders tended to cooperate among them, and considered themselves part of a common movement marked by the absence of revolutionary traits⁴⁹ (Canovan 1981). The populist experiment lived by Eastern Europe in the first decades of the twentieth century was short-lived, for such peasant parties were soon to fall victim of the different authoritarian *coups d'état* carried out in the region. Such populist parties had indeed no mean to tackle or respond to the violence of extremist regimes; nor had they had enough time to politically educate the masses and consolidate the democratic institutions of their respective countries so as to survive (Ionescu 1969). The populist parties of the after-war period were thus able to shake their political systems, perceived as unfair and unjust toward the small people, but it was not on them to build new ones, or to take part in their renewals (Ionescu 1969). This notwithstanding, such parties gained in some cases an important electoral success, indicating how agrarian populism was indeed the “dominant ideology” of the region in the first decades of the 1900s (Mudde 2002).

2.3.2 Modern populism in Eastern Europe

Even though Eastern Europe’s first experience with populism was a rather unsuccessful one, the history of the phenomenon in the region is not limited to such a single agrarian adventure, for after the collapse of communism, the phenomenon will come back to re-establish itself in the political system of many countries, with some very specific features. Today, populism in this part of the continent is even regarded as “a general phenomenon, spread[ing] across the ideological spectrum” of the whole region (Mudde 2002).

After the downfall of communism, Eastern Europe decided to reshape its political and economic structures in the name of liberal-democracy and capitalism. Led by many of the personalities who took part in the revolutions against the communist regime, the double transition faced by the region soon appeared demanding. The hardships of such a process, coupled with the newly created and still relatively unstructured party systems of the region, provided fertile ground for the emergence of populist parties as organizations collecting people’s disappointments with the way democratic reforms

⁴⁹ Eastern European peasant populist parties were, broadly speaking, non-revolutionary. However, some formal exceptions can be found. For example, the Bulgarian Agrarian Union led by Stambolisky had a revolutionary outlook (Ionescu 1969).

and economic transformations were being dealt with by the new elites⁵⁰. Populist actors in post-communist Eastern Europe portrayed themselves as “defenders of the revolution”, claiming that the latter had been stolen from the people by a corrupt elite (Stockemer 2019). The rhetoric of the “stolen revolution” was articulated in a dichotomous way: on the one hand, the political elite leading the democratic transition of the region was accused of being made up of former communists, and of having taken away the revolution from the people (Mudde and Rovira Kaltwasser 2017); on the other, the people was described as uncorrupt, and represented the “victimized majority” calling for a real revolution to oust the new corrupt elite from the top governmental position it had unjustly taken (Mudde 2012).

Post-communist populism in Eastern Europe has followed two trajectories⁵¹, thus differentiating itself according to the decade one takes into consideration. The variant of populism that developed in the 1990s was radical and espoused mainly a right-wing ideology – with some exceptions embracing left-wing ideas. That of the 2000s, instead, was a more centrist form of the phenomenon, with no secondary ideological link in particular, and for this reason a purer example of populism.

Most of the radical populist parties of the 1990s criticized the process of democratic transition as a top-down one – the exact opposite of the bottom-up push that had characterized the revolutions against the communist regime – and played for their projects on the historical rivalries and ethnic differences typical of Eastern Europe, that resurfaced after the end of communism (Stanley 2017). The process of transition was perceived as similar to that of globalization in the West, producing ‘winners’ and ‘losers’ – people taking advantage from democracy and capitalism, and people being left behind by these same developments. Radical populism reacted to such a scenario by playing on the notes of state intervention in the economy, anti-globalization and anti-integration feelings, and the perception that the new democratic elites were the same of the communist period, just reshuffled. Populism embraced in this period a right-wing ideology, encompassing cultural identity elements, nationalism feelings, and welfare chauvinism (Stanley 2017). This kind of populism was culturally conservative, focusing on the

50 Paul Blokker (2005), however, suggests to consider the emergence of populism in Eastern Europe as independent from the costs of transition the region underwent from 1990, and the societal and political changes it faced because of the collapse of communism. For him, populism is indeed to be regarded as a perennial open possibility for democracy, and so it should be considered in the case of Eastern Europe as well.

51 Beside the radical right-wing populist wave of the 1990s and the centrist populist wave of the 2000s, Mudde (2002) acknowledges also the presence of an agrarian form of populism in post-communist Eastern Europe, as survived example of the peasant populist parties developed in the aftermath of WWI. However, the importance of agrarian populism after the collapse of communism was – according to the scholar – limited: because of the changes undergone by Eastern European societies with communism and the process of industrialization, the category of the peasantry had indeed slowly disappeared, to be replaced by that of rural workers. As a consequence, agrarian populism had little destiny after the 1990s, for it had no more a specific people to appeal.

issue of national identity. Considering that in Eastern Europe identity frameworks have always been forced by external powers, after the end of communism and due to the first effects of globalization, radical populist parties advocated for a specific nationalistic identity in a period of great confusion (Blokker 2005). Since democracy in Eastern Europe became soon accompanied by the prospect of a EU membership – at least for some of the countries in the region – radical populism opted for a nationalistic stance also in this case, showing skepticism toward the process of European integration. The radical populist parties which emerged in this decade revealed themselves short-lived and with no influential power: their impact on the political game of Eastern European countries was pretty limited and factional. Even though the grievances they highlighted remained in the years that followed, such parties were not really able to enter the governments of the region, remaining confined to the periphery of their party systems.

The beginning of the new century marked the second decade of transition for Eastern Europe, and experienced the rise of other populist movements, this time of a different kind than their radical predecessors. The populist parties emerging in the 2000s stood in opposition to the establishment – and this was their central point – independently from the ideological core espoused by the latter. Such pure form of opposition can somehow be regarded as a sort of legacy effect, a direct consequence of communism, for by imposing a single ideology to be embraced by everyone without dissent, such a regime fostered anti-party feelings, encouraging the ‘us versus them’ divide typical of populism (Stanley 1917). In this sense, populism played on the cynicism produced by the communist regime, and attacked the elites just for being elites, having in mind the memory of what that meant under the dictatorship. This wave of populism has been defined ‘centrist’, for it supports manifestly only the issue of opposition to mainstream parties, without displaying any clear political program identifiable with the right or the left side of the political divide (Učeň 2007; Stanley 2017). By not being right-wing nor left-wing oriented, centrist populism is thus placed at the center of the political spectrum. The lack of a well-defined and articulated position on other major political issues is a liability if the populist party has to turn its ideas into concrete policies once in government, but it is also an asset in the electoral phase, for it allows to gain the support of a huge portion of the population that is dissatisfied with the way its country is being managed.

This variant of Eastern European populism differs from its radical predecessor in the way it considers and selects the establishment to criticize: in the 1990s indeed, populism was born as a reaction to the

way the transition process had been managed by a specific elite, the new democratic elite; at the beginning of the new century, instead, its main concern was that of attacking the elites in general for their typical and obvious misconduct, ineffectiveness and corruption (Stanley 2017). Dissatisfaction with and mistrust of mainstream political parties is further aggravated in Eastern Europe by the situation of rampant corruption typical of the region's political life – also this, a legacy of communist practices. Centrist populist organizations deviate from the political orthodoxy adopted by traditional parties immediately after the collapse of communism, and can therefore be defined – following the dual classification proposed by Grigore Pop-Eleches – unorthodox parties (Učeň 2007). The appeal of centrist populism reached those disillusioned with politics or about to become politically indifferent, promising them honesty, common sense, and the elimination of corruption: attempts at which current and previous incumbents had all failed (Učeň 2007). Its core features are three: an anti-establishment rhetoric, reformism, and “genuine organizational newness” (Hanley and Sikk 2012). Populism in Eastern Europe, hence, underwent a change at the beginning of the century, abandoning ideological issues – especially nativism – in the name of a pure opposition to the establishment. Contrary to their radical predecessors of the 1990s, centrist populist parties attracted much electoral support, sometimes even shaping the government (Učeň 2007). More often than not, however, their conduct ended up being similar to that of the parties they had criticized, for they as well proved unready to ameliorate the situation of their respective countries.

Despite being a feature of the political scenario of Eastern Europe in the 1990s, radical populism emerged again at the beginning of the 2000s, benefitting from the inability of the previously elected elites to guide the region toward a fully-fledged transition, and presenting itself as an alternative to the other existing parties, judged incompetent (Stanley 2017). Some important radical populist parties developed in Poland: the *Liga Polskich Rodzin* (League of Polish Families) adopted a light right-wing rhetoric, opposing Westernization in the name of national traditions and customs; *Kukiz '15* (Kukiz Movement) campaigned against immigration; and *Samoobrona Rzeczpospolitej Polskiej* (Poland's Self Defense) took a stance against economic liberalism, international financial organizations, the elites that led the process of transition, and the bodies of the EU. Other relevant cases of radical populism emerged also in Bulgaria, where the *Natsionalen Sayuz Ataka* (National Union Attack) opposed ethnic minorities, claiming to speak in the name of a unitary and homogeneous Bulgarian people; in Czech Republic, where the *Úsvit přímé demokracie* (Dawn of Direct Democracy) took up the issue of

opposition to the UE and immigration; and in Hungary, where *Jobbik Magyarországért Mozgalom* (Jobbik Movement for a Better Hungary) made ethnic exclusionism its core item (see 4.1.3). The parties emerging from this second wave of radical populism mainly adopted right-wing issues, combining authoritarian and nativistic attitudes with interventionist stances in the economy and redistributive approaches (Stanley 2017).

What is even more important, however, is the normalization of right-wing populism which has taken place in Eastern Europe from the first years of the new century. Populist approaches have entered the mainstream, with the traditional Polish *Prawo i Sprawiedliwość* (Law and Justice) and the Hungarian *Fidesz – Magyar Polgári Szövetség* (Fidesz – Hungarian Civic Alliance) (see section 4.1.3) being the most remarkable examples of mainstream parties turned populist.

The radicalization of traditional parties is a clear sign of the strength that populism has in some countries of Eastern Europe. If radical populist parties had been unable to gain electoral success in the 1990s, their importance in present times is not to be underestimated, for it was them to open the doors of government to populism (Stanley 2017).

2.4 Map of contemporary populist parties in the member states of the European Union

Populism has gained importance in Europe since the 1990s, becoming a political force which cannot be neglected. The amount of populist parties has increased, both in Western and Eastern Europe. In the last thirty years, populist parties have exited the periphery of the party system to enter governments, usually in coalition with other parties – mainly traditional but not only. This means that they have been able to exercise a certain influence on the political life of the countries in which they have been operating. The impact of populism, however, is not limited to the force populist parties have recently gained in elections, for they have been able to condition the political agenda and rhetoric of many traditional, non-populist parties as well, making them adopt certain populist messages and specific populist issues. Although not populist, many parties can today be regarded as persuaded by populism in the way they speak, and in the items they adopt. However, even if many politicians and organizations may occasionally pick populist elements, these are not to be regarded as populist, for their ideological core does not embrace a sincere populism. The only parties which can be labeled populist are hence those that make of populism their core creed, and respond positively to Mudde's definition of the phenomenon as outlined in section 1.1.

Since populism remains a highly contested phenomenon, every list of populist parties aiming at being exhaustive can be subject to criticism. For the purposes of this work, it is fundamental to outline the populist parties active in Europe, and more precisely in the European Union. To do this, I will rely on the classification proposed by Zulianello (2019), which, as stated by the scholar ‘adopts an unprecedented broad pan-European perspective’. Such a classification relies on Mudde’s definition of populism – the same definition adopted here – and considers those populist organizations which gained parliamentary seats in either the most recent national elections of their respective countries (up to 29 May 2019), the 2014 elections for the European Parliament, or the 2019 elections for the European Parliament (Zulianello 2019). The populist parties identified by such criteria can in turn be distinguished into right-wing populist parties, left-wing populist parties and pure populist parties⁵² – according to the second full ideology they attach themselves to, if any. Zulianello (2019) further divides the category of right-wing populism into three variants: ‘radical right populism’, ‘neoliberal populism’, and ‘national-conservative populism’; and the category of left-wing populism into the two subcategories of ‘typical social populism’ and ‘national-social populism’, according to the way populism is combined with various forms of socialism.

Table 1. Contemporary populist parties in the EU (as of 29 May 2019).

Country	Party (abbreviation)	Broad populist category/ specific subcategory
Austria	Freedom Party (FPÖ)	Right-wing / radical-right
Belgium	Flemish Interest (VB)	Right-wing / radical-right
	People’s Party (PP)	Right-wing / neoliberal
Bulgaria	Attack (ATAKA)	Right-wing / radical-right
	Bulgaria Without Censorship/Reload Bulgaria (BBT-BBZ)	Right-wing / national-conservative
	Citizens for European Development of Bulgaria (GERB)	Pure populism
	National Front for the Salvation of Bulgaria (NFSB)	Right-wing / national-conservative

⁵² Pure populism is a kind of populism attached to no secondary ideology. In an alternative fashion, it is named ‘valence’ populism by Zulianello (2019), and centrist populism by Stanley (2017) and Učeň (2007).

Country	Party (abbreviation)	Broad populist category/ specific subcategory
Croatia	Will (VOLYA)	Right-wing / radical right
	Bridge of Independent Lists (MOST)	Pure populism
	Croatian Democratic Alliance of Slavonia and Baranja (HDSSB)	Right-wing / national-conservative (populist until 2015)
Cyprus	Human Shield (ZZ)	Pure populism
	Citizens' Alliance (SYM)	Left-wing / national-social
Czech Republic	ANO 2011	Pure populism
	Freedom and Direct Democracy – Tomio Okamura (SPD)	Right-wing / radical right
Denmark	Danish People's Party (DF)	Right-wing / radical right
Estonia	Conservative People's Party (EKRE)	Right-wing / radical-right
Finland	Blue Reform (SIN)	Right-wing / national-conservative
	Finns Party (PS)	Right-wing / radical right
France	National Rally/National Front (RN/FN)	Right-wing / radical right
	Unbowed France (LFI)	Left-wing / social
Germany	Alternative for Germany (AfD)	Right-wing / radical right
	Left Party (Linke)	Left-wing / social
Greece	Greek Solution (EL)	Right-wing / radical right
	Independent Greeks (ANEL)	Right-wing / radical right
	Coalition of the Radical Left (SYRIZA)	Left-wing / social
Hungary	Hungarian Civic Alliance (Fidesz)	Right-wing / national-conservative (radicalized mainstream party)
	Movement for a Better Hungary (Jobbik)	Right-wing / radical right

Country	Party (abbreviation)	Broad populist category/ specific subcategory
Ireland	Sinn Féin (SF)	Left-wing / national-social
Italy	Brothers of Italy (FdI)	Right-wing / radical right
	Five Star Movement (M5S)	Pure populism
	Forza Italia (FI)	Right-wing / neoliberal
	League (Lega) [formerly Northern League, LN]	Right-wing / radical right
Latvia		
Lithuania	Lithuanian Center Party (LCP)	Pure populism
	Order and Justice (TT)	Right-wing / national-conservative
Luxembourg	Alternative Democratic Reform (ADR)	Right-wing / national-conservative
Malta		
Netherlands	Forum for Democracy (FvD)	Right-wing / radical right
	Party for Freedom (PVV)	Right-wing / radical right
	Socialist Party (SP)	Left-wing / social
Poland	Kukiz '15	Right-wing / radical right
	Law and Justice (PiS)	Right-wing / national-conservative (radicalized mainstream party)
Portugal		
Romania		
Slovakia	Ordinary People and Independent Personalities (OL'aNO)	Pure populism
	Slovak National Party (SNS)	Right-wing / radical right
	SME Rodina (SR)	Right-wing / radical right
Slovenia	List of Marjan Šarec (LMŠ)	Pure populism

Country	Party (abbreviation)	Broad populist category/ specific subcategory
Spain	Slovenian National Party (SNS)	Right-wing / radical right
	United Left/The Left (Levica)	Left-wing / social
	Podemos	Left-wing / social
	Vox	Right-wing / radical right
Sweden	Sweden Democrats (SD)	Right-wing / radical-right
United Kingdom	Brexit Party (BP)	Right-wing / neoliberal
	UKIP	Right-wing / radical right (until 2015, neoliberal)

source: re-elaboration of Zulianello (2019)

As shown by Table 1, all EU member states but Latvia, Malta, Portugal and Romania have at least one populist party identifiable with Mudde’s ideational definition of populism and Zulianello’s criteria of selection. The total number of populist parties identified in the countries of the EU is 51. The right-wing family appears as the most diffused (35 out of 51 parties are right-wing oriented), followed with equal merit by left-wing populism and pure populism (8 out of 51 parties are left-wing oriented, and 8 have no clear secondary ideological orientation, being thus pure populist parties). Two populist parties have shifted their orientation, passing from the mainstream to radical populism: the Polish Law and Justice (PiS), and the Hungarian Fidesz. Conversely, the Croatian Democratic Alliance of Slavonia and Baranja (HDSSB) has stopped being a populist party in 2015 (Rooduijn et al. 2019). Bulgaria is the country with the highest number of populist organizations, counting 5 parties, followed by Italy with 4.

Following the same presentational order of Table 1, Table 2 (below) shows the governmental experience – current or previous – of the above mentioned populist parties, and their integration as regards the party system and political regime of their respective countries. Populist parties’ integration is reached when they do not refuse to make alliances with traditional parties, and are not excluded from potential coalitions by the same mainstream forces. When the opposite is true, instead, there occurs a non-integration. Integration can then be negative or positive. It is negative when populist parties

behave in a conflictual way with the principles of the regime in which they operate, grounded on constitutionalism and liberalism. It is instead positive when populist parties behave in harmony with the principles of the regime in which they operate, the latter usually not more liberal nor constitutional because transformed by the same populist organization (Zulianello 2019). In fully-fledged liberal democracies, populist parties' integration cannot but be negative⁵³ (Zulianello 2019).

Table 2. Current or previous governmental experience of contemporary populist parties in the EU, and level of integration of the same parties in their respective country's party system and regime, as of 29 May 2019.

Country	Party	Government experience	Integration patterns
Austria	Freedom Party (FPÖ)	Yes	Negative integration
Belgium	Flemish Interest (VB)	No	Non-integration
	People's Party (PP)	No	Non-integration
Bulgaria	Attack (ATAKA)	Yes	Negative Integration
	Bulgaria Without Censorship/ Reload Bulgaria (BBT-BBZ)	No	Negative Integration
	Citizens for European Development of Bulgaria (GERB)	Yes	Negative integration
	National Front for the Salvation of Bulgaria (NFSB)	Yes	Negative integration
Croatia	Will (VOLYA)	No	Negative integration
	Bridge of Independent Lists (MOST)	Yes	Negative integration
	Croatian Democratic Alliance of Slavonia and Baranja (HDSSB)	No	Negative Integration
Cyprus	Human Shield (ZZ)	No	Non-integration
	Citizens' Alliance (SYM)	No	Negative integration

53 In order to have a positive integration into the party system of a liberal democratic regime, populist parties should abandon their ideological opposition to such a political system, stopping to oppose the legitimacy of constitutional constraints and pluralism – both core values of liberal democracies. However, by doing so they would inevitably lose some populist traits, so becoming non-populist parties (Zulianello 2019).

Country	Party	Government experience	Integration patterns
Czech Republic	ANO 2011	Yes	Negative integration
	Freedom and Direct Democracy – Tomio Okamura (SPD)	No	Non-integration
Denmark	Danish People’s Party (DF)	No	Negative integration
Estonia	Conservative People’s Party (EKRE)	Yes	Negative integration
Finland	Blue Reform (SIN)	Yes	Negative integration
	Finns Party (PS)	Yes	Non-integration (radical disembedding)
France	National Rally/National Front (RN/FN)	No	Non-integration
	Unbowed France (LFI)	No	Non-integration
Germany	Alternative for Germany (AfD)	No	Non-integration
	Left Party (Linke)	No	Non-integration
Greece	Greek Solution (EL)	No	Non-integration
	Independent Greeks (ANEL)	Yes	Negative integration
	Coalition of the Radical Left (SYRIZA)	Yes	Negative integration
Hungary	Hungarian Civic Alliance (Fidesz)	Yes	Positive integration
	Movement for a Better Hungary (Jobbik)	No	Non-integration
Ireland	Sinn Féin (SF)	No	Non-integration
Italy	Brothers of Italy (Fdi)	No	Negative integration
	Five Star Movement (M5S)	Yes	Negative integration
	Forza Italia (FI)	Yes	Negative integration
	League (Lega) [formerly Northern	Yes	Negative integration

Country	Party	Government experience	Integration patterns
Latvia	League, LN]		
Lithuania	Lithuanian Center Party (LCP)	No	Negative integration
Luxembourg	Order and Justice (TT) Alternative Democratic Reform (ADR)	Yes No	Negative integration Non-integration
Malta			
Netherlands	Forum for Democracy (FvD)	No	Non-integration
	Party for Freedom (PVV)	No	Non-integration (radical disembedding)
	Socialist Party (SP)	No	Negative integration
Poland	Kukiz '15	No	Non-integration
Portugal	Law and Justice (PiS)	Yes	Negative integration
Romania			
Slovakia	Ordinary People and Independent Personalities (OL'aNO)	No	Negative integration
	Slovak National Party (SNS)	Yes	Negative integration
	SME Rodina (SR)	No	Negative integration
Slovenia	List of Marjan Šarec (LMŠ)	Yes	Negative integration
	Slovenian National Party (SNS)	No	Negative integration
	United Left/The Left (Levica)	No	Negative integration
Spain	Podemos	No	Negative integration
	Vox	No	Negative integration
Sweden	Sweden Democrats (SD)	No	Non-integration

Country	Party	Government experience	Integration patterns
United Kingdom	Brexit Party (BP)	No	Non-integration
	UKIP	No	Non-integration

source: re-elaboration of Zulianello (2019)

As Table 2 shows, 19 out of 51 populist parties active in the EU have been or currently are in the government of their respective countries – generally in coalition with other organizations. Conversely, 32 of them have never acceded a national executive, remaining confined to the periphery of their party system.

The majority of populist parties here indicated (34 out of 51) displays systemic integration in the party system, meaning that they have cooperative ties with traditional parties. Only 17 organizations are not integrated. Out of these 17 non-integrated populist parties, all but two never reached systemic integration. The Finnish Finns Party (PS) and the Dutch Party for Freedom (PVV) are exceptions: they were previously integrated in the party system of Finland and the Netherlands respectively, to later radicalize their ideological stances through a process of radical disembedding, in order to be excluded from possible cooperation links and achieve isolation (Zulianello 2019).

Out of the 34 cases of integrated populist parties, 33 experience a negative integration.

There is, eventually, only one case of positive integration: Hungary’s Fidesz. Hungary is here to be regarded as an illiberal democracy (see chapter 4). Specifically, Fidesz has a positive integration in the political regime of the country in which it operates, because it changed it according to its ideological orientations. Turning Hungary from a liberal into an illiberal democratic regime, Fidesz’s program appears now in line with the form of government of its country. Fidesz was initially characterized by a negative integration because it worked in a liberal democracy, becoming positively integrated only since 2010, when it started to implement a series of policies not aligned with liberalism and constitutionalism.

CHAPTER 3

POPULISM IN ITALY

Right-wing and left-wing? Old staff. Today the difference is between the FEW powerful people who rule and earn (lobbies, multinational corporations, bankers, finance), and the very MANY people who have been deprived of their job and future by this Europe of nuts. I side with the very many, I side with the People!⁵⁴

(Salvini 2016)

The five parties which will be analyzed throughout the present chapter – the Fronte dell’Uomo Qualunque, Forza Italia, the Lega (Nord), the MoVimento Cinque Stelle, and Fratelli d’Italia – are all, according to Mudde’s definition (see section 1.1), identifiable as populist. They all conceive of society to be ultimately divided into two antagonist groups – the pure people and the corrupt elite – and all claim to speak in the name of the entire Italian population, that is, all claim to express the general will. Even though the rhetoric adopted is softer in some cases and more radical in others, all such political groups move on the same lines of majoritarianism and anti-elitism, implicitly entailing an anti-pluralist stance.

3.1 Genesis of the populist phenomenon in Italy: the Fronte dell’Uomo Qualunque

Italy had its first populist encounter – thus being one of the Western European countries in the frontline concerning the development of populism – already in the 1940s, in the form of the *Fronte dell’Uomo Qualunque* (Front of the Common Man) (Tarchi 2018). Founded by Giannini in the wake of the peninsula’s liberation from dictatorship, the organization claimed to express people’s grievances and discontent (Passarelli 2015) – defining itself as the real voice of all Italians (Gambarota 2019) – while simultaneously denouncing professional politicians and their games (Forcellese 2015; Corduwener 2017; Passarelli 2015). Its objective was indeed that of providing representation to those who felt unrepresented, ‘the men of the street’ (Campani and Pajnik 2017). The very name of the political group is highly indicative of its populist character, for it clearly expresses the idea of an organization made up of ordinary people, acting in the name of ordinary people. The Fronte’s criticism of traditional parties was articulated in its logo in a very interesting fashion, depicting a press steered by anonymous hands which squeezes a small man till death (Forcellese 2015). Communists, socialists and democrats were

54 Post published on 27 June 2016 on Salvini’s Facebook profile: <https://it-it.facebook.com/salviniofficial/videos/destra-e-sinistra-roba-vecchia-oggi-la-differenza-%C3%A8-tra-i-pochi-potenti-che-coma/10153871016253155/>. Translation by me.

all, in Giannini's eyes, working together just to impose on the Italian society their arbitrary vision of the world, their values and ideas (Gambarota 2019). Indeed, all major parties were convinced that the Italian people needed to be educated in a democratic fashion, and that only they could act in this direction (Corduwener 2017; Orsina 2014). This Giannini opposed, believing that people had the common sense needed in order to make political decisions, being ultimately able to govern themselves (Corduwener 2017). In the Fronte's logic, there was no substantial difference between fascism and democracy, for at the end of the day both were elitist organizations trying to impose their ideologies on the masses (Gambarota 2019; Corduwener 2017; Orsina 2014; Orsina 2013). In this sense, Giannini's party was neither fascist nor anti-fascist, (Forcellese 2015; Corduwener 2017), in that it believed that the struggle was not between such forms of government but rather between 'the 'masters' and the 'crowd'' (Corduwener 2017). The classical Manichean vision of society typical of populism is thus present: the honest, hard-working people on the one hand, and the dishonest, self-referential career politicians – the so-called partitocracy – on the other (Gambarota 2019; Biorcio 2012; Orsina 2013; Orsina 2014; Corduwener 2017).

The populist party advocated for a free market economy and a neutral and independent civil society (Corduwener 2017). The latter, however, is not to be intended in homogeneous terms, conversely to what usually happens with populist parties. The people was indeed "individually conceived as a group [...] of common men⁵⁵", because Giannini refused collective identities of any kind⁵⁶ (Orsina 2013). According to Orsina (2014), that of Giannini is "possibly the purest form of liberal populism that Italy has ever experienced". The Fronte's main message was that the ultimate power belonged to the people, and that as a consequence, it was to the people to decide its head of state, its officials and even its judges (Corduwener 2017). Despite the emphasis put on the crowd, the party did not move along nationalistic or racist lines (Gambarota 2019; Corduwener 2017).

Giannini talked to ordinary citizens with a very simple language, and proposing simple solutions (Gambarota 2019; Corduwener 2017). Never gaining more than 5.3% of the vote, and despite its short-lived existence, the Fronte is destined to leave an important legacy. Giannini's party is indeed believed to have influenced the development of populism not only in Italy, but in all Europe (Corduwener 2017; Tarchi 2002; Gambarota 2019).

55 Translation by me.

56 As far as the conception of civil society is concerned, Orsina (2013) regards Giannini's populism as the forerunner of Berlusconi's one.

By claiming to be the real voice of the entire Italian population (Gambarota 2019), the Fronte dell'Uomo Qualunque embraced a majoritarian approach, which inevitably discriminates against minority groups and pluralism. Given the absence of nationalism and nativism in the organization's ideology, members of the minority group were mainly politicians and elite components not sharing Giannini's view of the world, that is, people having different ideologies and mindsets. Opposing traditional representation, and wishing to replace it with a populist version of it, the Fronte further confirmed its majoritarian exclusionist stance, in that a populist representation would inevitably exclude the consideration of non-in-group components. The idea of speaking for the entire population, additionally, found no confirmation (ever) in reality, for the party was never supported by more than 5% of the people, thus indicating that its majoritarian stance threatened a numerically important (non)minority. The party never reached the government, and as a consequence never really had the chance to translate its ideology into concrete policies. The assessment of its implications on constitutionalism and modern liberal democracy, then, derives from a simple consideration of its rhetoric – which can sometimes be different from actions. Given the emphasis on the will of the majority, one can expect the party would have supported the executive at the expenses of the Parliament and courts, thus placing itself in contrast with the principles of separation of powers and checks and balances. Indeed, for its very nature, the judiciary is a non-majoritarian body defending pluralism and minorities' rights, while the Parliament is the locus of representation and pluralism – all elements opposed by the Fronte. Also Giannini's conception of judges elected by the people is problematic from a rule of law perspective, for it implies that they be loyal to their electors and not to the law. Therefore, even though the movement claimed not to be opposed to democratic regimes, its ideology suggests rather the opposite – at least if one considers democracy as more than the simple will of the majority.

3.2 Contemporary populist parties in Italy

It is in the mid-1990s that populism is going to make its greatest appearance in the Italian scenario, remaining ever since a constant feature of the country's political system (Tarchi 2018). Italy's crisis of

politics (see section 1.5.2) was indeed exacerbated⁵⁷ by the findings of the *Mani Pulite* (Clean Hands) judicial investigation – an investigation which by bringing to light the deep state of corruption of the Italian party system⁵⁸, somehow legitimized populist feelings (Tarchi 2018). The media moved in the same direction, giving further resonance to such a populist atmosphere (Orsina 2014). According to Passarelli (2015), it is precisely in post-Tangentopoli Italy that the country's most important populist parties will emerge. Since this moment, indeed, the phenomenon has never left the peninsula's political life, making the latter earn the nickname of ‘‘promised land of populism⁵⁹’’ (Tarchi 2015), ‘‘populist paradise⁶⁰’’ (Zanatta 2002), and ‘‘cradle of populism in Europe’’ (Pasarelli 2015). Until a couple of months ago, indeed, populism had totally ‘triumphed over traditional parties (Hermet 2001).

3.2.1 Tele-populism⁶¹: Berlusconi's Forza Italia

Of the new political organizations created after the 1992 crisis of traditional parties, one is destined to emerge with a particular emphasis, exploiting the vacuum left by the Mani Pulite investigation, and becoming the undisputed protagonist of post-Tangentopoli Italy: *Forza Italia* (Go Italy) (Biancalana 2020). Forza Italia was founded by the media tycoon Silvio Berlusconi in 1993, being able to gain the support of the Italian population already in the national elections of the following year, thus entering the government for the first time in a coalition with other parties, among which also the Lega Nord (see 3.2.2) (Biorcio 2012). After this first electoral victory – as we shall see in section 3.3 and ff. – the party will happen to be in the government many other times, always in coalition with other center-right

57 The origins of such a crisis go, however, much more back in time. As Orsina (2018) notes, the democratic regime installed in Italy after WW2 was fragile and precarious, in that by excluding the Communist Party from government, it prevented the full realization of the liberal principle upon which the same system was grounded. The delegitimization of political forces started with traditional parties trying to undermine the credibility of the communist group, continued with the Communist Party trying to undermine the credibility of mainstream organizations, and picked up with traditional parties lamenting the very functioning of the entire republican system just to gain popular support. Following Orsina's reasoning, the explosion of Tangentopoli is just the climax of a much longer period of people's disenchantment with and resentment for politics and politicians. For their part, political groups proved unable to contain such malcontents, preferring instead to give them legitimacy so as to gain popular support – a choice which further damaged the credibility of the Italian political system. Since the event of Tangentopoli, then, Italy has been characterized by a search for the perfect politician (Orsina 2014; Orsina 2018).

58 Every then-existing Italian party was found involved in the payment or in the reception of bribes – from where also the second expression with which the investigation is widely known, *Tangentopoli* (tangente means in Italian bribe). The only exceptions in this sense were the Communist Party (clearly aligned with Moscow) and the Lega Nord (Tarchi 2018).

59 Following an international perspective, however, another geographical area seems to challenge Italy's record in terms of populist manifestations: Latin America. Latin America is indeed consensually regarded as the real cradle of the populist phenomenon.

60 Translation by me.

61 The expression ‘tele-populism’ comes from Taguieff (*L'illusion populiste*, 2002), who intends it as a form of populism ‘‘adapted to the needs of television’’ (Biancalana 2020).

organizations, always with Forza Italia as the dominant group, and always with Berlusconi as prime minister (Biancalana 2020; Raniolo 2006; McDonnell 2013). Berlusconi's organization claimed to be different from the old traditional parties of the peninsula (Orsina 2013), and indeed it was (Raniolo 2006). Its leader came from the business world and represented the perfect self-made man (Tarchi 2018; Biancalana 2020). Relying on an almost religious conception of himself (Borcio 2012; Raniolo 2006), he purported to be the only one able to embody Italy's general will (Zanatta 2002; Biancalana 2020). As the leader, also Forza Italia's members were alien to the political world, in that the objective of the new party was that of creating a political class made up of people who knew more about life than about politics (Berlusconi 2001; Orsina 2014; Orsina 2013). Berlusconi's biggest ideological revolution lies in his consideration of civil society as pure and perfect (Orsina 2014; Orsina 2013). Conversely to the old traditional parties, which regarded the people as a mass they needed to educate, Forza Italia's leader conceived of the same as already educated⁶² (Orsina 2014; Orsina 2013). Common men and women were held as naturally good and virtuous, inclined to work hard and endowed with a strong sense of duty (Orsina 2014; Tarchi 2018; Biancalana 2020). On the contrary, old parties, career politicians and communists (parties on the left) were regarded as enemies, conceived as betraying the people in order to realize their own interests (Biorcio 2012; Orsina 2014; Orsina 2013; Raniolo 2006). In the out-group, Berlusconi also put magistrates and judges, discredited because of their non-majoritarian nature, and regarded as hindering his actions with no popular legitimacy (Biancalana 2020). In a non-conventional and aggressive way, the populist leader was able to carry out a fully-fledged delegitimization of what he considered the corrupt elite (Zanatta 2002; Biorcio 2012). Despite following a Manichean understanding of society typical of populism, Berlusconi's conception of the people was twofold, for it included on the one hand a "diversified and pluralist collection of individuals", and on the other a homogenous group characterized by the best human values (Orsina 2014). Following Raniolo's logic, this means "the deregulation of economic behavior" and the "regulation of social behavior" (Raniolo 2006). In this sense, Berlusconi's understanding of democracy is absolutely majoritarian and plebiscitarian (Tarchi 2018; Biancalana 2020). Forza Italia is distant from nationalism and nativism (Biorcio 2012), following instead a more moderate approach (Zanatta 2002), and for this reason it is regarded as a soft version of populism (Tarchi 2018; Zanatta 2002).

62 In this sense, if traditional parties embraced a hyper-political approach, Berlusconi promoted instead a hypo-political stance (Orsina 2014; Orsina 2013; Biancalana 2020).

The party is highly-centralized, completely relying on its leader for its functioning: the Cavaliere is the only one making decisions, and the organization is characterized by no internal democracy, being even defined ‘Berlusconi’s ’personal party’ ‘ (McDonnell 2013; Binacalana 2020; Biorcio 2006). Its main mean of expression was the television, from which the leader communicated directly with his citizens, using a simple and direct language able to create intimacy between electors and elected (Biorcio 2012; Zanatta 2002). From here also the label of ‘mediatic populism’ (Hermet 2001; Biorcio 2012) or ‘telepopulism’ (Biorcio 2012; Biancalana 2020).

Forza Italia, as seen, was set up with the burst of Tangentopoli at the end of the last century. Thirty years after, it cannot be considered anymore an outsider party (Zanatta 2002), and its attraction on the Italian electorate has hugely diminished – mainly because of the vicissitudes experienced by its leader. Over the years, indeed, Berlusconi has become world-famous especially for his involvement in several judicial investigations and sex scandals; and his name has increasingly been associated with laws he tried to pass in order to improve or protect his personal situation (Orsina 2019b). By tarnishing himself by the same vices he had criticized, the Cavaliere broke the promise originally done to his people, losing the credibility he had earned over his entire political career (Tarchi 2018). As a consequence of Berlusconi’s nihilistic leadership, Forza Italia was never able to fully institutionalize in the country’s party system (Orsina, 2014; McDonnell 2013), remaining profoundly linked to his founder. This symbiosis made it so that the political organization experienced his leader’s same fate (Biancalana 2020). What is even worse, by refusing alternation of leadership, Berlusconi ended up becoming a mainstream politician, that is, one of the main targets of populism (Orsina 2014).

Berlusconi’s populism, similarly to Giannini’s one some fifty years before, might at first sight not appear so dangerous for constitutionalism or the rule of law, for it presented itself in a non-radical way, and promoted a (limited) liberal understanding of society, not focused on nationalism nor ethnicity. In reality, however, also the implications of Berlusconi’s ideology have their negative sides. Forza Italia’s enormous emphasis on civil society as the ultimate locus of any power, represents a very deep form of majoritarianism, which excludes from political consideration all those not conceived as belonging to the people: politicians, communists and judges. Such a majoritarian stance, coupled with the party’s understanding of the people as an ideologically homogeneous group (all Italians shares the same values), highlights an approach which is necessarily anti-pluralist, thus placing itself in contradiction with some modern traits of constitutionalism. Such a majoritarian approach entails also an opposition

to non-majoritarian entities, for at the end of the day they are not representative of civil society because never elected by the same. Opposition to non-majoritarian bodies like the judiciary, however, consequently brings also an opposition to the system of checks and balances, and to the principle of separation of powers, which are at the very core of democracy's modern understanding and the rule of law.

As explained, the party reached the government many times, therefore having wide room for translating its ideological apparatus into concrete policies. The effects thereof on constitutionalism will be analyzed in section 3.3.5 of the present chapter.

3.2.2 Regional populism turned national: the Lega (Nord)

Italy's other important 1990s populist party is the *Lega Nord* (Northern League). It was set up in 1991 – before the party system's collapse brought about by Tangentopoli – from the merging of different autonomist leagues active in the Northern part of Italy, and depicted itself as a “true” alternative in the Italian political scenario (Urbinati 1998). That of Bossi is regarded as the “most typical” case of modern populism (Zanatta 2002), and also as the Italian vanguard of the phenomenon in its modern version (Biancalana 2020). Defending very specific values and territorial ideals (Zanatta 2002) – alien to traditional political ideologies (Biorcio 2012) – the LN presented itself as an organization moving along identity-related lines interpreted in an economic fashion (Tarchi 2018). The people defended by the party was regionally and morally defined (Tarchi 2018). It was a homogenous, imagined community (Zanatta 2002): the hard-working, honest, virtuous, sacrifice-oriented Northern people who represented the real and pure essence of the nation (Albertazzi, Giovannini and Seddone 2018; Biancalana 2020). Against it, Southern Italians – idle, unenthusiastic, with a parasitic approach – and the country's traditional political class – corrupt and interested only in the accomplishment of its own interests (Albertazzi, Giovannini and Seddone 2018) – were the main enemies (Tarchi 2018; Biancalana 2020). Bossi made no distinction between left and right: both sides of the political spectrum were harshly attacked because equally corrupt (Biorcio 2012), and responsible for the exploitation of the North (Tarchi 2018; Zanatta 2002). From such an unfair scenario, the call for the independence of *Padania*⁶³ – an ideological territory including the Northern regions of Italy – emerged as a necessary step to take in order to achieve redemption from Roman partitocracy (Biorcio 2012). The identity of

63 The Padania issue has come to have different declinations over the years, including requests for autonomy, federalism, independence, secession and devolution (Biancalana 2020; Biorcio 2012; Albertazzi, Giovannini and Seddone 2018). In a symbolic way, and with no national recognition, the LN even proclaimed the ‘secession’ of Northern Italy from the rest of the peninsula (Biancalana 2020).

Padania was built via subtraction and using moral references: it was everything *Roma Ladrona* (Thieving Rome) was not (Tarchi 2018; Biancalana 2020).

Bossi's Lega Nord discredited not only career politicians and Southern Italians, but also international financial institutions, international organizations, and migrants, further opposing globalization and cosmopolitanism because of their multicultural implications (Tarchi 2018; Biancalana 2020; Zanatta 2002). The novelty introduced by Bossi was especially evident in the language adopted by the leader: it was direct, simple, full of bad words, gross, politically incorrect, and marked by dialect (Tarchi 2018). Also his way of dressing was remindful of the common man: no tie, no tuxedo. He was an ordinary guy, and more importantly, the only one able to speak in the name of the general will of the people (Biancalana 2020). Bossi's LN has been in the government three times in coalition with other parties: in 1994, from 2001 to 2006, and from 2008 to 2011.

Since 2017, the leadership of the party is in the hands of Salvini, who turned it from a regional populist organization into a national (and nationalistic) one (Orsina 2019), enacting what has been defined a "substantial generational renewal" (Albertazzi, Giovannini and Seddone 2018). The people defended by Salvini's Lega – the reference to the north has been removed from the party's name – is a national people: the pure and honest Italians. Also the out-group has been adjusted: the EU has taken the place of Rome (Biorcio 2012) – even though traditional parties are still strongly criticized – and migrants have become the core opposition subject of the party, replacing Southern Italians (Albertazzi, Giovannini and Seddone 2018; Biancalana 2020). Members of the LGBT community are also labeled as enemies. Despite the redefinition of its Manichean logic, however, Salvini (in line with his predecessor) still proposes very simple solutions to complex problems, presenting himself as the only interpreter of the general will (Biancalana 2020)

Bossi's Lega Nord's populist ideology is probably the most radical one among those analyzed in the present chapter, at least as far as exclusionism is concerned. By moving on regional rather than national lines, the party's majoritarian approach produces a paradoxical effect, for the majority it claimed to represent is nothing more than a minority. The Lega Nord's peculiar majoritarianism is implicitly anti-liberal and anti-pluralist. Accordingly, the party's ideology contrasts with modern constitutionalism – at the heart of democratic regimes – intended as characterized by liberalism and respect for individuality and plurality. Bossi's strong emphasis on the general will might let suppose an antagonism toward non-majoritarian bodies, in that they would not be really representative of the pure people, who never

elected them. Even more so, one might imagine a certain hatred for judicial bodies, in that their main *raison d'être* is precisely the defense of pluralism, and of minority groups' rights. By presumably opposing non-majoritarian bodies, the party inevitably opposes constitutionalism's core principle of checks and balances; while its presumed antagonism for the judiciary might place the party in contrast with the other fundamental principle of constitutionalism upon which every democracy is grounded, the separation of powers. Together with Forza Italia, the LN entered the government many times, thus having the chance to implement certain policies (even though in a much more limited way than Berlusconi's party). The effects of such policies on constitutionalism will be analyzed in section 3.3 and ff. of the present chapter.

As we have seen, the party recently shifted from regionalism to nationalism. The main implications of its ideology, however, remain the same. As in the case of Berlusconi and Bossi, also Salvini's party was able to make it to the government, meaning that its ideological apparatus had the opportunity to express itself in concretely implemented policies, whose effects on constitutionalism and democracy are analyzed in detail in section 3.4 and ff. of the present chapter.

3.2.3 Web-populism: the MoVimento Cinque Stelle

The third populist party analyzed here, was set up as a reaction to the broken promises of post-Tangentopoli Italy⁶⁴. Criticizing the elites with (swear)words never used before, it was established in 2009 by a comedian, Beppe Grillo – together with Gianroberto Casaleggio, a web strategist – and called *MoVimento Cinque Stelle* (Five Star Movement).

Openly refusing the right-wing and left-wing label, while claiming to simply go head (Tarchi 2018; Ceccanti and Curreri; Caruso 2017; Lanzone and Woods 2015), the M5S can be regarded as embodying a pure version of populism, detached from any other secondary ideology (Zulianello 2019). Its stance is essentially post-ideological (Corso; 2019; Ceccanti and Curreri 2015), distinguishing between good and bad policies rather than conservative and progressive ones. The group's denunciation of Italy's political class – defined *la casta* (the caste) – was made extremely clear since the very beginning, when the so-called V-Day (abbreviation for Vaffanculo-Day, meaning Fuck-you-day) was organized.

The M5S, whose political vision lacks coherence (Corso 2019), grounds its *raison d'être* in a vehement opposition to political parties and representative democracy *tout court*, advocating for the

64 It has been noted, indeed, how the general expectation of change linked to post-Tangentopoli Italy has somehow cast a shadow over the problems of political representation that the country kept on having also after 1992 (Lanzone and Woods 2015).

accomplishment of direct democracy and the consequent elimination of all intermediary political organizations (Ceccanti and Curreri 2015; Caruso 2017). Representative democracy must be overcome because of its inherent divide between procedural and real democracy, and the growing weight of the first over the second at the expenses of citizens (De Rosa 2013). According to the M5S's *Weltanschauung*, citizens's role in the political game must become central, and this is only possible if people have a direct involvement in the decision-making process, something which can be realized – for its very horizontal nature – only via the internet (Corso 2019; Ceccanti and Curreri 2015; Tarchi 2018; Danna 2013). Explicitly refusing the categorization of party⁶⁵ and its typical hierarchical structure, the M5S has introduced a totally new relationship between party members and electors, using the net not only as a space for communication, but also as a platform for political participation. Opening the way to what has been called 'e-democracy', the M5S went even further than Berlusconi, for the movement's webpage was to become the online square where citizens could make decisions (Tarchi 2018). The possibility of registration on the platform was indeed open to anybody. The party's web democracy (and web democracy more in general), however, causes some problems. In the first place, the online platforms used by the movement cannot be praised as really representative, for the number of voting registered users does not correspond to an important part of the Italian citizenry, let alone the whole country's population⁶⁶ (Ceccanti and Curreri 2015). As a consequence, the movement is not really speaking on behalf of the nation, but rather only for a relative part thereof. What is more, the way the net has been used by the M5S has appeared oftentimes confusing, with questions addressed to the public changed during the answer-period, and websites' voting mechanisms suspended while they were still open for the vote. The group's online platform has many times been accused of lacking transparency (Ceccanti and Curreri 2015; De Rosa 2013). To reach people's centrality in the political arena, the movement proposed several ideas: the introduction of propositional referenda without a limiting *quorum* (Caruso 2017); the use of the web as a space for political-decision making and transparency; the reintroduction – through a constitutional reform – of the imperative mandate (of which I shall argue at the end of this section); and the introduction of the American recall system (Tarchi 2018). Conversely to what is regarded as the

65 After entering the political game in 2009, and even more so after the first electoral success, the M5S stopped being a movement and became a fully-fledged political party (Ceccanti and Curreri 2015; Tarchi 2018).

66 Urbinati notes how the people of the net is just a minority, for a huge part of the population is inevitably excluded from such a digital world. Additionally, even though the feeling is that the internet can really allow a direct form of democracy – in that it abolishes distances between people, and creates horizontality – it just produced a new digital version of mediation and representation, probably even less transparent than the traditional one carried out by political parties (Ceccanti and Curreri 2015).

practice of all populist parties – claiming more delegation to the leader at the effective disadvantage of real participation – the M5S seemed to defend a genuine inclusivity of citizens in political matters (Tarchi 2018).

The group's populism emerges from its dual understanding of society, antagonistically conceived as divided between pure people and corrupt elites. Part of the enemy are, however, not only politicians and parties, but also trade unions, multinational corporations, banks, international organizations⁶⁷, big business, financial institutions, intellectuals, and the media – accused of siding with traditional political personalities⁶⁸ (Tarchi 2018; Ceccanti and Curreri 2015). They are contrasted to ordinary people, regarded as a homogenous group who blindly shares all the leader's opinions, and exalted for their moral attitudes, innocence, honesty and willingness to work hard.

In his speeches, Grillo has always promoted a simplified narrative of politics, the latter intended as a field in which every citizen could operate because no special skills, but commonsense, are required (Tarchi 2018; Caruso 2017). The idealization of a web democracy is probably the better example in this sense, based on a populist vision of politics and democracy which finds no counterpart in complex real life (Ceccanti and Curreri 2015). Grillo's opinions are usually equated to the group's ones – even because he is, with Casaleggio, the only one deciding the action line of the movement. In reality, however, the posts written by the comedian on his blog are more to be regarded as externalizations of the author's reasonings, that ideas shared by every *grillino*⁶⁹ (Tarchi 2018). Divergence of opinion emerged, just to make an example, with the item of migration: Grillo and Casaleggio have always shown a rather hostile approach toward the phenomenon, so that when some M5S MPs proposed the elimination of illegal migration from among the crimes of the country's criminal code, the co-founders publicly discredited the proposal. However, the grillini – who were given the possibility to express their thought through the webpage of the organization – clearly showed to go in the opposite direction (Tarchi 2018, Ceccanti and Curreri 2015).

Creating a party conceived to be representative of the people, and made by the people, Grillo defended many times that no hierarchy is present in his organization, being the latter grounded on citizens'

67 Among the international organizations criticized by the party, there was also the EU (Tarchi 2018; Lanzone and Woods 2015). In Grillo's rhetoric, the supranational organization was just another caste, "dominated by technocrats and self-interested politicians who care little about the "real people"" (Lanzone and Woods 2015). The M5S opposed especially the euro (Caruso 2017), with its leader even calling for Italy's withdrawal from the monetary union (Lanzone and Woods 2015). Such a stance, however, has softened over the time.

68 "The power of the castes does not come from their control over production means, but from their control over the media. Without the daily lies, these casts would be naked [...]" (Tarchi 2018). Translation by me.

69 Literally 'little cricket', the nickname is used to name Grillo's supporters. Such an expression comes directly from a wordplay done with the M5S's leader surname, meaning indeed 'cricket'.

equality ('one counts one' was one of the party's mottos). This notwithstanding, there seems to be a serious tension between the democratic rhetoric advertised by the leader and the party's real organization (Ceccanti and Curreri 2015; Caruso 2017; Grasso 2017). In particular, the powers in Grillo's hands are so substantial that the movement's entire democraticity is questioned – not from a constitutional point of view but rather from a perspective of ideological coherence (Ceccanti and Curreri 2015). The comedian from Genoa seems indeed the *de facto* leader of the group. The party's rules as established in its statute (originally drafted by him and Casaleggio) foresee that only Grillo can decide who can register on the web platform and who cannot, that only Grillo can choose the political items to discuss, that only Grillo can manage the group's funds, and that Grillo is the only owner of the party symbol. Such a predominance of the leader is further evident in Grillo's practical behavior as far as the oppression of dissent in the party and the creation of a different leadership are concerned. Indeed, many M5S MPs have been arbitrarily expelled by the two founders, while some others have resigned autonomously, lamenting lack of democracy and room for self-expression in the group (Ceccanti and Curreri 2015; Tarchi 2018; Caruso 2017). But also the way questions are asked online raise doubts of democraticity, for only the leader can make demands, so deciding when and on which issues referenda should be held (Lanzone and Woods 2015; Caruso 2017). Some online supporters have even complained about the fact that comments on important issues go usually unanswered (Tarchi 2018; Danna 2013). The democratic style of the M5S – described by the Genoa's Tribunal as stemming from the party's 'movement-oriented memento' and the leader's 'dirigistic-request' (Grasso 2017), seems thus to be rather far from the democratic practice orally defended by the leader. The internal organization of the movement has even been defined as a 'participatory oligarchy' (Caruso 2017), being – starting from the comedian's blog – a top-down, centralized and vertical structure where Grillo exercises an authoritarian and monistic role (Ceccanti and Curreri 2015; Caruso 2017). In this sense, the by the party much cheered direct democracy risks turning into a by-someone-direct(ed)-democracy (Ceccanti and Curreri 2015).

In 2013, the M5S emerged from Italy's national elections as the most voted party, with 25.6% of the votes. The reason behind its victory can probably be explained by looking at the events the country went through during the previous five years, and the way they were tackled by the government. The peninsula experienced, in that period, the harshest effects of the Eurocrises, and the setting up of a technocratic government led by former Commissioner Mario Monti, under whom controversial yet important austerity policies were implemented (Fasone forthcoming). Such a scenario probably left a

legacy at the advantage of populism. Indeed, as introduced in section 1.5.2, and widely explained in section 1.5.3, populism is strengthened by technocracy, and since the Monti government was a technocratic cabinet, its very nature might be responsible for the electoral rise of the M5S. As De Rosa (2013) observes, Grillo's party was the specular opposite of its ruling predecessor, for in the first case MPs had no experience with politics, nor any specific competence; while in the case of Monti the cabinet was totally based on expertise.

More generally, the M5S's victory in the 2013 elections can be regarded as yet another attempt made by the Italian people to find the perfect governor, a research which goes on since 1994 (Orsina 2014). With Forza Italia's decrease in political importance, people's feelings of resentment for politics – which had somehow been canalized under Berlusconi but never completely dissolved – found a new way of expression in the group led by Grillo (Orsina 2018).

By entering the Parliament, the movement had to give itself a more consolidated structure. For this reason a code of behavior to be respected by the new M5S MPs was drafted, establishing that proposals for legislation could be presented to the Parliament only if they had previously been discussed on the webpage and approved by at least 20% of users, and that every parliamentarian of the movement had to keep the community updated through the upload of a sum-up video of the daily activities he had been involved in (Tarchi 2018). The code also ordered that M5S MPs respected the political line decided by the party's Assembly, and voted in a manifest way in the Parliament, thus making it clear that deputies were just instrumental, and had no real freedom of conscience in the exercise of their office – not even as far as vote's secrecy was concerned (Ceccanti and Curreri 2015; Caruso 2017). Transparency has been the key word promoted by the party also as far as the Parliament's legislative process is concerned. Indeed, even though parliamentary committee meetings must remain secret in their content, some M5S members have live-streamed some sessions on social media so as to show the electorate their loyalty to the party's values. By not respecting the secrecy rules imposed for such meetings, the M5S – advertising its actions as narrowing the existing gap between elected and electors – can “jeopardize the ability of these committees to provide an appropriate setting for political negotiations”, thus damaging the same legislative procedure (Fasone forthcoming).

As seen, the M5S accused Italy's political elite of corruption, and the very system of parliamentary representation of moving away from real democracy. Among the solutions proposed to fix such shortcomings, the party supported the introduction of the binding mandate via a constitutional

amendment bill tabled by the group in 2017, and eventually not approved (Fasone forthcoming). The prohibition of such a mandate is ordered by the Italian Constitution in its art. 67 to guarantee ‘MPs’ freedom’ (Constitutional Court ruling 14/1964), and it is considered a fundamental component of liberal constitutionalism (Ceccanti and Curreri 2015), and the ‘par excellence expression of political representation⁷⁰’ (Pinelli 2018). The free mandate – conceived in order to protect citizens from changes of mind which could prove detrimental for their good, even though not immediately recognized as such by the same (Pinelli 2011) – becomes in the populist understanding of the M5S⁷¹, a mechanism of convenience. As Grillo (2013) himself explained, the free mandate would be just a legally legitimate way to allow the first random John Doe who gets elected, to do whatever he wants, being he never considered responsible for not satisfying the political issues upon which he was elected by citizens. In the same partisan way are regarded also those ‘privileges’ connected to MPs like parliamentary allowances, pensions and inviolability, against which the M5S manifestly stood (and stands) asking for countermeasures (and maybe forgetting that they are instrumental to the good functioning of the legislative body) (Fasone forthcoming).

The party’s hostility toward the prohibition of binding mandates is evident also in art. 21.5 of the movement’s group to the Chamber of Deputies’ Statute, imposing a penalty of 100.000 € to those five-star MPs who voluntary drop such a group or are expelled from it, or resign from the same because of political dissent. It is immediately evident that the statute’s article violates art. 67 of the Italian Constitution (Gianfrancesco 2018; Fasone forthcoming; Pinelli 2013; Di Maria 2018).

In light of the 2018 national elections – and because of Grillo’s tiredness in leading the party (Tarchi 2018) – polls were held on the movement’s webpage in order to elect a new leader, and in 2017 Luigi Di Maio became the new face of the M5S.

The ideology of the M5S displays one of the most manifest examples of majoritarianism: Grillo himself stated that his party aimed at representing 100% of the Italian population (Tarchi 2018). Conceiving of the people as a uniform and undifferentiated block, with no room for heterogeneity, the movement’s ideology is clearly at odds with the notions of liberalism and pluralism embedded in modern constitutionalism. The realization of the general will much supported by the group is further in

70 Translation by me.

71 Fasone (forthcoming) notes how the elimination of the binding mandate’s prohibition is not *per se* a populist feature, being instead a typical claim of those countries where the phenomenon of parliamentary transfugism, intended as ‘the inclination of MPs to change political group or party once or several times since the electoral moment’, is particularly evident. In the case of the M5S, however, such a claim gains populist connotations, for it is advocated for under the simplistic justification of politics’s streamlining.

contrast with the very notion of representative democracy. A majoritarian exclusionist approach, characterizes also the movement's project of direct democracy via the web, for only a small part of the Italian population is registered on it, and consequently only a small part of the people can claim to really be represented. From such a majoritarian stance, there derives an inevitable contrast with regard to non-majoritarian institutions, like the judiciary (which is, however, not openly criticized by the M5S), whose functioning and composition is not dependent on the will of the majority, but rather intended to contrast and limit it. The rejection of non-majoritarian institutions necessarily entails also a friction with the principles of separation of powers and checks and balances, at the very heart of the rule of law.

From what just said, there emerges a serious conflict between the M5S's ideology and modern democracy, characterized as it is by liberal constitutionalism and the rule of law. Such a contrast is further evident when analyzing the concrete policies carried out by the party when in government, object of analysis of section 3.4 and ff. of the present chapter.

3.2.4 Marginal populism: Meloni's Fratelli d'Italia

It is now necessary to spend some words about another Italian party, whose consideration in the literature is really modest, if present at all: *Fratelli d'Italia* (Brothers of Italy)⁷². Among scholars, the organization tends not to be immediately regarded as populist (Mazzoleni and Bracciale 2018; Bracciale and Martella 2017) – being rather defined as ‘‘the natural heir of the conservative right tradition’’ (De Giorgi and 2018). This notwithstanding, there seems to be a general perception of Fratelli d'Italia as a populist organization (Zulianello 2019; Bracciale and Martella 2017; Fasone forthcoming; Mazzoleni and Bracciale 2018), a label which is not refused by the same party leader, Giorgia Meloni⁷³.

It is my opinion, that following Mudde's definition of populism – based on anti-elitism and anti-pluralism (see 1.1.) – Meloni's party can be considered as a populist one. Indeed, the leader uses a certain rhetoric of criticism against the local current elite, accused of having taken sovereignty away from civil society: ‘‘In the U.S. the people won against the elites, the oligarchies, high finance and the dominant ideology. The same will happen in Italy on 4 December: Italian citizens will not listen to

72 The marginal attention received by Fratelli d'Italia might be explained by taking into account the central role lately played by Salvini's Lega in the Italian political scenario.

73 She wrote on Facebook that ‘populism’ is just a derogatory term invented by the left to discredit those politicians who fight for the people and their rights. You can see the post, as reported on the party's official webpage, here: <https://www.fratelli-italia.it/2017/09/14/elezioni-meloni-renzi-combattiamo-camerieri-dei-lobbisti-populismo-categoria-inventata-sinistra-screditare-difende-popolo/>.

radical-chic people but will vote against this government, which has not been elected, in order to regain their sovereignty” (Mazzoleni and Bracciale 2018). Also a general resentment toward the EU’s supranational nature is present in the party’s ideology, deducible from the core values of the same as promoted on its official website⁷⁴: national traditions, national unity, a Europe of (different) people. Meloni’s rhetoric describes Italy as a country deprived of its powers and autonomy by Mss. Merkel and her lobbies (Mazzoleni and Bracciale 2018), with Tarchi (2018b) regarding her party as marked by a strong souverainiste component. Undoubtedly, FdI supports a very exclusionist *Weltanschauung*, resumable in the motto “Italy and Italians first”⁷⁵. Islam, migration, multiculturalism, and (homo)sexual minorities are all attacked, being regarded as dangerous for Italian culture and traditions (Mazzoleni and Bracciale 2018; Giorgi and Tronconi 2018; Fratelli D’Italia 2018; Giorgi and Tronconi 2018).

Interestingly, the party was founded in 2012, when Italy was ruled by the Monti cabinet. Given also the electoral success of the M5S in the 2013 national elections, one can imagine that the organization was set up as a reaction to technocracy (as we have seen in section 1.5.3, indeed, populism usually stands in opposition to the same, lamenting the exclusion of ordinary people from those decision-making processes which are based on expertise).

Fratelli d’ Italia’s emphasis on the general will, intended in nationalistic and nativistic terms, indicates a strong majoritarianism. The party claims indeed to represent the whole Christian and Italian-born population (from which, however, elite members and politicians are excluded), at the expenses of non-Italian and non-Christian migrants. Such an understanding of the people is marked by anti-liberal and anti-pluralist traits, for the in-group is a monolithic block characterized by units having the same interests and needs, fixed in time and space. As a consequence, the ideology of Meloni’s party is much at odds with a modern understanding of constitutionalism, intended as protecting pluralism and individualism. The populist party never gained enough support to reach the government – an indication that its majoritarian stance is grounded on the will of just a minority of people – thus making it impossible to be assessed from a tangible point of view, for its ideological exclusionist elements never found a way of concrete expression in the political arena. This notwithstanding, some deductions can be made about the possible relationship the party would have with constitutionalism and liberal

74 Cfr. <https://www.fratelli-italia.it/about-us/>.

75 Such a sentence is the title of the second section of Fratelli d’Italia’s political program for the 2018 national elections, which you can read here: https://www.fratelli-italia.it/wp-content/uploads/2018/01/PROGRAMMA_A4_REV2.pdf. Translation by me.

democracy. By aiming at realizing only the will of the majoritarian group, Fratelli d'Italia seems to run counter to non-majoritarian bodies, for by not being characterized by a political nature, these cannot be elected by the majority of people (having rather the opposite function of containing majority's excesses). A conflictual relation with non-majoritarian bodies might undermine the system of checks and balances, at the core of modern democratic regimes. In the same way, by fostering consideration of only what is perceived to be the pure people of the country at the expenses of minority groups, Fratelli d'Italia might question the working rationale of the judiciary – the non-elected body *par excellence* – whose primary charge is that of protecting pluralism and minorities' rights. As we have explained in section 1.2.4, it is currently impossible to conceive of democracy just in terms of the *demos*, for the way such a regime has come to be accepted since after WW2, entails also liberalism and constitutionalism. In this sense, the logic of Meloni's party is conflictual with the very basic principles of constitutional legal doctrine intended in its liberal version (checks and balances, separation of powers, respect for pluralism, protection of minorities, the rule of law), thus contrasting also with the very foundations of liberal democracy, and representing a threat to the same.

3.3 Populism's first time in power: the Berlusconi cabinets

1994 was the first time ever that Italian populism entered the government, to do it again many other times in the following years. It entered the government through a center-right coalition destined to become the central political actor of the country for about fifteen years⁷⁶. Its government experience was the result of an alliance set up by Berlusconi with other parties, of which Bossi's Lega Nord was a constant member. Of such an alliance, Forza Italia was the major party, being the most voted in the elections and the one having the most decisional power in the cabinet. In these fifteen years, populism expressed itself mainly through the figure of the Cavaliere, every time Prime Minister of the ruling coalition (Biancalana 2020; Raniolo 2006; McDonnell 2013). When in government, populism – as any other ideology – ruled, proposing laws and policies it deemed appropriate for the life of the country. A detailed analysis of all the policies and laws carried out by Berlusconi during his cabinets goes beyond the purposes of this work. However, because some laws, decisions and attempted reforms have been particularly ambiguous, they deserve special attention.

76 Such a center-right coalition has, however, lately been replaced by new populist actors, as we shall see in section 3.4.

3.3.1 Berlusconi's conflictual relationship with the judiciary

The first noteworthy element of analysis is Berlusconi's relationship with the judiciary, the most independent branch of any democratic system. When the Cavaliere entered politics, Italy had just been shook by Tangentopoli, and public opinion toward the third branch was extremely positive (Diamanti 2011). In a first moment, Forza Italia seemed to go in the same direction, for many of the speeches released by Berlusconi at the time leave shine through an implicit support for the work of magistrates, prosecutors and judges (Dallara 2015). The leader even asked Di Pietro⁷⁷ to enter his government (Pederzoli and Guarnieri 1997; Diamanti 2011), and later appointed Tiziana Parenti⁷⁸ as Minister of Justice. However, Berlusconi's approach toward justice is destined to change as soon as the judiciary starts investigating on some of his controversial business affairs, to turn into a real personal battle, which Forza Italia's founder will carry on following three strategies: the elaboration of *ad personam* laws, attempts at reforming the judiciary so as to make it less independent from politics, and an angry rhetoric designed to undermine the power's credibility and legitimacy (Dallara 2015).

During Berlusconi's office, about 40 *ad personam* laws have been enacted⁷⁹ – with the majority of them being produced during the leader's second term. Such pieces of legislation have been defined this way – *ad personam* means 'personal' – because of their specific goal, namely the protection of the Cavaliere from possible prosecutions. The norms they aimed at introducing were indeed the result of particularly contingent needs related to the activities of the Prime Minister (Palombarini 2011).

However, in order not to make them appear biased, such law proposals were passed off as ordinary pieces of legislation produced in order to solve some of the country's problems (and approved really quickly by the Parliament, without there being too much discussion) (Dallara 2015).

Legislative Decree 61/2001 established that false accounting was to be considered a crime only if, in the presence of a third party negatively affected by the misconduct, the person in question had reported the happening to a judicial authority. Law 367/2001 made it compulsory for courts to use evidences obtained through international rogatories only if they had been duly authorized, with the objective of limiting the use of such an institution. Both laws were enacted to protect Berlusconi's interests in two famous trials, 'All-Iberians' and 'SME-Ariosto', for such proceedings relied on international rogatories in order to check accusations of false accounting and money laundering abroad (Dallara 2015).

77 One of the public prosecutors involved in the Mani Pulite judicial investigation.

78 Another of the public prosecutors involved in the Mani Pulite judicial investigation.

79 Because of the extremely high number of such pieces of legislation – in turn thought to safeguard specific economic and legal interests – the press started categorizing them with respect to their focus, thus designing three different categories: *ad castam* laws, intended to protect politicians; *contra iustitiam* laws, aspiring to reduce the power of judges; and *ad aziendam* laws, having been conceived to shield the Cavaliere's firms (Travaglio 2010; Dallara 2015).

Law 248/2002 (Cirami Law) introduced the possibility for defendants – at whatever status and level of their trial – to ask for the transfer of their proceeding to another judge, if they had reasons to doubt of the impartiality of the judge already assessing their cause. The principle of legitimate suspicion was oftentimes appealed to by Berlusconi’s attorneys, requesting the transfer of his trials from the Milan court to other bodies (Dallara 2015).

Law 140/2003 – better known as the Lodo Maccanico/Schifani Law – introduced the granting of temporary immunity to the President of the Republic, the President of the Constitutional Court, the President of the Chamber of Deputies, the President of the Senate, and the Prime Minister – basically to the five highest offices of the state – in order to prevent them from being taken to trial. The law established that such positions were exempt from being prosecuted for any crime – even for those committed before they took office – further suspending their ongoing trials, and ordering that the statutes of limitations for the pending ones “were to run during the term in office” – all under the excuse of not distracting public officials with other secondary business when they were working (Quigley 2011). The Constitutional Court soon invalidated such very biased law (ruling 24/2004) because in contradiction with artt. 3 (equality before the law) and 24 (right to defense) of the Italian Constitution⁸⁰ (Dallara 2015; Quigley 2011). Despite this first failure, another law with identical objectives was passed in 2008, Law 124/2008 (Lodo Alfano Law). Also this time, the Constitutional Court struck it down, mentioning again artt. 3 (equality before the law) and 138 (constitutional review procedure) of the Constitution (Cost. Court ruling 262/2009).

Law 251/2005 (Law ex-Cirelli) reduced the statute of limitations for “minor offenses” (including corruption, fraud and tax evasion) from fifteen to seven-and-a-half years; and that for more important crimes (like violence against women) from twenty-two years to twelve-and-a-half (Dallara 2015). Also in this case, Berlusconi had a direct advantage in having the statute of limitations reduced. Even though the law’s provisions were “strongly questionable” if not even “unacceptable” (Palombarini 2011), the bill could not be judged unconstitutional by the Constitutional Court. This notwithstanding, by “postponing the date of the official start of the investigations”, judges thought up an alternative way to use the legislation without making it have its desired effects (Dallara 2015).

Law 51/2010 on ‘lawful impediment’ established that neither the Primer Minister nor his Cabinet could be brought into hearings for supposedly committed crimes, if they had “conflicting government

80 Additionally, it is worth recalling also art. 96 of the Italian Constitution, clearly stipulating that the Prime Minister – together with his/her ministers – is subject, for the crimes he/she has committed during his/her office, to ordinary justice (if actions have been previously authorized by either the Chamber of Deputies or the Senate). From a EU perspective, such a law was also in contradictions with art. 20 (equality before the law) of the EU Charter of fundamental rights.

duties” (Dallara 2015). By distracting the public official, indeed, trial proceedings would interfere with his official obligations in a negative way. It goes without saying that also such a law was many times appealed to by Berlusconi’s lawyers in order to postpone his trials, so that they could finally run out the statutes of limitations, and the leader could avoid being prosecuted (Quigley 2011). The ‘lawful impediment’ law was judged partially unconstitutional by the Constitutional Court (ruling 23/2011), for some of its parts violated artt. 3 (equality before the law) and 138 (constitutional review procedure) of the Italian Constitution. However, the Court did not void the piece of legislation in its entirety, maintaining indeed its principle with a modification: judges were given a discretionary power when assessing whether the impediment presented by the defendant was valid or not. Basically, it was not the accused but the judge to evaluate the real existence of a lawful impediment.

As it seems clear, such laws were intended to make it “increasingly difficult for the judges to exercise criminal jurisdiction” (Nelken 2002). Indeed, all analyzed pieces of legislation attempt at making politics prevail over law. For this reason, since they sincerely aim at obstructing the judiciary’s functioning, they display a strong unconcern for the Constitution and its principle of checks and balances.

The second strategy used by the Cavaliere in order to hinder the judiciary consisted in trying to reform it. Resorting to the conviction that the Italian legal system was too slow and little efficient, and that it needed to be fixed in a fairer way, the government proposed a dramatic transformation in the form of the so-called Castelli reform. Defined as an “epochal” project (Palombarini 2011), the reform was presented as improving the justice system, for it granted a better protection to the accused. However, it soon appeared to many that it was just another way to politicize legal bodies, so that the Cavaliere and his colleagues could better protect themselves from the charges of bribery, false accounting and corruption which were pending on them (Nelken 2002). The reform’s two most dubious innovations were the separation of public prosecutors’ and judges’ careers, and the transfer of some of the *Consiglio della Magistratura*⁸¹’s powers to entities close to the government (Dallara 2015). The inherent problem of the first measure, as pointed out by judges, was that the very separation of careers between the two mentioned judicial offices – both of which pledge alliance to the law – could make it easier for public prosecutors to be controlled by the executive (Nelken 2002; Palombarini 2011). The most important

81 The Italian High Council of the Judiciary is a self-governing body of the judiciary branch, considered as ‘an institution of constitutional importance’. The CSM’s objective is that of granting the independence of the judiciary from the other powers of the state – especially the executive. It is responsible also for judicial training and disciplinary proceedings as regards the members of the third branch. The most of its members (2/3) are magistrates elected by their fellows.

provision of the second measure was instead the transfer of judicial training's competences from the CSM to a special training school for judges, that had to be set up by the Italian Supreme Court in concert with some committees of the Minister of Justice⁸² (Dallara 2015; Nelken 2002). The clear intent of such a measure was that of reducing the administrative power of the CSM as far as the management of justice was concerned, while simultaneously widening the executive's room of action. The inclination to reduce the autonomy of the CSM was further confirmed by another innovation introduced by the reform concerning local judicial councils. These were indeed to be changed in their composition and, more importantly, in their role: from a simple function of consultation, the reform altered their office to include also disciplinary investigations (Nelken 2002).

It took three years of Parliament's discussion and the intervention of the President of the Republic to make the legislative proposal pass (after it had been importantly mitigated) (Dallara 2015; Nelken 2002). Ciampi intervened to point out that the reform was unconstitutional in certain of its points, in that it compromised the impartial implementation of justice. The Castelli bill was finally approved as Law 150/2005. Just two years later, however, its content was importantly softened by the center-left opposition, with the passage of Law 11/2007 (known as the Mastella Law).

As the perviously analyzed *ad personam* bills, also the Castelli reform is an example of the governing coalition's tendency to make politics prevail over law, and over those who should protect its provisions. The justice reform was indeed an attempt at politicizing the most independent branch of the democratic system, with serious consequences for the protection of fundamental rights and for the system of checks and balances.

The third and last strategy adopted by Berlusconi to prevail over the judiciary, as mentioned, consisted in a discrediting and accusatory rhetoric addressed to judges and courts. Such a strategy had serious repercussions, for after the Cavaliere's personal battle with justice, the legitimacy of the third branch in the eyes of the Italian people decreased (Diamanti 2011; Dallara 2015), with effects to be still felt today (Rye, Koncewicz and Fasone 2019). Berlusconi obsessively blamed prosecutors, judges and judicial bodies of being partisan and biased in a left-wing direction (Fasone forthcoming). The expression '*toghe rosse*' (red robes) is, in this sense, highly indicative (Mudde 2007; Dallara 2015). According to the media tycoon, the judges prosecuting him were just trying to hinder the implementation of his

82 The new job thought for the Supreme Court was immediately refused by the same, as also the Castelli reform. In a unanimous document, indeed, the Court made it very clear that its function was that of checking sentences and not judges, for the latter had in fact to be loyal only to the law (Nelken 2002).

office, an office which he, conversely to them, had received directly from the people (Nelken 2002; Biancalana 2020; Mudde 2007). Magistrates were thus ‘conspirators’ (Palombarini 2011), acting without representing civil society, for they were indeed not elected by the same. Berlusconi even accused them of subverting the very democratic system of the country, for they were plotting against someone who had been elected using democratic mechanisms (Quigley 2011). Such a rhetoric of victimization was spread mainly through the leader’s television channels, thus reaching the entire Italian population (Nelken 2002). The legal system was essentially described as lacking competence, being its stalemates attributed entirely to its members, defined lazy, idle, listless. Also the CSM was accused, depicted as a self-referential body based on partisan ideological affiliations and clientelism. The very existential idea of its functioning was considered unacceptable, for a situation where judges control ‘‘their own excesses [...] [is simply] implausible’’ (Nelken 2002).

3.3.2 The media issue: Berlusconi’s conflict of interest

When dealing with Berlusconi’s impact on the Italian system during his period as prime minister, the media issue cannot be ignored⁸³. As said, Forza Italia’s leader was an outsider when he firstly entered politics in 1994, coming from the business world. Berlusconi was indeed a media tycoon, the leading shareholder of Mediaset, Italy’s main commercial television company. As he was elected premier – and even more so when he was appointed for his second term – some worries were expressed regarding the influence he could exercise on the general public through his TV channels, and the potential conflict of interest originating from his very special situation (Grassi 2004; Hibberd 2007; Hibberd 2004; Venice Commission 2005; Razzoli 2010). The OSCE oftentimes lamented his excessive media ownership, while the parliamentary assembly of the Council of Europe denounced the leader’s conflict of interest as a threat to media pluralism (Razzoli 2010). When the Cavaliere first entered the media business (1970s/1980s), apart from the rulings of the Constitutional Court abolishing RAI’s monopoly, the sector was practically unregulated. Such a situation allowed him to buy several TV channels, notably Canale5, Italia 1 and Rete4 (Padovani 2015). By the mid-1980s, then, a *de facto* duopoly characterized the peninsula, whose media were managed only by RAI and Mediaset. As a consequence, Law 223/1990 was passed to eliminate such a situation, postulating that no more than 25% of national channels could be owned by the same person/group. In 1994, however, the

83 Italy was indeed the only Western European state where a prime minister was also simultaneously the owner of three TV channels, as well as many newspapers, magazines, an advertising company, a cinema distribution house, and ‘‘the largest publishing house in the country’’ (Razzoli 2010; Blatmann 2003).

Constitutional Court intervened on the topic, establishing that the percentage guaranteed by such a law, amounting to three channels, distorted media competition and pluralism, hence violating art. 21 of the Italian Constitution, concerning freedom of expression (Hibberd 2007). Implementing the decision of the Court, Law 249/1997 (the so-called 1997 Broadcasting Act) was passed to officially ban the ownership of more than two TV channels, without, however, imposing a deadline for the drop of third ones. Consequently, in 2002 the Constitutional Court intervened again confirming the duopoly unconstitutional, and establishing a deadline within which media owners were to remain with just two channels (31 December 2003) (Venice Commission 2005; Hibberd 2007). To such a situation – defined by the Venice Commission (2005) an ‘anomaly’ – Berlusconi, now back in government, responded with the emission of two laws, aimed at safeguarding his own interests: Law 112/2004 and Law 215/2004.

Regarded as ‘one of the most evident cases of *ad personam* legislation’ (Cepernich 2009; Padovani 2015), Law 112/2004 (Gasparri Law) introduced two important changes – whose theoretical objective was the strengthening of the antitrust system, but whose concrete effect was the bypassing of constitutional principles –: a 20% threshold of national channels’ ownership per person/group, and the integrated communication system (*sistema integrato delle comunicazioni* – SIC) for the determination of media ownership limits. The SIC launched by the bill widened the field of reference for the delineation of media ownership to include all forms of communication (not only TV channels but also cinemas, newspapers, books, magazines, radio stations and the internet); while the threshold imposed for national channels’ ownership was to be determined on the base of the system’s revenues. Such a law gave Berlusconi not only the possibility of holding his third channel, but also that of diluting Mediaset’s dominant position in the communication market, for this was indeed enlarged (Padovani 2015). The at-the-time President of the Republic Ciampi, after receiving the law for approval, immediately alerted that its measures run contrary to the rulings of the Constitutional Court about external pluralism (Hibberd 2007; Blatmann 2003; Zaccaria 2004), further expressing his doubts about the notion of ‘integrated system of communication’ and the potential risks of ‘dominant positions’ attached to it (Venice Commission 2005). The Gasparri Law soon became object of criticism. The Council of Europe denounced its lack of references to any potential conflict of interest, and the fact that the legislation was formulated in too detailed terms (Razzoli 2010). It was oftentimes pointed out that such a bill does not promote, but rather discourages, media pluralism (Hibberd 2007; Venice Commission 2005; Padovani 2015; Zaccaria 2004), thus threatening the very foundations of the

Republic. The absence of antitrust legislation, indeed, prevents the full realization of art. 21 of the Italian Constitution (freedom of expression), that is, of one of the grounding principles of the very system of democracy (Zaccaria 2004). By discouraging media pluralism, such a law contrasts with art. 11 (freedom of expression and information) of the EU Charter of fundamental rights, which specifically defends pluralism in the media field.

Basically, then, the Gasparri Law not only failed to solve the problem of duopoly in the media market (Venice Commission 2005), but even worsened it.

The other media-related bill produced by the Berlusconi government important for our analysis is Law 215/2004 (Frattini Law), passed⁸⁴ in order to solve the conflict of interest caused by the Cavaliere's simultaneous media ownership and public office – much lamented since his entry into politics (Grassi 2004; Razzoli 2010; Blatmann 2003; Zaccaria 2004; Hibberd 2004). Conflict of interest is defined as arising “from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties” (Committee of Ministers' Recommendation No. R(2000)10 “on Codes of Conduct for Public Officials”; Venice Commission 2005). To eliminate such a conflict, the law established incompatibility with public office for all those individuals already involved in management and entrepreneurial activities, obliging them to communicate their situation and solve it before coming to power. Importantly, however, from the long category of incompatible careers, company's owners were excluded. By making such a departure distinction, the law appears in violation of art. 3 of the Italian Constitution (Bassanini 2002), and of art. 20 of the EU Charter, both defending equality before the law. Indeed, the way the legislation was formulated is highly discriminatory (Bassanini 2002), making it so that people be treated differently according to their jobs. Since the Frattini Law unequivocally aimed at safeguarding Berlusconi, it was widely criticized and denounced as partisan (Zaccaria 2004). It was further objected that such a bill was totally inefficient in preventing the very problem it was supposed to solve, for it only obliged people to communicate their situation and find a solution to it, eventually imposing sanctions if this was not to happen (Venice Commission 2005; Hibberd 2007; Pinelli 2006). The bill was thus accused of having completely missed the point: while its original purpose was that of addressing Berlusconi's special situation, its final output ended up being that of tackling everyone's potential conflict of interest but the Cavaliere's one (Venice Commission 2005).

⁸⁴ Initially a decree-law, when it was sent to the Parliament for its conversion into law, a motion of confidence was put upon it to urge the legislative body to approve the executive's decision (Zaccaria 2004).

As far as the media issue is concerned, a final issue worth of mention is Berlusconi's interference with the management of the RAI platform. Forza Italia's leader, indeed, publicly denounced known personalities working in RAI's three channels for having badmouthed about him and his party⁸⁵. Such journalists were either fired or neglected a renewal of contract (Blatmann 2003). Additionally, the Cavaliere also made it so that professionals close to his group were hired in the platform's decisional top positions, so as to assure a positive advertising for his organization and persona (Razzoli 2010). The Open Society critically denounced such an abuse of power, judging it as a limitation to the independence of the media (Razzoli 2010), a concern that was further expressed by the Venice Commission (2005). Indeed, even though no official censorship was imposed, Berlusconi's intimidations were considered as a threat to press freedom (Blatmann 2003). In the same fashion were interpreted also the legal suits started by the same man against some of the most important Italian and foreign newspapers – like La Repubblica and El Pais – which had dared to denounce his controversial behaviors (Razzoli 2010).

Berlusconi's conflict of interest further created an international concern, for Italy's democratic system was perceived as threatened⁸⁶. In 2003 and in 2005, indeed, when assessing the country, Freedom House rated it as 'partly free', placing the peninsula on the same level of Turkey.

3.3.3 A partisan electoral system: the *porcellum*

The last item worth considering – before addressing what has probably been the most significant issue of all Berlusconi governments – is Law 270/2005, reforming Italy's electoral system. Soon nicknamed the *porcellum* (crap) (Dickmann 2015; Corriere della Sera 2013), the bill was elaborated and approved little before the 2006 national elections. Introducing a "de-personalized proportional system with a majority bonus" (Pasquino 2007), the law did not establish a minimum threshold to be reached for the attribution of the bonus, so that even a relative majority could receive it. Additionally, the new electoral system denied citizens the possibility of expressing a candidate preference by imposing blocked party lists, while simultaneously leaving candidates free to run in how many districts they wanted (Di Virgilio 2007). In the Senate, the majority bonus was to be conceded (on a regional base) to the best

85 The most famous case is the so-called 'Bulgarian Edict': during an interview in Bulgaria, Berlusconi accused three journalists of having carried out a "criminal use of [the] television" because of their critical judgments toward his party (Padovani 2015; Razzoli 2010).

86 The alarm was so widespread that in 2002 Ciampi addressed a letter to the Parliament, reminding the same to take into serious consideration the key principles of pluralism and impartiality, and further underlying the fundamental importance of media pluralism for the independence of democracy (Hibberd 2007; Blatmann 2003).

performing coalition gaining less than 55% of seats. In the Chamber of Deputies, instead, the same bonus was to be attributed to the most voted alliance if this had less than 340 seats (Di Virgilio 2007). The majority bonus – the ‘poison’ of the bill (Sartori 2005) – would have guaranteed to the winning coalition significantly more than the absolute majority of the seats in Parliament (Pasquino 2007), thus drastically limiting the role of the opposition, with important consequences for the principle of representation which is at the heart of the Italian parliamentary system (Dickmann 2015). The real objective of the legislation was therefore that of establishing a republic with a very strong executive branch, without formally changing the country’s form of government⁸⁷ (Dickmann 2015). Such an arrangement would have benefited Berlusconi’s coalition in case of victory, and since it was drafted precisely to satisfy his interests, the legislation was denounced as profoundly partisan⁸⁸ (Sartori 2005; Di Virgilio 2007; Pasquino 2007). The Constitutional Court (ruling 1/2014) not only criticized the attribution of majority bonuses without minimum threshold as an unreasonable provision, but even defined the new electoral system as ‘irrational’, for it allowed the creation of strategic coalitions that would only last until elections, with serious consequences for the entire system. Indeed, by transforming a relative majority into an absolute one, the law would have strengthened the government at the expenses of the legislative branch, legitimizing a ‘majoritarian prejudice’ (Dickmann 2015), and putting at risk the entire first part of the Italian Constitution, for which amendment is requested precisely an absolute majority (art. 138 It. Const.). The introduction of blocked party lists – amounting to a *de facto* indirect vote by the people – was further denounced by the Constitutional Court because in contrast with artt. 56 (universal and direct suffrage for the election of the Chamber of Deputies), 58 (universal and direct suffrage for the election of the Senate), 48 (on citizens’ vote as *free, personal, secret and equal*) and 117 (legislative powers’ compatibility with EU law provisions)⁸⁹ of the Italian Constitution⁹⁰. Such a practice was also accused of ‘destroying’ the relationship which should exist between elected and electors, thus undermining the quality of representation, and bringing the country back to partitocracy practices (Pasquino 2007; Di Virgilio 2007).

Law 270/2005 left a certain legacy in the Italian political system, for just a couple of years later a new electoral bill was passed following more or less the same *modus operandi*: Law 52/2015. Called the

87 Barbera highlights the intrinsic link between electoral system and form of government, precising that since the first conditions the latter, the electoral system should always be aligned with what is established in the constitution as far as the form of government is concerned (Dickmann 2015).

88 The law was described by Prodi and the center-left alliance as anti-democratic (Pasquino 2007; Di Virgilio 2007).

89 With reference to art. 117 of the Italian Constitution, law 270/2005 would be in violation of art. 3, protocol 1 of the ECHR establishing people’s free expression of opinion in the choice of their legislature.

90 The provisions about majority bonuses and blocked party lists were eventually declared unconstitutional by the Constitutional Court (Const. Court ruling 1/2014; Ufficio Stampa Corte Cost. 2013).

italicum, the new legislation aimed – as its predecessor – at guaranteeing an absolute majority in the Parliament to the best performing party/list, through the use of a majority bonus which – by neutralizing the preferences expressed for all lists but the most supported one – penalized any opposition group (Dickmann 2015).

3.3.4 The 2016 attempted constitutional reform

The final issue of the Berlusconi cabinets worth of analysis for the purposes of the present work is the attempted constitutional reform aimed at modifying 50 + 3 of the 139 articles of the Italian Constitution⁹¹, comprehensively altering the whole second part of the legal document (dealing with the organization of the country's institutions) (Bull 2006; Vassallo 2004; Pinelli 2006)⁹². Proposed by the government and approved by both chambers, in 2006 the reform was rejected by 60% of the Italian population through a referendum. The main news of the reform – to be regarded as a ‘‘constitutional tsunami’’ (Bull 2006) – had the objective of altering the country's form of government, its bicameral legislative system, the central government's and regions' competences, some rules of the Constitutional Court, and some powers of the President of the Republic (Olivetti 2008).

3.3.4.1 A premiership with no limitations

Concerning the country's form of government⁹³, the reform had the goal of strengthening the power of the executive branch without transforming the system into a presidential or a semi-presidential one. The project aimed instead at developing a special model of the parliamentary system where the election of the prime minister was to remain linked to that of the Chamber of Deputies, through a voting procedure which connected – in an unspecified way – the name of the premier candidate to the party lists competing for the Parliament⁹⁴. The prime minister would have had the power of autonomously appointing and dismissing his cabinet's ministers – a formal action previously carried out by the Chief of State. The new cabinet would have asked the Chamber of Deputies' confidence (but not the Senate's) for the political program it had campaigned on (and not for its own composition). Additionally, the

91 The reform aimed to modify 53 out of 80 articles of the Italian Constitution's second part (Olivetti 2008).

92 It has been noted that the parties of the governing coalition (Forza Italia, Alleanza Nazionale, and the Lega Nord) were aliens to the 1948 Constitution, having not been involved in the drafting process of the same either because marginalized or absent from the country's political scenario (Bull 2006; Pinelli 2006b; Pinelli 2006; Olivetti 2008).

93 The following explanation of the reform's content is drawn from Olivetti (2008), Bull (2006) and Fusaro (2004).

94 Hence, the Prime Minister was not directly elected by the people, but rather decided on the base of the winning party to which he was somehow connected. A central role was consequently to be played by the electoral law, which, however, remained unspecified in the constitutional reform text (Olivetti 2008). According to Bifulco (2004), however, such a provision meant that the premier was *de facto* elected by the people.

reform established that in the case of a motion of no-confidence expressed by the Chamber of Deputies to the prime minister, the President of the Republic would have been obliged to dissolve the legislature. Such a dissolution could be avoided only if a new premier was presented by the Chamber, but the conditions for this to happen were made particularly demanding. Indeed, the ‘peculiar’ novelty introduced by the text lied in the fact that the new premier could be approved only with an absolute majority of the legislative branch, meaning with the majority that had initially given the government confidence over its political program. This, in turn, made the removal of the prime minister extremely difficult, establishing a “*de facto* irremovability of the [same] over the legislature” (Olivetti 2008; Mancino 2004). The reform established also that the premier would have had the power to decide about the early dissolution of the Chamber – even without previous consultation with the cabinet. The new role attributed by the reform to the prime minister has evidently been the most attacked provision (Vasallo, Thompson and Ania 2004), for it would have produced a premiership office with absolute powers and free from any check (Elia 2004; Bifulco 2004; Mancino 2004; Bull 2006; Olivetti 2008; Grassi 2004). The power to dissolve the Chamber in an arbitrary way, would have given the prime minister the possibility to threaten the legislative body to pass bills not included in the electoral program of his party: indeed, had the body refused, it would have been dissolved (Portanuova 2004; Elia 2004; Mancino 2004; Grassi 2004; Bifulco 2004). The reform thus marginalized the Parliament, making of it a formal body at the service of the executive (Mancino 2004), and a victim of the will of the majority (Pinelli 2006; Grassi 2004). The strengthening of the executive’s powers, not balanced by the introduction of new constitutional constraints, would have made of Italy a hybrid form of government, in between parliamentarism and presidentialism – without the binding obligations of any of the two (Mancino 2004). A form of government unique in the world, in contrast with constitutionalism, and distant from representative democracy (Elia 2004; Pinelli 2006b; Grassi 2004; Portanova 2004). The result would have been that of an unbalanced political system, unprecedented in the history of European constitutional democracies.

3.3.4.2 The end of the Italian legislative chambers’ perfect symmetry

As far as Italy’s bicameral system is concerned, the constitutional reform had the objective of demolishing its ‘perfection’ (symmetry) (Fusaro 2004). The Senate was to become a federal organ of regional representation, thus making of the Chamber of Deputies the only Parliament’s body. The regional chamber was not to give its confidence to the cabinet’s political program, nor could it give the

executive a motion of no-confidence. At the same time, however, it was also to be alien to the possibility of being dissolved by the premier. The reform would have given regions the power to produce laws concerning the school system, the health system and the local police system. As far as the legislative process was concerned, the constitutional project foresaw that in case of conflict between Chamber and Senate concerning the central government's fields of competence, the Chamber would have made the last decision; while in case of conflict concerning regions' and state's shared competences, the Senate would have had the last word. In order to reduce the Senate's evident power, however, the reform established also that when dealing with laws of national interest, the government could bypass the regional body – "subject to the approval of the [P]resident of the Republic" – so that the Chamber would have had the last word (Vassallo, Thompson and Ania 2004).

It is evident that the prevalence of the Chamber of Deputies over the Senate would have produced strange results, for in the name of a proclaimed national interest, the first could undo every piece of legislation disliked by the incumbent executive, or better said, by the prime minister. Being the notion of national interest extremely broad and subjective (Bull 2006; Portanova 2004), such a provision risked to be called ordinarily just to repel bills judged "politically inappropriate"⁹⁵ by the government (Olivetti 2008). Additionally, the very fact that the Chamber of Deputies could bypass the Senate, meant not only the end of the two bodies' symmetry (Olivetti 2008), but also the negation of the regional chamber's representation (Bifulco 2004; Bull 2006). The new distribution of legislative competences between regions and state – with regions acquiring exclusive competences over health, police and school matters – was to threaten national civil and social rights, for some of them would have been administered directly by local authorities, with the risk of producing different outputs according to the region, and the possibility of violating also those fundamental rights protected by the first part of the constitutional document (Olivetti 2008).

3.3.4.3 A Constitutional Court at risk of politicization and the President of the Republic as a symbolic figure

The reform also touched upon the composition of the Constitutional Court. Whereas the amount of its members was to remain fifteen, the number of Constitutional judges appointed by the Parliament – that is, by a political body – was to increase from five to seven. This provision clearly threatened the

95 Translation by me.

independence of the legal body – which risked becoming politicized – with important implications for the protection of fundamental rights (Bifulco 2004).

With reference to the President of the Republic, the reform aimed to reduce some of his powers at the advantage of the prime minister. The Chief of State was not to appoint ministers anymore (being thus deprived of his control function as far as their compatibility with such an office was concerned), nor could he dissolve the Chamber of Deputies. As mentioned, however, he would have been given the power to decide when a law passed by the Senate was in contrast with the country's national interest. The reduction of the President of the Republic's role to a mere symbolic figure (Bifulco 2004; Grassi 2004; Elia 2004), would have weakened the constitutional guarantees of the Italian system (Baldassarre 2004), while his involvement in the legislative process would have clearly caused a risk of politicization (Olivetti 2008; Vassallo Thompson and Ania 2004).

3.3.4.4 The decline of the system of checks and balances

On the whole, the reform has been importantly – and vehemently – criticized⁹⁶ (Bull 2006; Mancino 2004; Bifulco 2004; Grassi 2004; Portanova 2004; Elia 2004; Baldassarre 2004; Mauro 2006; Pinelli 2006b; Blokker 2020), being defined ‘confused and bungled’, ‘‘dangerous for the country⁹⁷’ (Mauro 2006), disastrous for the Constitution (Portanova 2004), and ‘‘useless⁹⁸’ (Bifulco 2004). Sartori even described it as ‘unconstitutional’, for it formally maintained the country a democracy, while depriving it of any democratic substance (Bull 2006). Indeed, such a constitutional project would have almost annulled the system of checks and balances (Baldassarre 2004; Grassi 2004; Pinelli 2006; Olivetti 2008; Blokker 2020), with repercussions not only on the second part of the Constitution – defining the organization of the Italian political system – but also on the first one, that whose objective is the protection of fundamental rights (Bifulco 2004; Grassi 2004; Bull 2006). The reform is characterized by a strong majoritarian approach (Grassi 2004; Blokker 2020), which can hinder the protection of minority groups. As a result, had it been approved, it would have altered the rule of law, the separation of powers, the system of checks and balances, the protection of fundamental rights, and pluralism – that is, the very basic foundations of any democratic system. Additionally, since it was thought in such a

96 For a softer, more positive assessment of the reform, see Fusaro (2004).

97 Translations by me.

98 Translation by me.

way that each single party of the governing coalition could gain its shares of benefits⁹⁹ from it (Pinelli 2006; Blokker 2020), the legislative project was further accused of having politicized the Constitution (Bifulco 2004; Pinelli 2006b; Mauro 2006; Baldassarre 2004), depriving it of its democratic character (Vassallo, Thompson and Ania 2004). A criticism which found confirmation in the fact that the opposition was not consulted for the bill's drafting (Pinelli 2006; Blokker 2020), with the result that the reformed Constitution would have been a product of the (populist) right, whereas – as Sartori notes (2006) – constitutional texts should never be right-wing nor left-wing oriented.

Also the way the constitutional referendum was advertised by the Berlusconi cabinet was biased, for the significance of the reform was downgraded in the name of simplification, and important information were not spread or spread incorrectly (Pinelli 2006; Bull 2006; Sartori 2006; Sartori 2006b).

3.3.5 Assessing the impact of populism in government: the experience of the Berlusconi's coalition

In the previous sections, we have described the most relevant policies, laws and reforms carried out (or attempted) by the coalition government led by Berlusconi, of which Bossi's Lega Nord was a member. It is now essential to analyze these policies, laws and reforms from a constitutional perspective, so as to understand what their effect on liberal democracy and the rule of law was.

The general line of action followed by the populist government in question has been that of trying to strengthen the role of the executive at the expenses of the Parliament and of the judiciary, while simultaneously making it free from any possible control. Apart from the failed constitutional reform, this has been attempted through the use of urgency legislation and the reform of the judiciary. Such practices show a strong disregard for the principle of separation of powers and its related system of checks and balances, which are at core of constitutionalism, and consequently at the core of any functioning modern democracy. A disrespect for such principles means that also pluralism is at risk, because the protection of fundamental rights is threatened. If the judiciary is politicized (as the Castelli reform and the constitutional reform project wanted it to be), it risks to be loyal to a specific political ideology rather than to the law. If the Parliament is weaker than the executive (as the failed

99 The 2016 constitutional reform is indeed to be intended as a way to make it so that the issue of devolution – much advocated by Bossi and always rejected when proposed individually (Olivetti 2008) – could finally be welcomed (Portanova 2004; Pinelli 2006; Diamanti 2006). The legislative project was though in such a way that the Lega Nord would get its devolution, Forza Italia would have a strong premiership, and Alleanza Nazionale a powerful executive and the reintroduction of the national interest (Vassallo, Thompson and Ania 2004).

constitutional reform and the electoral law wanted it to be), it can be then used in an instrumental way, to pass partisan laws which are not the result of compromise, and as a consequence are not representative of the whole population. In particular, the laws produced in the media field – together with Berlusconi’s manipulation of the RAI platform– have seriously threatened freedom of the press, considered as a part of freedom of expression, that is one of the main principles upon which liberal democracies rely on. The many personal bills produced to safeguard Berlusconi’s interests – partly or totally declared unconstitutional – are instead a clear example of the legislator’s unconcern for the Constitution and legislative norms more in general.

As we have seen, the most damaging effects of the policies here analyzed have been prevented either by declaring specific legal measures unconstitutional, or by finding mechanisms to bypass them. Despite being this an important indication of the good functioning of the country’s independent institutions, the dangerous implications of the laws and reforms in question cannot be underestimated. The coalition led by Berlusconi has placed itself in stark contrast with constitutionalism, for it has repeatedly violated the principles of the rule of law, of separation of powers, and of checks and balances. We have seen how liberal constitutionalism is an essential component of modern democracies, without which doctrine, the same democratic regime cannot be said to exist. As a consequence, even though Italy has not be turned into an authoritarian regime of the Chinese or Russian kind, nor can one say that it was transformed into an illiberal state, the effect that populism had (or tried to have) on its internal functioning was simultaneously serious and dangerous, for it threatened to destabilize the very constitutional democratic foundation of the Republic.

3.4 Populism’s second time in power: the M5S’s and Lega’s ‘government of change’

The last national elections in Italy, held on 4 March 2018, ended up with the formation of a populist government resulting from the coalition between the Movimento Cinque Stelle¹⁰⁰ (the most voted party) and the Lega (the best performing party of the center-right alliance), under the leadership of university professor Giuseppe Conte. Italy thus became the first Western European country to be ruled exclusively by populist forces (Orsina 2019). The M5S-Lega cabinet agreed on ruling the country in the name of change, naming its shared political program ‘the government of change’ (Biancalana 2020; Corso 2019). After only fourteen months of government, however, Salvini decided to withdraw his

100 For the first time ever the M5S decided to ally with some party (Corso 2019). Until that moment, indeed, he refused any involvement with other political organizations.

confidence from the cabinet, perceived as hindering his party's actions¹⁰¹. As a consequence, on 9 August 2019, Conte¹⁰² resigned. This marked the end of the coalition government between the two mentioned populist parties, also known as the Conte I cabinet. After the President of the Republic found an alternative majority in the Parliament, a new government was set up on 5 September 2019 resulting from an alliance between the M5S, the Democratic Party and other minor organizations, again under the leadership of Giuseppe Conte: the Conte II cabinet¹⁰³. Di Maio's and Salvini's populist government coalition has experienced short life; this notwithstanding some important policies have been enacted. Two of them deserve special attention, because of their implications and dangers: the so-called '*decreto sicurezza*' (Security Decree-Law) and '*decreto sicurezza bis*' (Security Decree-Law Bis). Both sets of measures were advocated particularly by Salvini, being such policies of central importance for the Lega's political program. Another policy, then, is worth of mention even though it was carried out during the Conte II cabinet and not the Conte I: the reduction of the Parliament's constitutional composition.

101 Salvini's no-confidence to the government might, however, be explained on the base of very different reasons. In the May 2019 European elections, his party gained 34% of the votes, while the M5S only 17%, thus experiencing a decrease in support (Corso 2019). Given such a change in the two organizations' balance of power, it can be conjectured that the crisis of government was triggered by the leader of the Lega in order to have new elections. Soon after the results of the European ballots, the relationship between Di Maio and Salvini became "tenser" (Corso 2019). Such a tension was even more evident in July 2019, when the two parties voted in the opposite way for the new European Commission President Ursula von der Leyen, with the M5S supporting her, and the Lega voting against. This divergence was indeed regarded as a 'first profound crack' in the majority (La Repubblica 2019), clearly indicating an internal division (Stefanoni 2019). The Lega's decision was interpreted by the M5S as a sign of opposition toward the same group, made in order to gain consensus (Stefanoni 2019). The idea of Salvini taking the distance from its ally after the European election just to gain more consensus, was shared also by the premier Conte (Il Fatto Quotidiano 2019).

102 Until May 2019, Conte has oftentimes declared that he was just "a mere executor of the contract signed by the two leaders of the coalition" (Corso 2019). After the European elections, however, the university professor became more active and less neutral (Corso 2019) – as made unequivocally clear in his resignation speech before the Parliament. Conte heavily criticized the former Interior Minister, expressing all his concern for Salvini's inclination to demand plenary power and urge the masses, further lamenting his disrespect for institutions and institutional rules (Il Fatto Quotidiano 2019). The call for plenary power, indeed, is reminiscent of the Enabling Act passed by the German Parliament in 1933 and used to set up the Nazi regime. Also Mussolini asked for plenary power some ten years before (Pollicino and Vigevani 2019). The premier's resignation speech was therefore characterized by anti-populist notes, alerting against the dangers of souverainism, and reminding of the importance of checks and balances (Il Fatto Quotidiano 2019).

103 As we shall see in the next sections, the M5S-Lega cabinet had a conflictual relationship with the rule of law, proving unconcerned for the protection of fundamental rights and hostile toward the judiciary (a stance expressed mainly by Salvini). It is possible that the new government – made up not only of populist parties – might change such a trend (Rye, Koncewicz and Fasone 2019).

3.4.1 Not only migration: the so-called ‘*decreto sicurezza*’

Decree-Law 113/2018¹⁰⁴ – better known as *decreto sicurezza* (Security Decree-Law), after its advertised content, or *decreto Salvini* (Salvini Decree-Law), after the name of the Interior Minister who proposed it in the first place – was approved by the Parliament at the end of November 2018 under the much longer epithet of ‘Urgent provisions in the field of international protection and migration, public safety, as well as measures for the functionality of the Ministry of the Interior and the organization and functioning of the National Agency for the management and destination of goods sized from organized crime¹⁰⁵’. It is made up of 40 articles and deal with the issues of migration (the biggest section of the document), public safety, law and order, prevention and fight against mafia organizations, and the management of the Interior Ministry.

More precisely, as far as the migration issue is concerned, the *decreto sicurezza* (art. 1) abolishes humanitarian protection from the list of international protections granted by Italy, because of an allegedly too permissive use made thereof. This kind of protection – foreseen by the previous Italian law on migration (*Testo unico sull’immigrazione*), and lasting from six months to two years with the possibility of renewal – was given to migrants who despite not having the requites for being granted asylum or subsidiary protection, could not be repatriated in their country of origin because of possible violations of human rights (Carta 2019). It was the most used form of protection during 2017¹⁰⁶. The decree-law replaces it with other residence permits to be given in ‘special cases’. Indeed, the legislation foresees residence permits for medical treatment reasons, for situations of very serious natural disasters, to victims of domestic violence, to victims of labor exploitation, to migrants who have carried out ‘actions of great civic value¹⁰⁷’, and to migrants in need of particular protection because of the risk of being persecuted or tortured in their countries. Their average duration goes from six months to one year¹⁰⁸ (Carta 2019). The decree (art. 2) also prolongs migrants’ detention period in specific return centers (*Centri di permanenza per il rimpatrio – CPR*) from 90 to 180 days, before sending them back

104 It was converted into Law 132/2018, with the addition of some amendments. In phase of conversion, moreover, other elements were added to the (already very long) title (Ruotolo 2018; Curreri 2019; Curreri 2018).

105 Translation by me. To such an array of different topics, some others were added when the decree was converted into law, giving the government the task of reorganizing armed forces’ and police forces’ staff (Curreri 2019).

106 Salvini denounced the easiness with which humanitarian protection was given in Italy (Carta 2019). In 2017, humanitarian protection was indeed granted to about 25% of asylum seekers – conversely to asylum protection, which was granted to 9% of migrants, and subsidiary protection, which was given to 8% of migrants. Also, 58% of international protection requests were rejected (Curreri 2018; Algostino 2018).

107 The nature of such actions is not specified (Carta 2019).

108 Furthermore, as pointed out by many scholars, by abolishing humanitarian protection and limiting the concession of special residence permits, many migrants will find themselves in Italy with no regular permission. The measure introduced by the decree, then, has the very likely consequence of increasing the number of irregular migrants, and insecurity (Pallante 2019; Carta 2019; Curreri 2018).

to their country of origin. Additionally, also asylum seekers can be detained in return centers for a maximum of 180 days, after they have been detained for a maximum of 30 days in hotspots, in order to verify their identity and personal situation (art.3 d.l.). Interestingly, the new law (art. 4) also authorizes the detention of migrants – when other specific centers are full, and for no more than 48 hours – in ‘suitable spaces’, before expelling them. Increasing the funds to be used for repatriation in order to promote such a practice (art.6 d.l.), the decreto sicurezza (art.7) expands the number of crimes for which protection can be neglected or revoked, to include – along serious actions like terrorism or murder – also threat to government officials, robbery, and female genital mutilation rituals. It further establishes (art. 10) immediate compulsory expulsion for those migrants charged with criminal offenses or convicted with non-final judgment. The Italian reception centers system managed by local municipalities (*Sistema per l'accoglienza dei richiendi asilo e dei rifugiati – SPRAR*) – which could be used by both asylum seekers and refugees, and had the primary objective of foreigners’ integration – becomes now available only for migrants who have already gained international protection, and non-accompanied minors. The decree (art. 14) considers also the question of Italian citizenship, extending from 24 to 48 months the period for gaining it, and introducing the possibility of revocation if foreigners (actually become Italian) are involved in very serious crimes like terrorism. Concerning public safety and law and order, the decreto sicurezza enlarges the list of public urban spaces (the so-called urban *DASPO*) where people can be fined or removed for damaging or spoiling public structures and the likes (art. 20 d.l.); re-introduces the criminalization of roadblocks (art. 23 d.l.); and increases punishments for those people who trespass to land (art. 30 d.l.). The decree deals also with measures to contrast organized crime (Title II), with the management of the Interior Ministry, and the management of goods sized from mafia-clubs (Title III).

The decreto sicurezza – advertised in a misleading way by its supporters, Salvini in the frontline, in the name of narrative simplicity and information omission (Curreri 2019; Curreri 2018) – contains ambiguous measures contrasting with the Italian Constitution, communitarian obligations, and international treaties ratified by Italy. Doubts arise also about the specific constitutional instrument used for its enactment, and the conditions under which the decree was elaborated and finally converted into law. The bill displays both formal and substantial flaws, but before analyzing them, it is worth making a first and more straightforward observation about the quality of the piece of legislation’s text, which is simply incomprehensible. As noted by Algostino (2018), the understanding of the document’s

reasoning is “almost impossible”, for it goes something like: “in paragraph 2-ter, second sentence, the expression «for humanitarian reasons» is replaced by the following: «for medical treatments, as well as of residence permits as referred to in art. 18, 18.bis, 20-bis, 22, paragraph 12-quarter, and 42-bis, and of the residence permit released as referred to in art. 32, paragraph 3, of the legislative decree 28 January 2008, n. 25»”¹⁰⁹. Such an overloaded and little consistent language makes the decree ungraspable for ordinary people, thus obliging them to rely on the way it is presented by its sponsors in order to comprehend its main objectives. But the way things are described and the way things are read in the first person are never the same, for the first always implies a certain connotation given by the speaker. Thus, pluralism of opinion is destined to be softened – for if by reading one has to elaborate information, by listening to stories, one tends to adopt the narrator’s point of view – and with softened pluralism of opinion, democracy comes a little less.

Coming back to the text’s flaws, from a formal point of view, a first criticism can be addressed to the legislative technique used to issue the bill. It is a decree-law, that is, a piece of legislation enacted by the government without Parliament’s delegation or request. Art. 77 of the Italian Constitution stipulates that such pieces of legislation, having the value of ordinary law, can be produced by the government in total autonomy if, and only if, there are extraordinary, urgent and necessary conditions – further establishing that in order to be valid, the decrees need to be converted into law by the legislative branch within 60 days from their publication. The first objection is therefore related to the conditions under which the bill was written, for there was no extraordinary or urgent situation to make use of such a special measure. Indeed, considering the first issue of the legislation (migration), one cannot find any urgent situation related to it, for migrants in Italy make up only 0.6% of the population: an evident signal that no invasion is going on (Natale 2019). Additionally, the same Interior Minister has oftentimes declared a reduction of the phenomenon in 2018 (Ruotolo 2018), and such a decrease is also officially reported in the Interior Ministry’s website, where migration in 2018 is said to have dropped of 90% with respect to 2016 (Corsi 2019). If one takes into account the other issues addressed by the decree, then, it is difficult to understand how citizenship questions, the sale of goods sized from mafia-clubs, and the management of the Ministry of the Interior can be considered as urgent situations (Ruotolo 2018; Algostino 2018).

A second formal criticism has, instead, to do with the piece’s heterogeneity, as clearly perceivable already from its title. In this regard, the Constitutional Court has specified in its ruling 22/2002 – and in

¹⁰⁹ Translation by me. Sentence extrapolated from art.1, para.1, letter b), no.1) of Decree-Law 113/2018 (Gazzetta Ufficiale della Repubblica Italiana 2018).

other ones produced afterwards – that since the decree-law responds to a situation of emergency, the themes handled by the same have to show a certain homogeneity, for they are conceived to address such an emergency. As a consequence, random issues cannot be put in the same decree if they are not measures to be adopted for the resolution of one specific extraordinary circumstance. Also in this case, it is difficult to understand how measures designed to prevent organized crimes may be connected with measures abolishing humanitarian protection (Ruotolo 2018). The only possible link is given by the issue of public security (Curreri 2018), but for its being so broad and comprehensive, public security related to no specific threat can hardly be regarded as a situation of emergency. Hence, absent the two principles conferring the decree-law legitimacy, the legislation seems to be inconsistent with the Constitution. The Constitutional Court has in this sense established that decree-laws enacted in disrespect of art. 77 of the Italian Constitution are unconstitutional¹¹⁰ (ruling 29/1995) – a judgment which, however, has not prevented executives from making use of such a practice (Algotino 2018). The government’s habit of relying on decree-laws is detrimental for the correct functioning of democratic systems, for it violates the principle of separation of powers according to which law-making is an exclusive competence of the Parliament (Corsi 2019).

Another point of concern is the way in which the decreto sicurezza was approved by the Parliament and converted into law, for the Conte I cabinet placed a motion of confidence on it in both chambers, thus ‘obliging’ the Parliament to approve its decision if it did not want to cause a government crisis. Such a mechanism weakens the ordinary legislative procedure as envisaged by the Constitution, representing “an unnatural fact” that undermines the entire constitutional design (Rescigno 1998; Ruotolo 2018). Linking a maxi-amendment to a motion of confidence implies that the chambers cannot discuss single provisions or reject some of them, for they are obliged to approve or disapprove the entire text through a ‘blocked vote’ (Ruotolo 2018; Algotino 2018; Corsi 2019). Depriving the Parliament of the possibility to discuss a bill – thus confining it to a function of mere acceptance of government’s decisions (Santoro, G. 2019) – confers the decree a flaw of formal legitimacy with respect to art. 72 (on the way bills are approved by the Parliament) of the Italian Constitution. But such a practice also highlights the legislator’s disrespect for the principle of separation of powers, which in turn affects the whole constitutional apparatus (Ruotolo 2018). As for the specific decision of the executive to pose such a motion, moreover, there seems to be a lack of transparency regarding the moment in which, if at all, the Council of Ministers would have authorized such a practice (Curreri 2018).

¹¹⁰ The decree-law’s unconstitutionality is then transmitted to the conversion law (Algotino 2018), the latter being affected by such a flaw *in procedendo* (Ruotolo 2018).

From a substantial point of view, the decree is weak and flawed in many respects (Pallante 2019; Carta 2019; Ruotolo 2018; Santoro G. 2019). The elimination of humanitarian protection, which grants migrants man’s fundamental rights and dignity protection, is not only worrisome (Carta 2019), but also in contradiction with artt. 10 and 117 of the Italian Constitution – establishing the country’s compulsory compliance with international treaties and obligations¹¹¹ – and the very same art. 2 of the constitutional charter, which protects precisely those fundamental rights and dignity without making citizenship distinctions. In particular, art. 10 of the Italian Constitution makes it clear that foreigners located in Italy have a right to asylum if they are deprived, in their countries, of the democratic liberties foreseen by the Italian charter. In this sense, the *Corte di Cassazione* (Italian Supreme Court) has claimed that the full implementation of such an article of the Constitution can be achieved only through the three protections related to the right of asylum, namely asylum protection, subsidiary protection and humanitarian protection (order n. 10686/2012; and ruling 4455/2018) (Algostino 2018).

The second migration-related provision of the decreto sicrezza extends, as seen above, migrants’ detention times in return centers from 90 to 180 days. Such an extension makes the norm’s collision with art. 13 (on the inviolability of personal freedom) of the Italian Constitution even more acute (Algostino 2018). Indeed, depriving people of their freedom of movement equates to a serious violation of one’s own dignity. In this regard, the Constitutional Court has recognized fundamental liberties’ supremacy over public security’s needs triggered by migration flows, for how much pressing and serious the concerns related to migration and law and order might be, nothing can be more pressing and urgent than personal freedom (Algostino 2018). The *Garante nazionale dei diritti delle persone detenute o private della libertà personale* (Italian national guarantor of detained people and people deprived of personal freedom) has further expressed its skepticisms concerning the proportionality and reasonableness of such measures with respect to the very same deprivation of ones’s own liberty, putting in doubt especially the too long period of detention (Algostino 2018).

¹¹¹ In this regard, it makes sense to note that despite the provision of the decree, Italy remains bound to respect the international treaties it has ratified and their obligations – a point stressed also by the President of the Republic in his unusual letter sent to the Prime Minister on 4 October 2018 (Curreri 2018; Corsi 2019; Rye, Koncewicz and Fasone 2019). If, as Curreri (2018) notes, humanitarian protection is a form of asylum protection not imposed by the EU – as to make intend that no international obligation exists in this sense for Italy under artt. 10 and 117 of the Italian Constitution – Italy’s ratification of international treaties aimed to safeguard and protect the fundamental rights and freedoms of the person – exactly what humanitarian protection grants – is instead indicative of an international obligation pending on the peninsula in the direction of humanitarian protection. Among the international treaties to which artt. 10 and 117 of the Italian Constitution make reference, one of the most relevant is the 1951 Geneva Convention on the status of refugees, where humanitarian protection is intended as a way to give full application to art. 33. The EU Charter recalls in its art. 18 the same right of asylum as established in such a convention, binding member states to respect it. Also art. 1 of the same EU Charter – on the protection of dignity – is worth mentioning, in that humanitarian protection is intended to safeguard people’s dignity as well.

Decree's article 3, introducing migrants' detention in hotspots for 30 days and in return centers (CPR) for other 180 days with the objective of identification, seems to be in contradiction with art. 13 (inviolability of personal freedom) of the Italian Constitution: since not having identity cards and other identification documents is pretty normal for someone fleeing his/her country, to ground migrants' detention on such explanations appears not so reasonable (Carta 2019; Algostino 2018). Additionally, such a measure also violates art. 117 of the Italian Constitution (on international obligations), for it does not respect art. 8 of directive 2013/33/EU, prohibiting asylum seekers' detention for the sole reason of having submitted an application for international protection (Santoro, G. 2019).

But puzzlement arises also with regard to the decree's provision authorizing migrants' detention in 'suitable spaces' – when no other migration-related center is available – before expelling them. Indeed, by there being in the legislative text no specification of what such places should be or by what standards they should be determined (Curreri 2018), possible violations of asylum seekers' human rights seem behind the corner (Santoro, G. 2019; Algostino 2018).

As far as the immediate and compulsory expulsion of migrants charged with criminal offenses or convicted with non-final judgment is concerned, the denial of those provisions granted by art. 24¹¹² (right to defense) and art. 27 (presumption of innocence) of the Italian Constitution is even too evident. In the same way, such a decree measure violates also art. 48 (presumption of innocence and right to defense) of the EU Charter. The decree's measure foresees immediate expulsion¹¹³ even if this means that the migrant in question will be returned to a country where he/she can be tortured, subject to inhuman treatment or killed (Curreri 2018), thus implying a violation of art. 3 (on the prohibition of torture) of the European Convention on Human Rights, and of art. 19 (on protection in the event of removal or expulsion) of the EU Charter (Rye, Koncewicz and Fasone 2019). Consequently, also a violation of artt. 10 and 117 of the Italian Constitution – binding Italy to respect international and communitarian obligations – is present.

It is evidently clear what is the (concerning) message that the legislator aims to give with such a decree-law: immigration is inevitably a threat to public security, and asylum-seekers are tendentially criminals (Curreri 2018; Algostino 2018; Corsi 2019; Natale 2019). Such an approach seems to be even more worrisome if one considers that is being followed in Italy, a country whose Constitution has a personalistic 'meta-principle' designed to safeguard people's rights in the first place, and despite

112 The right to defense is considered by constitutional jurisprudence as the most important principle of the legal apparatus (Santoro, G. 2019).

113 It is noted how this way expulsions might be enacted also following a simple denunciation made in an instrumental fashion (Curreri 2019; Curreri 2018).

which migrants are still equated to terrorists and robbers (Algostino 2018). This attitude – which seems to forget that asylum-seekers are people as anyone else – reaches its maximum (Curreri 2018; Corsi 2019) in the decreto sicrezza’s measure concerning the revocation of Italian citizenship for those migrants convicted of very serious crimes¹¹⁴. Basically, if a migrant who has obtained the Italian citizenship carries out a terroristic act, he is deprived of his Italian citizenship; but if the same action is done by someone who was born in Italy – and consequently never went through those practices necessary to gain citizenship – then, he can still be considered an Italian citizen, for in his case no citizenship revocation is foreseen by law. It goes without saying that such a provision violates in every possible way art. 3 of the Italian Constitution, clearly and unambiguously stipulating that every citizen is equal before the law¹¹⁵. In this sense, the decreto sicurezza takes an opposite direction with regard to the most important principle of the Italian Constitution, making it law that some Italians are more equal than others, for despite every Italian citizen has the same good – Italian citizenship, indeed, – if someone was born in Italy, then its citizenship increases in value and becomes a privilege¹¹⁶ (Pallante 2019; Pallante 2018; Curreri 2019; Curreri 2018). Such a discrimination is hardly justifiable from a constitutional point of view (Ruotolo 2018; Santoro, G. 2019). In this sense, Curreri (2018) talks about ‘first category’ and ‘second category’ citizens. Such a measure also violates art. 20 (equality before the law) of the EU Charter, in turn violating artt. 10 and 117 of the Italian Constitution (respect of obligations deriving from international and communitarian treaties). Additionally, the measure lends itself to possible contradictions with artt. 2 and 22 of the Italian Constitution, respectively recognizing man’s inviolable rights, and stipulating no citizenship deprivation for political reasons¹¹⁷ (Ruotolo 2018).

Critical considerations can be done also as far as the decree’s provisions regarding law and order are concerned. As seen above, the criminalization of roadblocks is re-introduced – it was introduced for the

114 The other provision foreseen by the decree as far as Italian citizenship is concerned – extending the period to gain it from 24 to 48 months – goes in the same worrisome direction. Such a prolongation seems indeed intended to give the responsible authority more time to find out potential criminal actions carried out by the foreign applicant, so that he/she can be denied Italian citizenship (Curreri 2019; Curreri 2018). Moreover, the newly established period seems to be in contradiction with art. 111 of the Italian Constitution, concerning the right to trial within a reasonable time.

115 Algostino (2018) and Pallante (2018) have expressed their disappointment as far as the reaction of the President of the Republic to this specific point is concerned. Indeed, in the letter sent by the same to the Prime Minister, there is no mention nor criticism of the double-standard nature of the decree provision about citizenship deprivation.

116 Algostino (2018) stresses how the decree measure about citizenship deprivation be in violation of international obligations pending on Italy, and in particular of art. 8 of the UN Convention on the Reduction of Statelessness, ratified by the country with Law 162/2015. Accordingly, no state can deprive a person of his/her citizenship if such a deprivation makes the person in question stateless (Curreri 2018).

117 For a different point of view, see Curreri (2018). According to the scholar, indeed, the decree provision would not contrast with art. 22 of the Italian Constitution, in that terroristic attacks are not categorizable as acts committed for political reasons.

first time in 1948 to be rejected in 1999. The penalty for roadblocks with criminal punishment appears disproportionate in the first place. Additionally, since roads and also railways are usually blocked in occasion of demonstrations and strikes – that is, during different manifestations of social discontent and protest – re-criminalizing such practices appears as a way to oppress any form of protest and complaint, despite being industrial actions, public meetings, and freedom of expressing one’s own thought enshrined and protected by the Italian Constitution in its artt. 40, 17 and 20 respectively¹¹⁸ (Algostino 2018). Any democratic form of government, indeed, relies on internal dissent and difference of opinion, giving people the right to express them in a peaceful way without being sanctioned. Following the same rational approach, doubts arise also with regard to increased punishments for those trespassing to land – an action punishable with a detention period from one to three years, as defined by the decree. Again, such a punishment appears excessive in comparison with the violation committed, especially because also in this case the action of trespassing could be carried out as a form of protest, or to express social malaise¹¹⁹ (Algostino 2018). Making use of detention punishments for actions being traditionally carried out in order to protest or express discomfort – as in the two measures here discussed – brings about suspicions of unconstitutionality with art. 27 of the Italian Constitution, according to which punishments must have a re-educative function for the accused. In these specific cases, then, it is unclear how being deprived of one’s own liberty for having protested on a street or by having occupied a building can re-educate people.

A final criticism can be addressed to the decree’s provision concerning the expansion of the so-called urban DASPO, enlarged to include – among the already present airports, railway stations, schools and tourist attractions – also health centers, public establishments and public spaces destined to markets and exhibitions. The purpose is that of avoiding that certain practices and people affected by social malaise can have a bad impact on the aspect and functioning of such urban public spaces. Without mentioning here artt. 2 (man’s inviolable rights) and 3 (equality before the law) of the Italian Constitution, and art. 20 (equality before the law) of the EU Charter, there seems to be a tension between such limiting measures and artt. 16 (freedom of movement) and 32 (right to healthcare) of the Italian Constitution (Algostino 2018).

118 Freedom of assembly and association is also guaranteed by art. 12 of the EU Charter, and by art. 11 of the ECHR; as well as freedom of thought (art. 10 EU Charter; art. 9 ECHR).

119 The principle of proportionality for penal punishments is enshrined also in the EU Charter (art. 49).

3.4.2 Not only migration pt.2: the so-called ‘*decreto sicurezza bis*’

Some months after the enactment and conversion into law of the first decreto sicurezza, the Conte I cabinet produced a second decree-law, namely Decree-Law 53/2019¹²⁰. Following the way paved by its predecessor, also this one was nicknamed after its advertised content, placing itself in continuity with the previous one and becoming the so-called *decreto sicurezza bis* (Security Decree-Law bis) (Zirulia 2019).

The decreto sicurezza bis is made up of 18 articles addressing ‘urgent measures in the field of public safety and law and order’¹²¹. It specifically deals with illegal immigration (above all rescue at sea), law and order issues, and fight against sport-related violence.

Regarding illegal migration, art. 1 gives the Interior Minister the power to ban ships from entering Italy’s territorial waters for reasons of law and order, public safety, or when the conditions defined by art. 19, section 2, letter g) of the of the UN Convention on the Law of the Sea, as established in Montego Bay in 1982, materialize. The Interior Minister’s new power must be exercised in agreement with the Minister of Infrastructure and Transport, and the Defense Minister, informing (but not consulting) also the Prime Minister. Such measures have to be carried out in the respect of international treaties and obligations, and do not apply to warships and government ships used for non-commercial objectives. Art. 19, section 2, letter g) of the 1982 Montego Bay Convention defines that the ‘‘[p]assage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State[,] if in the territorial sea it engages’’ in the activity of ‘‘loading or unloading of any commodity, currency or person contrary to the [...] immigration [...] laws and regulations of the coastal State’’. Following such an approach, art. 2 of the decree introduces administrative monetary penalties for those violating the Interior Minister’s decisions as possible by the provisions of art. 1 d.l., with fines ranging between 10.000 and 50.000 euros¹²². Additionally, also the ship involved in the violation must be seized¹²³.

Art. 4 d.l. foresees an increased allocation of funds to be used for undercover investigations carried out by the police, especially concerning the fight against the facilitation of migrant-smuggling; while art. 12 establishes a reward fund intended to promote bilateral cooperation for the return of illegal migrants.

120 It was converted into Law 77/2019.

121 Translation by me.

122 During the decree’s conversion into law, administrative penalties have been increased, ranging now between 150.000 and 1.000.000 euros (ASGI 2019).

123 Before being converted into law, the bill ordered such a seizure only if the ship in question was habitual in its violation (ASGI 2019).

Shifting to public safety and law and order, the decreto sicurezza bis then concentrates on increasing punishments for violations carried out especially during demonstrations and protests in public areas. Art. 6 imposes harsher sanctions for those wearing – with no apparent justification – helmets or other face-covering items during protest movements and demonstrations in public areas, while also establishing a detention measure (up to four years of prison) for those who during such events make use of fireworks, sticks, firecrackers, flares etc. at the damage of other people and things.

Art. 7 d.l. follows with some modifications to the Italian criminal code, produced to increase punishment measures. Criminal actions are thus aggravated if carried out during demonstrations in public areas, consequently deserving more severe punishments. So, for example, resisting public officers becomes more serious, from a legal point of view, if such a resistance takes place during a demonstration; disruption of public service is punished in a more severe way if there is a demonstration going on; and damages to public goods are legally more important if they are done during demonstrations (Natale 2019).

Art. 10 d.l. is instead aimed at controlling the correct development of the 2019 Summer Universiade, held in Naples.

Chapter III of the decree concentrates, then, on measures to fight violence specifically during sport-related demonstrations. Also in this case, the decree considers violations to be legally worse if carried out during such events, deserving harsher punishments just in light of the social context in which they were carried out.

This second decree-law has been much criticized for the flaws it contains with respect to the Italian Constitution, communitarian obligations and international treaties¹²⁴. In the first place, two formal objections are worthy of note – the same two addressed also to the decreto sicurezza. The decreto sicurezza bis has been produced by the government using the only legislative instrument at its disposal for which no authorization of the Parliament is foreseen: the decree-law. But as already noted, such an instrument can be made use of only in cases of extreme necessity and urgency, cases which do not find concretization in the current reality of Italy, for – as also the Interior Minister has many times explained – migration flows have decreased, and the number of migrants arriving on boats has dropped (Zirulia 2019; Natale 2019). Hence, there being no necessary and urgent conditions for its enactment, the decree-law has been (ab)used by the government only to bypass an ordinary legislative process

¹²⁴ The United Nations High Commissioner for Refugees even asked “the Italian government to reconsider the decree” and modify it with a focus on migrants protection (UNHCR 2012).

(Zirulia 2019) – with the cabinet manifesting again a certain disrespect for the democratic separation of powers, and the Constitution. Producing a decree-law when the requisites of art.77 (on government’s possibilities of legislation) of the Italian Constitution are absent, means producing a legislation which is in contrast with such an article. The non-urgent and non-necessary conditions in which the decree was elaborated, are further made clear by the heterogenous array of topics thrown in the law, going from illegal migration to sport-related events (Zirulia 2019). It is important to recall here, that the Constitutional Court ruled that decree-laws must be homogeneous in order to respond to one single alarming situation (ruling 22/2002). Also in this case, to make the whole document fall under the label of ‘security’ is not enough, for there lacks a specific threat (ASGI 2019; Filodiritto 2019). Moreover, the decree-law has been approved by both chambers for its conversion into law, after the government had placed a motion of confidence on it, meaning that no discussion or rejection of single articles or amendments was possible, and the Parliament was confined again to a mere approval-giving body (Zirulia 2019).

Concerning art. 1 d.l., the first thing to be noticed is the attribution to the Interior Minister of powers usually owned by the Minister of Infrastructure and Transport (ASGI 2019). Indeed, according to art. 83 of the Italian *Codice della Navigazione* (Navigation Code), the Minister of Transport is the only one tasked with the power of deciding who can cross the country’s sea and terrestrial borders, and who cannot. With this new provision, however, the Interior Minister comes to have such a power as well (ASGI 2019). Since the provision does not specify which ship typology it addresses, it could be invoked also to deny entrance to NGO ships and humanitarian ships which came to migrants’ aid¹²⁵. Indeed, the measure seems elaborated with this very purpose, that is, granting the Interior Minister Salvini the power not to allow humanitarian ships into Italy’s territory, in order for the country not to be obliged to welcome further migrants (Magri 2019; Italia Stato Di Diritto 2019; ASGI 2019). So intended, such a measure creates no little problems, for it places the decree in violation of many international treaties, and consequently, in contrast with artt. 10 and 117 of the Italian Constitution, both about Italy’s duty to respect international obligations. Deciding to close the country’s borders to ships carrying asylum-seekers – as allowed by the decreto sicurezza bis – means indeed that Italy refuses to help people at sea who are in need; a behavior which is in contradiction with the obligations pending on the country because of the many international conventions ratified by the same (ASGI

¹²⁵ For some scholars, however, NGOs’ ships cannot be regarded as “*ex se* “offensive” (or “inoffensive”)” in that they are not involved in the activity of ‘loading or unloading’ people. Conversely, they rescue people at sea who are in need of aid, in compliance with international obligations. Following the same reasoning, then, the provisions of the decreto sicurezza bis would be completely useless (ASGI 2019).

2019; Filodiritto 2019). The international treaties from which such obligations derive include: the 1982 UN Convention on the Law of the Sea – also known as UNCLOS Convention – (in particular its art. 98), the 1974 International Convention for the Safety of Life at Sea – known as the SOLAS Convention – and the 1979 IMO International Convention on Maritime Search and Rescue – also known as the SAR Convention. But the provision introduced by art. 1 d.l. is in contrast also with other international conventions focusing on migration and human rights; in particular with the 1951 Geneva Convention (especially with its art. 33 and its principle of *non-refoulement*, obliging ratifying countries not to reject migrants toward places where their life could be at risk¹²⁶), with the EU Charter (which explicitly recalls the Geneva Convention in its art. 18), and with the ECHR (protocol n. 4, art. 4 on the prohibition of collective expulsion of aliens¹²⁷). But the fact of being in contradiction with many international commitments is not the only flaw of art.1 d.l. Indeed, by giving the Minister of the Interior the power to decide whether or not there is a violation of art. 19, section 2, letter g) of the Montego Bay Convention, the provision attributes to such a political figure a task traditionally exercised by the judiciary: that of checking potential norms' infringements (Filodiritto 2019; Camilli 2019c), going against that fundamental constitutional principle which is the separation of powers. As far as art. 2 of the decree is concerned, regarding the administrative sanctions to be imposed on everyone violating the Interior Minister's decision not to let a ship enter Italy, doubts have been expressed by the same President of the Republic, who highlighted, in a letter to the government, his worries about the application of so severe sanctions to every ship contradicting art. 1 d.l. without any specification in the decree of the ship type, of the persons carried by the ship, and of the conduct showed by the ship (ASGI 2019). Such a provision conflicts also with international obligations, pending on ship captains, to rescue people at sea and bring them to the closer safe place possible. Some scholars have also noted that art. 2 d.l. would just discourage ship staff from helping people at sea who are in need of aid, because the decree tends to criminalize search and rescue activities carried out by NGOs (ASGI 2019). Additionally, it would seem that beside administrative sanctions, the decree leaves open the possibility – in the case in which the ship entry comes to be interpreted as a crime – to impose also potential criminal punishments on the people who have violated the Interior Minister's order. If this were to be the situation, that is, if the decree's sentence in art. 2 dealing with criminal sanctions were to be understood in a cumulative way, the legislation would then violate the principle of *ne bis in*

126 In this sense, to ban a ship from entering Italy's sea frontiers substantially means to reject it (Italia Stato Di Diritto 2019).

127 Rejections at the frontier deriving from closed borders are to be compared to expulsions (Natale 2019).

idem as established by art. 649 of the Italian Code of Criminal Procedure, by protocol 7, art. 4 of the ECHR (Zirulia 2019), and by art. 50 of the EU Charter.

Concerning the introduction of a fund meant to finance subjects accepting to cooperate with Italy in a bilateral way for the return of irregular migrants arrived in the peninsula, many worries emerge. Art. 12 d.l. indeed does not specify who such subjects are, so that they could be both private and public entities. It does not specify either the way returns should be carried out, with the possibility of leaving returning modalities open to the interpretation of the subject carrying them out (with potential violations of the principle of *non-refoulement* and human rights). Such a provision needs therefore to be watched over (ASGI 2019).

As far as the remaining part of the decree is concerned, the strengthening of sanctions for violations carried out specifically during demonstrations in public areas and sport-related events appears too severe, and casts some doubts about the respect of the proportionality principle (Zirulia 2019). Such provisions are indeed held as representing the legislator's very specific conception of the world (Filodiritto 2019; Italia Stato Di Diritto 2019), according to which demonstrators are always a danger for society (Natale 2019; Camilli 2019c). Additionally, the trend – embraced already many years ago – to find in criminal sanctions the right form of punishment for people expressing social malaise, seems to be worryingly appreciated by the decree's legislator (Giglio 2019).

3.4.2.1 The *decreto sicurezza bis* applied

Despite the many controversies surrounding its very existence, the law is still active¹²⁸ and has many times been invoked in order to justify the Interior Minister Salvini's decision not to let ships enter Italian coastlines. The first application of the *decreto sicurezza bis* – well-known because of its consequences – occurred with regard to the NGO's ship Sea Watch 3, which on 15 June 2019 was denied the authorization to dock in Italian territory (Zirulia 2019). The ship carried about 40 migrants saved off the Libyan coast, and did not consider docking in Libya (as it is well known, Libya is not a safe country). After waiting for two days for a permission to enter Italian frontiers, the ship's captain Carola Rackete, decided to dock in Lampedusa even without Italian authorization, because of the migrants' poor conditions. As soon as she reached Italian territory, she was arrested, accused – among other criminal charges – of supporting illegal immigration. Released at the beginning of July, Ms.

¹²⁸ As it has been noted, such a law grants a huge discretionary power to the Interior Minister. In the current government, the Conte II cabinet, the policy of closed borders has been abandoned, with new Interior Minister Luciana Lamorgese having a much softer approach as far as the issue of migration is concerned (Rye, Koncewicz and Fasone 2019).

Rackete did not get sanctioned because of art. 51 of the Italian Criminal Code, saving from any sanctions those who carry out a duty imposed by the law. According to the judge, indeed, by not respecting the minister's order, the Sea Watch 3's captain had complied with the obligations pending on her as ship captain to save people at sea who are in need, and bring them to the closest safe place (Rye, Koncewicz and Fasone 2019).

Before that, however, Salvini had already denied entrance to another ship, the Italian Coast Guard's ship Ugo Diciotti. The case gained constitutional importance in that Salvini's decision triggered the intervention of the judiciary. In the summer of 2018, the Italian craft was originally denied access so as to 'force' Malta to offer a place of safety (Camilli 2019). Initially accused of kidnapping with the objective of coercion – for the decision was made in order to force the EU to change the rules of its Dublin Regulation (Santoro E. 2019) – Salvini was finally accused by the Tribunal of Catania (ministerial crimes section) of aggravated kidnapping, for having limited migrants' freedom with no justification, and in violation of international obligations deriving from the law of the sea (Camilli 2019). The charge was made worse by the fact that there were also minors on board, and that Salvini acted in his office as Interior Minister (Marsala 2019; Santoro E. 2019). As noted by Rye, Koncewicz and Fasone (2019), the Diciotti case was the final "escalation" of a tense relationship between the judiciary and the executive. In order for Italian ministers to be prosecuted, art. 96 of the Constitution requests a special authorization released by the Parliament, an authorization which was denied by the Senate under the justification that Salvini acted in the name of Italy's public interest. It has been noticed that even though such a denial is perfectly compatible with the provisions of the Italian Constitution, it is nonetheless "symptomatic of a democratic and rule of law *malaise*" which is unfolding in the country (Rye, Koncewicz and Fasone 2019).

The application of the decree's first provision continued, as did also the charges against the Interior Minister. At the beginning of August 2019, Salvini ordered the NGO's ship Open Arms – carrying between 160 and 170 migrants rescued off the Libyan coast – not to enter Italian frontiers, thus keeping the vessel wait for 19 days at sea despite the declared serious health conditions of many passengers (Ziniti 2019). The ship was then seized by the Agrigento attorney's office and let dock in the port of Lampedusa (Sciacca and Sclaunich 2019; Ziniti 2019c; Ziniti 2019d). After charges pressed against the

Interior Minister by the NGO in question, Salvini was accused of kidnapping also by the Agrigento attorney's office (Ziniti 2019b)

Lately, the consequences of another denial of entry ordered by Salvini are making themselves feel. Indeed, at the end of July 2019, the Interior Minister did not authorize the Italian Coast Guard's ship Gregoretti to dock in Italian ports. The (*Italian*) ship, carrying 131 migrants, was kept waiting for 5 days in the port of Augusta before being allowed to enter Italian borders. Again, Salvini was charged of aggravated kidnapping for having limited migrants' freedom, and for having violated obligations Italy has under European and international law (La Rosa 2019). What is more controversial, however, is that Salvini's decision violated the same provisions of art. 1 of the decreto sicurezza bis, establishing that ships bans cannot be imposed on warships and government ships used for non-commercial objectives. Indeed, the Gregoretti craft was and is a ship of the Italian Coast Guard, that is, a warship (La Rosa 2019). On 20 January 2020, the Senate gave its authorization to have former Interior Minister Salvini prosecuted. The M5S voted in favor of such a provision, with Di Maio stating that conversely to what had happened in the Diciotti case, this time Salvini acted just to satisfy his personal objective, and in disagreement with the other members of the cabinet (Ziniti 2019).

Salvini's reaction to such charges has always been designed to discredit the judiciary. Accordingly, while he acted following a mandate directly received from the people, judges had no democratic legitimacy, for they had never been elected by citizens nor were they representative of the same (Rye, Koncewicz and Fasone 2019). Evidently, such a disregard for the judiciary is in contrast with the same Constitution, establishing that each branch has equal importance (Rye, Koncewicz and Fasone 2019). Recalling his democratic mandate, the Lega's leader has accused the legal power of trying to hinder the actions of his party because of a different ideological approach – following the way which had already been paved very well by Berlusconi.

3.4.3 Parliament's constitutional composition reduction

At the beginning of October 2019 – under the Conte II cabinet – a constitutional amendment bill, changing the composition of the Parliament by reducing the number of its members, was approved after less than one year of discussion¹²⁹. The bill was brought before the legislative branch by the entire

¹²⁹ Since the constitutional amendment bill was not approved by the Parliament with a two-third majority, a referendum must be carried out. Such a referendum is still to be held.

government coalition, being in reality a milestone of the M5S's agenda (Palermo 2019; Patta 2019). It is indeed to be regarded as an attempt by the same party to correct the inherent flaws of representative democracy (Corso 2019). The approved bill aims to reduce the number of MPs from 630 to 400 in the chamber of Deputies, and from 325 to 200 in the Senate (from which number, life senators are excluded). Such a reform is not in itself populist, for many parties before Di Maio's one have been advocating for a transformation of the legislative body, and surely a change was needed. However, if for this reason the constitutional amendment can be regarded as an "educational" opportunity, on the other side, the reasons proposed to justify it are quite worrying and the result of a simplistic understanding of politics (Palermo 2019). It has indeed been criticized how a change of such an importance cannot be legitimized in the name of budget reduction and anti-elite rhetoric, for the implicit consequences of the amendment are so far-reaching, that a very deep analysis must have been necessarily carried out before proposing it – at least if the reform is not to be intended as completely random (Lupo 2019; Patta 2019). The little time used to debate the legislation might, however, suggest a different perspective. By altering the quantitative composition of the Parliament, the very function of the institution – that of representation – is inevitably decreased, while the balance of the entire democratic system is destroyed and must be reestablished in a careful way. Indeed, with the reduction introduced by the reform, a smaller number of people is going to elect important offices like those of constitutional judges and of the President of the Republic (Palermo 2019; Patta 2019). If the objective was that of loosening the elite's hold on politics, the unintentional consequences of the constitutional amendment might rather push in the opposite direction, with important decisional powers ending up being concentrated in the hands of a few elected, whose decisions are able to condition the entire democratic system. The hope is that the electoral law which will establish the way the new Parliament has to be elected (that is still to be elaborated) be mindful of possible shortcomings, and drafted in such a way so as to avoid that absolute majorities may easily be created.

3.4.4 Assessing the impact of populism in government: the M5S-Lega cabinet

After having explained the most controversial policies carried out by the M5S-Lega government, it is now necessary to analyze them with regard to constitutionalism and the rule of law, in order to grasp their real effect on constitutional liberal democracy.

The first thing to be noticed is the government's attitude to deprive the Parliament of its legislative (and representative) function, bypassing such an institution in order to produce bills (as the two security

decrees) which are not the result of pluralistic discussion and compromise, but rather the arbitrary concretization of the general will. The motion of confidence put on the same security decrees is to be regarded in a similar fashion, for its objective was that of making the Parliament ‘subject’ to the will of the executive. There emerges, from the way both pieces of legislation were elaborated and passed, a certain inclination to strengthen the government over the legislative branch. Such an inclination – similar to that showed by the Berlusconi experience of government – is in contrast with the constitutional principle of separations of powers and its related system of checks and balances. Similarly to the Parliament, and in line with such a contrast, also the judiciary has been attacked. Both decrees tried to give the executive tasks traditionally in the hands of judges, thus marginalizing their function at the advantage of politics. The delegitimization of the judiciary has occurred also because of the accusations addressed to the same by Salvini, when he was reminded that in a country characterized by the rule of law, politics cannot prevail over law. Many provisions of the bills analyzed, then, are incompatible with norms of the Italian Constitution, with obligations deriving from EU law, and with practices and commitments stemming from international law. All such incompatibilities relate to the protection of fundamental rights, widely disregarded by the two security decrees. As a consequence, the M5S-Lega government (and even more so the Lega, main author of the legislations we are considering) is characterized by a certain disrespectful stance toward the rule of law – the paramount principle of constitutionalism. By threatening the principles of separation of powers, the system of checks and balances and the protection of fundamental rights, additionally, the coalition also threatened the very core of modern democracy.

3.5 Italy’s many populisms: is there a common core?

In this chapter, five different examples of Italian populism have been analyzed: one arising after WW2 (the Fronte dell’Uomo Qualunque), one developing little before the explosion of Tangentopoli and recently turning from regionalism to nationalism (the Lega Nord now simply Lega), one deriving exactly from Tangentopoli (Forza Italia), one appearing in response to the broken promises of post-Tangentopoli Italy (the MoVimento Cinque Stelle), and one probably emerging as a reaction against the 2008 Eurozone crisis and the way it was handled (Fratelli d’Italia). At this stage the question is: is there a common core to the five cases of populism here analyzed? Do they have similar effects on the rule of law?

The first common feature to be found in all parties under analysis is a majoritarian and exclusionist approach. Indeed, all the investigated political organizations claim to embody the *volonté générale* of their country, at the expenses of minority groups. The people is consequently held as sharing the same will, the same populist ideology. By doing so, all such cases of populism share an anti-pluralistic stance. All cases of Italian populism also have an anti-elitism approach, for the elites are always regarded as the number one enemy. The other members of the out-group, then, change according to each party's secondary ideology and historical contingencies: the Lega and Fratelli d'Italia have an exclusionist approach toward migrants, Muslims, and homosexual individuals; the M5S does not take into account mainly journalists and banks, Forza Italia opposed communists, the Fronte dell'Uomo Qualunque focused its attacks on politicians only.

Forza Italia's, the Lega's and the M5S's relationship with the rule of law has been shown by the policies such parties have implemented once in government. Conversely, in the case of the Fronte dell'Uomo Qualunque and Fratelli d'Italia, one can deduce it only from their ideologies, for these two organizations never made it to the executive. One can thus suppose that their strong focus on majoritarianism might translate into an opposition to non-majoritarian bodies like the judiciary (also because of its pluralism-preserving role), or representative ones like the Parliament, with obvious consequences for the principles of separation of powers, checks and balances and the rule of law. As said, Forza Italia, the Lega and the M5S had their time in the government. Their cabinets have produced similar effects, even though in the case of the M5S-Lega coalition less policies have been implemented because of the shorter time in the executive. From the actions of both governments, there emerges a certain tendency to strengthen the executive at the expenses of both the legislative and the judicial branches. Both coalitions have relied on urgency legislation in order to make the will of the majority prevail, bypassing the Parliament and limiting its representative function. Both have tried to hinder the judiciary and to discredit it. In particular, the FI-LN alliance has tried to make the judiciary less independent through a process of politicization. The M5S-Lega cabinet, instead, has proceeded in the same direction by giving political figures the power to decide in domains usually managed by judges. Both experiences, then, have publicly discredited the very role of legal bodies. This has been carried out especially by Berlusconi and Salvini in reaction to their being reminded that the law is equal for everyone and is to be respected. Indeed, both leaders have many times accused judges and courts of hindering their parties' political program just because ideologically different from their stances, and of lacking that legitimacy which only an electoral mandate can give. Additionally, both governments have

been characterized by a certain unconcern for the law – be this national, European or international – and for the protection of fundamental rights by the same enshrined and protected. In conclusion, then, both the FI-LN cabinet, and the M5S-Lega government have proved to have a conflictual relationship with the rule of law, the principle of separation of powers, the system of checks and balances, the protection of fundamental freedoms, pluralism and constitutionalism more in general. Both have therefore proved to be in contrast with – and dangerous for – modern democracy.

CHAPTER 4

POPULISM IN HUNGARY

[...] the Hungarian nation is not simply a group of individuals but a community that must be organised, reinforced and in fact constructed. And so in this sense the new state that we are constructing in Hungary is an illiberal state, a non-liberal state. It does not reject the fundamental principles of liberalism such as freedom, and I could list a few more, but it does not make this ideology the central element of state organisation, [...] [it] instead includes a different, special, national approach.

(Orbán 2014)

4.1 Rise and development of the populist phenomenon in Hungary

The four parties presented in this section – the National Peasant Party originating from the *népi* movement, the MIÉP, Jobbik, and Fidesz – are all classifiable as populist organizations, following Mudde’s definition of populism as provided in the first chapter of the present work. Indeed, such movements conceive of society as being divided into two morally different and naturally antagonist groups – the real people, and the corrupt elites – and aim at establishing a political system based on the will of the majority. All the Hungarian groups considered here, embrace populism as their main thin ideology, secondarily relying on right-wing stances. All such Hungarian populist groups, then, tend to show anti-liberal and anti-pluralist positions.

4.1.1 Interwar populism: the *népi* movement

The origin of the populist phenomenon in Hungary is individuated by many scholars in the literary movement that developed in the country during the late-1920s¹³⁰ (Vardy 1978; Bartha 2015; Bozóki 2015). Referred to as *népi mozgalom*, meaning indeed ‘populist movement’, it emerged out of the political and social context of the Horthy regime¹³¹, articulating those feelings of resentment left by the

¹³⁰ According to Trencsényi (2014), however, the first example of agrarian populism in Hungary is to be found in the Smallholders’ Party. Originating at the end of the 1910s under the leadership of István Nagyatádi Szabó, it mixed “conservative agrarianism and socialistic peasantism”. The party had a very short existence, for it merged in 1922 with the conservative and nationalist Christian National Unity Party into the new Catholic-Christian Smallholders’ Peasant and Bourgeois Party, better known as the Party of Unity (Vardy 1983). The Smallholders’ Party as an independent organization will be, anyway, re-established in 1930 (Fazekas and Fekete 2018; Mészáros, Solymosi and Speiser 2007).

¹³¹ Hungary was at the time a multi-party parliamentary system with a head of state, a prime minister and a parliament. Elections were regularly held in order to shape the parliament, and the prime minister was directly appointed by the head of state. The powers of the latter figure, embodied by admiral Horthy, were notably broader than those of any other entity in the system. The regime was conservative, and the right to vote was limited by sex, age, education, and property criteria (Vardy 1983). The at-the-time Hungarian system was considered as having many “democratic elements” but also a “strong autocratic character” (Fazekas and Fekete 2018).

defeat in WWI and the structure of the Habsburg monarchy¹³². As a consequence of the Great War, Hungary lost more than 70% of its territory, so that more than the half of its population came to be ruled by neighboring countries' governments (Vardy 1983). The Habsburg family had made the region experience an important economic development, with a push toward capitalism and the creation of modern urban places (Csepeli 1996; Bozóki 2015). The consequence of these two situations was a strong nationalism coupled by anti-Semitism, and a huge gap between the bourgeoisie and the peasantry, making up the majority of the population and feeling unrepresented in the political game (Vardy 1983; Bozóki 2015). As explained by Papp, the *népi* movement aimed at improving the economic and social conditions of the rural masses, excluded and marginalized by the urban governing elites (Bartha 2015). It proposed a certain romanticization of the peasantry, regarded as characterized by 'regenerative powers' in light of its 'morally and culturally' uncorrupt nature (Vardy 1978); while at the same time distrusting governing elites because of their ties with modernization, capitalism and urbanism, perceived as alien and negative phenomena (Trencsényi 2014; Antal 2018; Bozóki 2015). The *népi* movement was set up after the ideas spread by the writers Dezső Szabó and László Németh in the first place¹³³ (Lackó 1996). The first founding father moved along the lines of peasant glorification and racism, showing anti-liberal traits: communitarianism was indeed believed to be the value to preserve in order to avoid societal failure, the latter being regarded as unavoidable in the case of liberalism supremacy (Bozóki 2015). This form of populism was very similar – for its cultural and intellectual traits – to the Russian *narodnichestvo*, from which it however diverged because of its lack of revolutionary elements, and the political organization it later acquired (Vardy 1978). Entrance in the political world was one of the most relevant questions the populist writers tried to solve: since the cultural movement was supported only by intellectuals and some peasants, in order to bring about a change in the direction of a fairer society, the movement needed to turn political (Taylor 2008; Bozóki 2015). As a consequence, in 1938 the *Nemzeti Parasztpárt* (National Peasant Party) was founded by the core *népi* supporters, proposing a political program which merged nationalism and socialism together, and was directly inspired by Szabó's writings named 'Towards a New Hungarian Ideology' (Bozóki

132 According to Cornelius (1990), the populist writers movement was inspired by the ideas of many small youth groups originating at the beginning of the 1920s. Such clubs were made up of Hungarian youngsters either living in Hungary or without it, in the other neighboring countries where a huge part of Hungary's population found itself after the redrawing of borders as established by the 1920 Treaty of Trianon. Organizing visits to villages and defending social justice, these groups influenced many future members of the *népi* movement, especially Dezső Győry, Dezső Szabó and Zsigmond Móricz, who corresponded with them and started to write articles about their activities.

133 Vardy (1978) regarded the intellectuals Endre Ady and Zsigmond Móricz as two other founding personalities of the populist movement; while Antal (2018) considered Gyula Illyés, Zoltán Szabó, Péter Veres, Géza Féja, Imre Kovács, and István Bibó as additional leading cultural members of the same *népi* organization.

2015). Apart from land reform, the most significant nationalistic feature of the new party, was its concern for the fate of the thousands of Hungarians forced to live in foreign countries but still considered a part of the homeland. In a sense, populism will prove fundamental for the development of nationalistic feelings, and a sense of belonging and consciousness in the country (Csepeli, 1996; Taylor 2008). According to Antal (2018) – and he extends the same consideration to the whole region of Eastern Europe – populism cannot be here considered without its nationalistic component. An exclusivist approach characterized the National Peasant Party, where Jews were criticized and not considered part of the people, in the name of their different nationality and religion. Indeed, despite the fact that some of its representatives rejected being labeled as anti-Semitic, Kodolányi’s writings are exemplary of the group’s hostility toward what was perceived as alien: “No matter how much my Jewish acquaintances live within the society of the city, I still do not consider them to be Hungarian” (Csepeli 1996). The populists even supported some anti-Jewish legislation passed at the time, defending their being Hungarian and Christian (Lackó 1996). Despite the transformation from a writers’ movement to a political party, the populist organization never became influential in the political realm (Bozóki 2015). The persuasion of the *népi* movement was therefore mainly (ethno)cultural, for it succeeded in keeping Hungarian self-consciousness alive, without ever implementing any concrete policy (Bozóki 2015). This was in line with the conception shared by some of the founding fathers in the 1930s, before the organization was given a political identity, to remain spiritual in order to avoid the stagnation typical of politics and its unavoidable corruption (Taylor 2008). It will be precisely this intellectual dimension to allow populism to survive the Communist period (Bartha 2015). When Hungary turned dictatorial, indeed, some of the party’s members decided or were forced to cooperate with the Communists, while many others fled the country: as a consequence, the concrete existence of the populist party was over by the end of the 1940s¹³⁴ (Vardy 1978; Taylor 2008). Even though the populists were not successful as a political group, their influence on the cultural mindset of Hungary was impressive, for it was destined to last over time (Vardy 1978; Taylor 2008; Trencsényi 2014). Populism remained alive during the entire communist period only in cultural terms, for other parties but the communist one were banned, and independent non-aligned literary production was victim of censorship. It will be able to emerge again in a manifest way – that is, in the form of a political party – only after the demise of the communist regime, regarding such a system – together with Western economic influence – as a form of foreign oppression to be opposed,

¹³⁴ The party reorganized itself in 1956 as the *Petőfi Párt* (Petőfi Party) and was involved in the failed revolution carried out by Hungarians against the Soviet regime. The experience was however extremely short-lived (Taylor 2008).

while continuing to support the national question of Hungarian living in other Eastern European countries (Bozóki 2015).

As just seen, the *népi* movement never made it to the government. Consequently, to assess its tangible impact on the Hungarian political system of the interwar period is pretty harsh, in that the group is analyzable only from an ideological perspective which never really turned into reality. Even by recognizing that ideological and rhetorical items not always translate into parallel policies, it is still possible to consider what the movement's impact could have been on a liberal democratic system, had its ideas translated into real practice. The movement's ethnic nationalism – coupled with a special interest for ethnic Hungarians not living in Hungary – indicates an inclination to make the will of the majority prevail. An attitude this, which is coupled and confirmed by the movement's exclusionist approach toward minority groups, like the Jews or the governing elites of the time. Being these two groups not considered as part of the people, their will was not included in the general will supported by the populist movement. Therefore, the ideal society called for by the *népi* writers was one in which minorities were not taken into account or protected. From opposition to specific minority groups, there emerges also an attitude against pluralism and liberalism. In particular, anti-liberal stances were clearly advocated for by some of the original writers, in that liberalism with its focus on the individual rather than on the community, was regarded as a corrosive and dangerous practice. The party's inclination toward the imposition of the general will, together with its anti-pluralism and anti-liberalism are then further expressed by the same when it claims to represent the whole Hungarian population, irrespective of those who may not really feel represented by the movement's majoritarian ideas (like the elite or the Jews). The *népi* movement openly defended democracy, but the implications of its message were rather undemocratic. Its aim was indeed the establishment of a government representative of only the majority – with the exclusion of minority groups – when democracy derives instead from the tension between majority will and minorities' protection. As far as constitutionalism is concerned, the movement's non consideration of minority groups and its opposition to pluralism, let imagine that it would oppose institutions defending those same values, like the judiciary. In this sense, the *népi* group might be thought of as disrespectful of the separation of powers and of the system of checks and balances – which it would regard as hindering its main project of majority will – in turn highlighting a certain disregard for constitutionalism as well.

4.1.2 Post-democratic transition populism: the MIÉP

After the breakdown of communism (1988-1989), Hungary re-established itself as a democratic republic based on a multi-party system. Some parties of the previous regime re-emerged transforming themselves, the communist party changed its name and orientation, and some other political organizations were created from scratch¹³⁵ (Fazekas and Fekete 2018; Mészáros, Solymosi and Speiser 2007). Among the latter category there were the Hungarian Democratic Forum (*Magyar Demokrata Fórum*) and Fidesz.

As a consequence of the passing of time and changing of society, populism now had to adapt to the new social situation in which it found itself, characterized by democracy and market-economy. The phenomenon confronted thus the deficits of the double process of transition Hungary was undergoing, from which people expected welfare and good living conditions. Post-transition Hungarian populism is grounded – as any manifestation of populism in post-communist Eastern Europe – on the idea that the revolution was taken away from the people by an elite which is identical to the communist one, and that as a consequence the system still needs to be changed (Szôcs 1998; Stanley 2017).

The first populist party appearing in the country after the transition, was the *Magyar Igazság és Élet Pártja* [MIÉP] (Hungarian Justice and Life Party), set up in 1993 from a split of the Hungarian Democratic Forum, under the leadership of István Csurka. A writer¹³⁶, Csurka represented the most radical faction of the Hungarian Democratic Forum, and regarded the new President of the Republic as a representative of foreign interests trying to exploit his country (Szôcs 1998). He criticized his fellow party-men in the Democratic Forum for having compromised with the elite in order to reach power, supporting a ‘politics of pacts’ (Bozóki 2015). According to his anti-establishment and anti-elitism message, current incumbents were not Hungarians but alien, and they had deprived the people of a real transition from communism (Vidra and Fox 2014; Kovács 2013; Bozóki and Kriza 2002). In Hungary, opposition to elites is thus defined exclusively in ethnical terms, for they are not considered real Hungarians but rather foreigners trying to submit the country. Csurka opposed communism and was critical of liberalism, his message being indeed an exclusivist one, ‘isolating and racist’ (Bozóki 2015). The MIÉP’s program was characterized by chauvinism, nationalism, anti-Semitism, xenophobia, anti-EU feelings, anti-NATO feelings, exaltation of Christian values, and opposition to liberalism,

¹³⁵ Hungarian political parties follow the same right/left ideological distinction as in the West. However, such stances are perceived in the country in a different way, for the left of the political spectrum tends to be associated with parties deriving from the old regime, while the right stands in opposition to those same parties (Mészáros, Solymosi and Speiser 2007).

¹³⁶ By simultaneously being a populist politician and a populist writer, Csurka preserved some of the traditional traits of the historical *népi* movement (Bozóki and Kriza 2002).

globalization and international finance (Pap and Glied 2018; Szôcs 1998). The party also articulated conspiratorial theories, according to which international, financial, and liberal organizations would be trying to colonize Hungary once again after Soviet oppression (Pap and Glied 2018; Kovács 2013). According to Csurka, the country was then in a situation of “quasi-democracy”, therefore the party’s goal was that of establishing a real democracy based on national and social values of ethnical identity (Bozóki and Kriza 2002). The MIÉP has been for all its life a very marginal party, never gaining more than 5.47% of the votes, and being regarded by the other political organizations of the country as unfit for governing (Bozóki and Kriza 2002).

Like the *népi* movement, the MIÉP never made it to the government. Also in this case, therefore, an assessment of the party’s impact on the new democratic system of Hungary, is possible only on the basis of the party’s ideological and rhetorical mindset’s analysis, rather than of its implemented policies. The MIÉP’s focus on ethnic nationalism, coupled with its feelings of anti-Semitism, is exemplary of the party’s inclination to consider only the majority of citizens without taking care of, or recognize, minority groups. The ethnic majority of Hungarians is the only social element considered, and their will and needs must prevail over those of minority groups like the Jews or the same elites. Non-representation of minorities means also opposition to pluralism, for the party accepts just one social segment. In turn, disrespect for pluralism, leads to disrespect for liberalism, a stance which the party manifestly supported. The MIÉP opposed the at-the-time current Hungarian elite, but since it was the first elite elected using democratic procedures, and consequently an elite decided democratically by the people, its anti-elitism is in this sense full of undemocratic shades. By opposing someone who has been elected by the people, the party also opposed the functioning of democracy itself, for it implicitly rejected the will of the majority it purportedly supported. A conclusion that seems even more clear if one considers that the party never received more than 6% of the votes. Csurka claimed that Hungary at the time was just a quasi-democracy, implying that a full democratic regime would have been possible only with the creation of an ethnic national community. But again, this consideration is not inclusive, and consequently his vision of democracy appears rather undemocratic. Csurka’s accusations toward his former party, the Hungarian Democratic Forum, denounced because of its willingness to compromise with other political organizations and establish alliances, further underlines the MIÉP’s opposition to liberalism and pluralism. Democracy in itself is the result of different interests which are equally expressed and considered, but by opposing compromise in the political realm, the party showed

its disrespect for different ideological views. Given the unconcern for every institution and political actor not aligned with the MIÉP – regarded by the same as quasi-democratic – and of its non-consideration of minority groups, one can imagine the party would not respect the principle of separation of powers and the system of checks and balances, for these usually protect minority groups' rights and pluralism. Consequently, a certain opposition attitude toward constitutionalism is also foreseeable in the MIÉP's approach.

4.1.3 Contemporary populism: Jobbik and Fidesz

In response to the MIÉP's unattractiveness, a new radical movement was set up by a group of right-wing young intellectuals: the *Jobboldali Ifjúsági Közösség* (Right-Wing Youth Association) (Kovács 2013; Vidra and Fox 2014). The organization became a fully-fledged political party in 2003, with the name of *Jobbik Magyarországért Mozgalom*¹³⁷ (Jobbik – Movement for a Better Hungary) (Kovács 2013). Accusing mainstream parties of being too distant from the people and of using an incomprehensible language, Jobbik claimed since the beginning to be different from traditional political actors, in that it truly acted in the name of the whole Hungarian people. It denounced Hungarian current political and economic elites because of their continuity with the past regime, advocating for a real change in the system. Accordingly, a democratic transition still had to take place, and this was only possible if the process was led by a real representative of the people – as the party deemed to be. Gabor Vona, Jobbik's leader, made this idea clear when he said that the left and the right “ha[d] deliberately and completely destroyed the country” (Kovács 2013).

The movement opposes multiculturalism and non-conventional subcultures like the LGBT one: it wants to abolish the Gay Pride manifestation annually held in Budapest, while simultaneously aiming at creating a country made up of only real Hungarians (Enyedi 2016). In this sense, it is possible to grasp the exclusionary and xenophobic approach of the organization, which advocates for a partisan state acting in the name of the Hungarian majority, while rejecting protection and recognition of the most vulnerable groups of society and ethnic minorities. Jobbik has framed its political message taking back old racial issues, like mistrust and resentment for the Jews, and adapting them to new circumstances (Kovács 2013). Such a religious group is thus framed by Vona as responsible for the phenomenon of globalization, which in turn is the reason why many Hungarians feel threatened in their own home-

¹³⁷ In Hungarian, the word *jobb* can mean either ‘better’ or ‘right’ (Kovács 2013; Murer 2015). In this sense, the party name indicates both that the organization is the better alternative in the country, and that it has a right-wing ideological orientation (Murer 2015).

country¹³⁸. However, Jobbik has also politicized new issues, until that moment not part of the political debate. The Roma question is surely the best example in this sense. Not considered part of the in-group, Roma minorities are the subject of proposed racial demands authored by the organization, asking for school segregation and the restriction of welfare services (Kovács 2013). Radicalizing its positions in order to distinguish itself from Fidesz, Jobbik has reintroduced the politically incorrect notion of ‘Gypsy crime¹³⁹’, according to which Gypsies would inherently be criminals (Vidra and Fox 2014; Kovács 2013). The New Hungarian Guard, together with other similar groups, is an action organization related to the party, and founded by the same with the intention of strengthening national defense¹⁴⁰. Its basic targets are Jews and Roma (Murer 2015).

The search for an enemy allows the populist party to create a unitarian group of Hungarians, from which communists, oligarchs linked to the previous regime, ethnic and religious minorities are all excluded. Part of the in-group are considered also Hungarian minorities living abroad (Kovács 2013). Opposition to international organizations, EU¹⁴¹ and NATO in the front line, is a typical attitude of such a radical party, which considers them as new forms of Soviet oppression. Following the example provided by the UK, Vona questioned Hungarian membership in the European Union, informing about his proposal for a referendum (Murer 2015). The same approach was followed as far as NATO is concerned, for the party also demanded Hungary’s withdrawal from it (Kovács 2013). In the same fashion, Jobbik has criticized NATO for perpetuating only American interests, accusing the country of being extremely corrupt, while simultaneously praising Russia’ morality (Murer 2015). From its public position and political program, Jobbik is a movement supporting anti-Semitism, anti-immigration stances, xenophobia, anti-liberalism, law and order issues, nationalism, euro-skepticism, aversion to capitalism and cosmopolitanism, and a strong and partial state (Pap and Glied 2018; Enyedi 2016). Its opposition to big business and global markets is to be interpreted in ethnical terms, for financial organizations and entities are intended as foreign interests trying to sabotage the country, thus leaving it open to the arrival of non-Hungarian people (Varga 2014). Conversely to the attitude usually embraced

138 Significant in this sense is the demand, made by a Jobbik MP in 2012, to have a list of government members and parliament staff of Jewish origin, regarded as representing a risk for the security of the country (Kovács 2013).

139 The expression ‘Gypsy crime’ was used mainly during the 1970s and 1980s by the police, when referring to criminal offenses and practices carried out by people of Roma origin. The term was, however, discredited at the end of the 1990s because referring to Roma as naturally criminals, thus being politically incorrect and racist (Vidra and Fox 2014).

140 The New Hungarian Guard is the *de facto* successor of the Hungarian Guard, founded in 2007 with the same aim, and later disbanded by the metropolitan Court of Budapest (Murer 2015).

141 Despite the criticisms usually addressed to the European Union, Hungary remains dependent on it for ‘‘infrastructure funds, agricultural support, and access to market’’; while Jobbik gained legitimacy in the Hungarian party system only thanks to the EP elections (Murer 2015).

by populists, Jobbik has a pro-Islam stance. Islam is regarded as the only way left to stop Western globalization and liberalism, both corrupt phenomena which are destroying the world (Pap and Glied 2018; Enyedi 2016). Even though the party's positive evaluation of Islam conditions its foreign policy, after the 2015 migration crisis, Jobbik has supported an anti-immigration stance, thus showing some inner contradictions (Pap and Glied 2018). Despite the fact that it never reached the country's government, Jobbik is today 'the second most popular' organization in Hungary after Fidesz, and the major representative party of the opposition (Murer 2015; Antal 2018).

The non-presence of Jobbik in the government makes it so that an assessment of its impact on Hungary's democratic system can be based only on the political and ideological program the party rhetorically and theoretically supports, for an analysis of its concrete decisions and policies is obviously not possible. Jobbik uses the language of ethnic nationalism, considering ethnic Hungarians to be the real country, from which minority groups like the Jews, the Roma, and migrants are excluded. However, even within the group of ethnic Hungarians, there prevails an exclusionist approach, for some of them – namely Hungarians having non-traditional lifestyles like members of the LGBT community – are not included. Elites, even though of Hungarian origins, are considered another group worth of being left out. The party's attitude is therefore that of making the will of the majority prevail. All those who are not considered as part of the majoritarian group, are completely excluded from consideration and representation. This is true even if the party claims to represent the will of the whole population, for minority groups are evidently not included in the majority of the country. The consequence is, obviously, a tyrannical majoritarian approach, which by being unconcerned with minorities, is also profoundly undemocratic. The intentional exclusion of minorities the party defends, stresses also the group's anti-liberal and anti-pluralistic stance. Indeed, liberalism is manifestly opposed because of the dangers different stances can bring about. Jobbik's emphasis on majority will, together with a rejection of pluralism as just highlighted, let suppose that the party might have a hostile stance toward the constitutional principles of separation of powers and checks and balances, likely regarded as non-representative of the will of the majority, and consequently non-democratic in the party's understanding of the term. Indeed, by protecting minority groups and checking that no power prevails above the other, the judiciary could be looked at as hindering Jobbik's main objective – which is simultaneously also the judiciary's primary concern – that is, the imposition of a tyranny of the majority. Jobbik is thus potentially hostile to the principles of constitutionalism. But unconcern for

constitutionalism also implies a certain disregard for democracy itself. Indeed, as explained above, democracy is a compromise between different interests and ideologies, and by refusing everything which does not belong to the supposedly will of the majority, Jobbik disrespects the ground upon which liberal democracy is founded, that is, the protection of minority groups and their representation.

The most “unusual” political party in contemporary Hungary is Fidesz (Kiss 2002). Fidesz – Hungarian acronym for *Fiatal Demokraták Szövetsége* (Federation of Young Democrats) – was founded in 1988 by a group of young university students, coming mainly from the faculty of law, among whom Viktor Orbán, Gábor Fodor and László Kövér (Kubas and Czyż 2018; Mészáros, Solymosi and Speiser 2007). The organization originally embraced a liberal stance, advocating for democratization, a free market economy, private property, human rights, neutrality of the state, secularization, and liberalism; while vehemently opposing communism, its nationalism and its *modus operandi* (Kubas and Czyż 2018; Kiss 2002). After a dispute between Gábor Fodor and Viktor Orbán – caused by the diverging understandings the two had concerning economics and social rights – the leadership of the party was taken by the first student, and the group was strengthened in its organizational form around the figure of the new chairman: Fidesz thus stopped being a student organization and became an effective political party (Kiss 2002). Starting in 1994, with the new leadership of Orbán, Fidesz underwent also an ideological shift, turning from a radical-liberal organization into a right-wing populist one. By 1995 its identity shift was completed (Kiss 2002), and the party name was added the denotation *Magyar Polgári Párt* (Hungarian Civic Party) (Kubas and Czyż 2018). According to many scholars, the ideological profile change was due to the party’s poor performance in the electoral game, and the presence of already another liberal organization in the Hungarian party system (Kubas and Czyż 2018; Lendvai 2019; Egedy 2009; Rupnik 2012). Indeed, liberalism was the ideological core of the Alliance of Free Democrats – SzDSz. At the same time, the right side of the political spectrum was characterized by a vacuum, for its main representative, the Hungarian Democratic Forum, had started to vacillate (Rupnik 2012). As a consequence, Fidesz’s ideological shift can be understood as a strategic choice, done in order to gain power. Such a turn was possible because of the relatively young character of the party and the fact that it rotated around the decisions of a single person, uncritically followed by the ranks and files of the organization (Kiss 2002). The success of such a strategic decision was made clear in 1998, when Fidesz won the national elections, becoming the leading organization in the government. The right-wing populist stance of the party will intensify after the loss of the 2002 elections. Criticizing

political incumbents because of their alleged irresponsibility and corruption, and attacking them of perpetuating communism despite the formal revolution, Fidesz stopped being considered a party of the establishment, and became an outsider. Its political program was focused on nationalism, exaltation of Christian values, a strong state, euro-skepticism, anti-liberalism, anti-immigration stances, anti-Western feelings, anti-communism and a rejection of multiculturalism (Lendvai 2019; Egedy 2009; Enyedi 2016; Kiss 2002; Bozóki 2015). Basically Fidesz merges a right-wing oriented cultural stance and a left-wing oriented economic stance of state intervention (Egedy 2009). The party's main focus is on the protection of Hungary's national interests and culture from any possible interference or threat, be it in the form of foreign entities or individuals. As a consequence, particular emphasis is attributed to the recognition and protection of Hungarian minorities living abroad (Kubas and Czyż 2018). Hungary is understood as the sum of all Hungarians whose personal individualist identity disappears in the interests and benefits of the community, as was made clear by Orbán himself (Murer 2015). Consumerism, privatization, globalization, economic and financial liberalism, cosmopolitanism, the emergence of new subcultures and the spread of different religious creeds are in turn regarded as forms of domination coming from without Hungarian borders, with the attempt of imposing a certain unnatural vision of the world to the country (Enyedi 2016). Some of Fidesz's ideas are clearly taken from its right-wing colleague Jobbik, being just softened (Enyedi 2016). By opposing foreign powers and internal enemies, while simultaneously defending a conservative Hungarian essence, based on Christianity in its classical sense, Fidesz claims that there exists "a natural order in the realm of morality" that it will protect (Egedy 2009). In its messages, the populist party claims to speak on behalf on the whole nation, which only it can represent. This has been exemplified in an unmistakable way when after losing the 2002 national elections, the party's leader announced that the competition could not have been fair, for "the nation cannot be in opposition" (Bozóki 2015). At the moment, Fidesz is the strongest political force in Hungary (Kubas and Czyż 2018).

4.2 Contemporary populism in power: Fidesz

Fidesz has been in the government four times, respectively in 1998, in 2010, in 2014, and more recently in 2018. While the policies enacted during its first term are still marked by a liberal approach (Carpinelli 2018), starting from 2010 the decisions implemented by the organization appear more ambiguous and controversial, and for this reason they deserve special attention. The second Orbán cabinet, then, is the most noteworthy from a constitutional and democratic point of view, for it carried

out extremely significant transformations to Hungary's form of government¹⁴². The third term is instead characterized by a focus on migration – with the objective of stopping it – and Stop-Soros¹⁴³ policies, enacted with the goal of hindering NGOs's activities (Carpinelli 2018). Finally, the party's fourth office is a confirmation of the direction engaged in the previous years (Carpinelli 2018).

From 2010 Fidesz has been the country's most supported political organization, gaining – in alliance with the *Kereszténydemokrata Néppárt – KDNP*¹⁴⁴ (Christian Democratic Party) – a two-thirds majority of seats in the Parliament, a result which has allowed it to act without considering the opinions or concerns of the opposition (Kubas and Czyż 2018; Pogány 2013).

The following sections are going to explain what Fidesz's main reforms are about, and what their impact on the democratic arrangement of Hungary is.

4.2.1 Constitutional change and retrogression¹⁴⁵ : Fidesz second cabinet

The timeframe 2010-2014 has been the most productive of all Fidesz's years in government. Indeed, it is precisely during such a period that Hungary's transformation from a liberal democracy into an illiberal state has been taking place. As we shall see in the next sections, this has been possible because of the many reforms carried out, starting with the change of the constitutional text, and touching upon the country's judiciary system, ombudspersons mechanism, media system, electoral system, and independent bodies.

4.2.1.1 Overview of the constitution-making process: toward a new Fundamental Law

As said, the most significant changes to Hungary's democratic system have been carried out by Orbán's party during its second term in the government (2010-2014). Without doubt, the most relevant measure

142 Fidesz's slogan for such elections, "It's about time!", showed the party's intention to radically cut with the nation's past and its previous regime (Kubas and Czyż 2018).

143 George Soros is a Hungarian-American philanthropist and investor, supporting – among others – the Open Society Foundations. Initially a mentor of Orbán, Soros is now opposed by the Prime Minister and Fidesz because of his willingness to promote freedom and liberalism, being additionally regarded as a conspirator who aims at filling Hungary with migrants (Lendvai 2019; Krekó and Enyedí 2018; Poggeschi 2018).

144 The KDNP is a minor party which has been able to enter the legislative of the country only thanks to its coalition with Fidesz (Mészáros, Solymosi and Speiser 2007; Bajomi-Lázár 2015). Many observes consider it just a "satellite party" of Orbán's organization (Norwegian Helsinki Committee 2013).

145 Huq and Ginsburg (2018) define constitutional retrogression as being characterized by five pathways: amendments to the fundamental law (to marginalize political opposition and hinder pluralism), the elimination of checks and balances, the reduction of public debate (through a distortion of information or hindering CSOs), the centralization of the executive power at the expenses of the other branches (usually through the practice of clientelism), and the elimination of political competition (usually through majoritarian procedures in the electoral system).

enacted by Fidesz in such a period has been the adoption of a new constitutional text¹⁴⁶, approved by the Hungarian National Assembly – of which a two-thirds majority was made up of Fidesz’s members – in April 2011, and entered into force in January 2012 (Kubas and Czyż 2018; Carpinelli 2018). The explanation provided by the party for the creation of the new text stresses the importance of marking a clear boundary between communist Hungary and post-communist Hungary. After the Soviet regime’s fall, indeed, the country did not create a new constitution¹⁴⁷, but rather edited its previous one in the name of multi-party democracy, checks and balances, separation of powers, rule of law and fundamental rights protection. However, since the constitutional text of reference had been elaborated during the communist period, Fidesz purported, a definitive break was needed, and it could only take the form of a new legal document¹⁴⁸ (Rupnik 2012; Pogány 2013; Vincze and Varju 2012). The new constitutional text introduced – together with some other cardinal laws¹⁴⁹ enacted more or less simultaneously – modifications to the composition and functions of Hungary’s Constitutional Court, to the functioning of Hungarian media, to the identity of the country’s political community, to voting rights, and to people’s fundamental rights. Anyway, before analyzing its most significant novelties and the implications these entail, something has to be said concerning the procedure, the atmosphere and the conditions under which the new Constitution was written and approved by the Parliament. Given that it was elaborated when the old 1989 Constitution was still in place, the new Fundamental Law had to be written and approved following such a text’s provisions. More precisely, the 1989 Constitution requested in art. 24 a two-thirds majority of the National Assembly to amend the constitutional text. Such an article, however, did not deal with the creation of new constitutions, and for this reason in 1995 an amendment was passed in order to fill such a gap, establishing a four-fifths majority of the Parliament as a necessary condition for the creation of a new constitutional text (Bánkuti, Halmai and Scheppele 2012; Fleck et al. 2011). In its first year of government, Fidesz

146 It is interesting to note how the intention of changing Hungary’s Constitution had never been expressed by Fidesz during its electoral campaign (Lendvai 2019; Bozóki 2015).

147 Of all the Eastern European countries formerly under communist rule, Hungary is the only one that did not adopt a completely new constitutional text after the fall of the regime, rather preferring to amend the old 1949 Constitution (Norwegian Helsinki Committee 2013).

148 Even though Fidesz explained the constitutional change as a need to depart from communism, Hungary’s 1989 Constitution had been so deeply changed with respect to its 1949 original version, that “little of its original substance was left” (Rupnik 2012). Indeed, round table talks had been organized in 1989 between the ruling communist party’s members and some representatives of the opposition, in order to amend the text in the name of multi-party democracy and liberalism. Consequently, the spirit of the 1989 amended text had a really different ethos than the original communist document (Pogány 2013).

149 Cardinal laws are also called ‘organic laws’ (Mazza 2013), and place themselves – in the hierarchy of sources of law – between the constitution and ordinary laws (Vincze and Varju 2012). The notion of cardinal laws is explained in the same new Fundamental Law of Hungary, art. T, as ‘acts of Parliament’ for whose adoption and amendment a two-thirds majority of the National Assembly is required.

amended the 1989 Constitution twelve times, changing those provisions which could prove hostile for the realization of its political project. Among these amendments, the party annulled the aforementioned 1995 measure about constitutional change. Once such a provision was over, Fidesz could use the old Constitution's art. 24 – establishing the text's amendment procedure – in order to change the old constitutional text, for it indeed had the two-thirds majority requested by the article in order to act in such a way (Fleck et al. 2011; Bánkuti, Halmai and Scheppele 2012). From this first move, a certain tendency to modify laws according to one own's needs and aspirations is already evident.

The constitution-making process attracted much criticism and controversy from NGOs, experts and scholars worldwide (Vincze and Varju 2012; Norwegian Helsinki Committee 2013). Importantly, in its opinion 614/2011, the Venice Commission lamented the lack of transparency of the whole process, the non-participation of the opposition in any dialogue, and the "inadequate consultation of the Hungarian society" during the entire drafting period (Venice Commission 2011; Norwegian Helsinki Committee 2013). Additionally, the Commission also criticized the little time allowed by the government for public debate about the text, since by 7/8 March 2011 the constitutional document had not yet been made available, despite being its approval in Parliament foreseen for 18 April 2011 (Venice Commission 2011 2011; Pogány 2013; Norwegian Helsinki Committee 2013).

Hungary's new Constitution appears as the exclusive product of Fidesz (Rupnik 2012; Meschini 2016; Fleck et al. 2011). When in December 2010 the parliamentary committee¹⁵⁰ announced to the National Assembly the key principles which had to inspire the new text, there was absolutely no debate (Bánkuti, Halmai and Scheppele 2012; Fleck et al. 2011). A resolution passed in March 2011, additionally, authorized all MPs to come up with a constitutional proposal within one week, either respecting or ignoring the previously decided constitutional principles (Bánkuti, Halmai and Scheppele 2012). Out of the drafts received – which were only two – the one elaborated by Fidesz members was accepted and submitted to the Parliament as "a private-member's bill" (Bánkuti, Halmai and Scheppele 2012; Pogány 2013; Fleck et al. 2011). The party's choice to rely on such a proceeding was a strategic one, for bills proposed by individual MPs do not need a "preparatory stage" imposing consultation with the opposition and civil society interested groups – practices required instead for any other bill proposed by the government as a whole entity (Bánkuti, Halmai and Scheppele 2012; Bozóki 2015). After the presentation of the constitutional draft to the legislative chamber, only nine sessions

¹⁵⁰ Such a parliamentary committee had been set up after resolution 47/2010, and was made up of 45 members, of whom 30 came from the governing coalition and mainly from Fidesz (Meschini 2016; Fleck et al. 2011).

were used by the Parliament to discuss it (corresponding to approximately one week¹⁵¹) – despite the 180 amendments proposed during such a phase (Bánkuti, Halmai and Scheppele 2012; Meschini 2016; Fleck et al. 2011). Of these 180 amendments, only those advanced by Fidesz members were considered, a decision which pushed all parties of the opposition but Jobbik¹⁵², to go away before the new constitutional text was put to the vote – thus bringing about a situation for which Fidesz, that had already been the only party involved in the creation of the document, was also the only organization voting on its approval (Bánkuti, Halmai and Scheppele 2012; Fleck et al. 2011; Meschini 2016). In practice, therefore, during the constitution-making process, Fidesz had largely reduced the opposition's room, while simultaneously excluding CSOs from possible legitimacy checks to the new text. Conversely, during the document's approval phase, it was the opposition to auto-exclude itself, as a sign of protest against the fact that it had not been taken into consideration during the drafting period (Meschini 2016).

What can be concluded is that Hungary's new Constitution's writing and adoption occurred in undemocratic conditions¹⁵³ (Venice Commission 2011; Fleck et al. 2011). What was missing was indeed the participation of the opposition and of society (be it in the form of media, experts or CSOs) to the constitution-making process, a necessary step in order to elaborate a constitutional text representative of the whole country and not only of a part thereof¹⁵⁴ (Fleck et al. 2011).

4.2.1.2 The new Fundamental Law: a constitution in the name of the real Hungarian community

The new Hungarian Constitution was named the Hungarian Fundamental Law, and consists of four parts and 105 articles. The first part, named 'National Avowal' sets out the interpretation line for the whole text¹⁵⁵. The second part, 'Foundations', delineates the 'fundamental constitutional principles' upon which the country is grounded, like state sovereignty, independence, the rule of law and the

151 Concerns were expressed regarding the speediness with which the new text was adopted (Venice Commission 2011; Meschini 2016).

152 When the constitutional text was put to the vote, however, the far-right party expressed itself contrary to its approval (Bánkuti, Halmai and Scheppele 2012).

153 According to some scholars, the elaboration of the new Fundamental Law, by being incompatible with democratic standards, would also be incompatible with art. 2 (founding principles of the EU) of the Treaty on the European Union (Fleck et al. 2011).

154 In order to compensate for the non-participation of the opposition in the constitution-making process – and despite the fact that the 1989 Constitution did not foresee any referendum for the adoption of new constitutional texts – the coalition government sent every Hungarian family a questionnaire with some constitution-related demands. However, only 11% of the population answered the questions: a so small percentage which is, in any case, insufficient to give the new Fundamental Law any public legitimacy (Meschini 2016; Fleck et al. 2011).

155 Its normative power derives indeed from art. R of the new Fundamental Law, establishing that the understanding of the whole Constitution must be compulsorily in harmony with the measures of the National Avowal (Fleck et al. 2011).

separation of powers, while also defining other values of constitutional importance like family's protection, citizens' duties and the compliance with international law (Vincze and Varju 2012; Halász 2011). The third part is called 'Freedom and Responsibility' and enshrines citizens' fundamental liberties, rights and duties; while the fourth section defines state's institutions and bodies, being therefore titled 'State' (Meschini 2016; Halász 2011). There is, eventually, a concluding part called 'Closing Provisions' referring to the special norms which are to be applied in cases of urgency and necessity.

The preamble to the Constitution (the National Avowal) is a very particular section, for it reviews Hungary's most important historical events, mentioning Saint Stephen, the 1956 revolution carried out in the name of national independence, the country auto-determination as restored in 1990, and the non-recognition of the previous communist constitution. However, the way it has been formulated has immediately raised concerns. Some first observations have been made by the Venice Commission in its opinion 621/2011. The first thing the Commission has denounced is "a certain lack of clarity" in the text, bringing in turn "a certain vagueness into constitutional interpretation" (Venice Commission 2011b). A second worrisome element is given by the distinction, upon which the preamble seems to be founded, between people of Hungarian origin, and people of other nationalities, both to be found in the country's community. Indeed, it seems that the new Fundamental Law has been adopted to represent only citizens of Hungarian origin (including those living abroad¹⁵⁶) but not citizens of other nationalities living in Hungary (Venice Commission 2011b; Pogány 2013; Fleck et al. 2011; Norwegian Helsinki Committee 2013). In the preamble, Hungarians are further defined on the basis of their being Christian. The way the community is described in such a section of the new Constitution, therefore, moves on ethnical and cultural values rather than on political ones (Fleck et al. 2011). Such an approach seems to reflect the very populist practice of majority will's supremacy: by enacting a constitution in the name of the ethnic group which also represents the majority of citizens living in Hungary, the legislator intentionally deprives minority groups of their representation. Constitutions are the most important legal assets a democratic country can count on, and if these are not inclusive of minorities' protection, they open the way to kinds of discrimination incompatible with democratic forms of state.

156 The reference, in the Constitution's preamble, to Hungarians living in neighboring countries as essential components of the Hungarian community living in Hungary, may be problematic also as far as good neighborhood relationships and inter-ethnic relations are concerned (Venice Commission 2011b; Pogány 2013; Fleck et al. 2011). The new Constitution (art. XXIII) also grants Hungarians not living in Hungary the right to vote in Hungarian national elections, despite their not being subject to the country's legislation (Uitz 2013; Fleck et al. 2011; Kubas and Czyż 2018).

As mentioned above, the Constitution's National Avowal defines the Hungarian community in both ethnic and cultural terms, specifying that Christianity is essential to preserve nationhood. Understanding the Hungarian community as unitary and Christian, the remaining parts of the constitutional text establish a series of measures designed to make legally compulsory the adherence to such a creed, despite leaving freedom of religion intact (art. VII). The new Constitution, indeed, defends traditional marriage between man and woman, establishes family as the cornerstone of Hungarian life, and promotes the practice of having babies (art. L). Such elements, which once part of the Constitution become compulsory for every citizen, do not espouse a neutral understanding of the state¹⁵⁷, but rather impose on the community a certain vision of the world, the Christian conservative one, which might not be shared by every single citizen (Fleck et al. 2011; Meschini 2016; Bíró-Nagy 2017). The same is true for the provisions of art. II, protecting life also in embryonic and fetal form. Once again, the Fundamental Law behaves in such a way as to impose on citizens a conduct which is compatible only with Christianity, hindering women's right to self-determination (Fleck et al. 2011). As far as the LGBT community is concerned, furthermore, not only are homosexual marriages not allowed by the Hungarian Fundamental Law – thus making it harder for the country's legislation to catch up on European tendencies – but discrimination on gender grounds is explicitly avoided in the wording of art. XV (discrimination prohibition). The only possible way to intend sexual discrimination as included in the provisions of art. XV, is that of making it be implied in the 'other circumstances' category (Vincze and Varju 2012). If one does not consider discrimination based on gender orientation as being part of such a category, however, the provision then places itself in violation of art. 21 of the EU Charter, and of the EU Court of Justice's case law (Fleck et al. 2011). The approach followed by the legislator, is that of restricting the protection of human rights, thus regressing from the achievements reached by the previous 1989 Constitution (which indeed in its art. 70A prohibited discrimination for gender reasons). Already from these first measures, it emerges an approach favorable to nationalism at the expenses of liberalism, for people are not more free individuals who can choose which values they want to espouse, but rather units of a bigger group who is defined only in historical and cultural terms (Meschini 2016). The will of the majority seems to prevail at the expenses of minority groups also as far as ethnic Hungarians are concerned – also this time, in measures embodied in the most important text of the country.

¹⁵⁷ The state takes a position contrary to neutrality, as made clear also by art. VII of the Fundamental Law, in which it is established that even though State and Churches are independent the one from the others, they must cooperate for community purposes (Fleck et al. 2011).

A last novelty is worth mentioning with reference to people's fundamental rights. The new Constitution, indeed, introduces a series of rights which can be guaranteed only if citizens carry out their specific duties, as established by the same text (Fleck et al. 2011). Following such an attitude, the very notion of inalienable rights is not fully respected, for some rights are instead dependent on the discharging of obligations¹⁵⁸. An example in this sense is provided by art. XII of the Fundamental Law, establishing simultaneously citizens' right to freely choose their work, and their duty to make their part in the community by working. Such a provision is unacceptable in a liberal democracy, where everyone should be free to choose not only what kind of career he/she wants to have, but also if he/she wants to have a working career at all, for any 'obligation to work is contrary to freedom' (Fleck et al. 2011). Also art. XIX of the Fundamental Law is significant from this perspective, for it grants social rights on the condition that beneficiaries engage in activities useful for the welfare of the community. Importantly, the same rationale of artt. XII and XIX is detectable also in the name of the Constitution's third part, 'Freedom and *Responsibility*' (emphasis by me), and in the sentence of the National Avowal defining that 'individual freedom can only be complete in cooperation with others'. Such an approach shows an anti-individualistic (and consequently an anti-pluralistic and an anti-liberal) conception of the people, who are in no case intended as something else than the unitary community of their country – as however made unequivocally clear already from the very first pages of the constitutional text.

4.2.1.3 The Hungarian judicial system's independence decline

A very important modification introduced by the new Fundamental Law touches directly the Hungarian Constitutional Court¹⁵⁹, its composition, powers and appointment process. Art. 24 of the new Constitution establishes that the body's judges must be 15 (before they were 11), that their office must last 12 years (before it lasted 9 years), and that the Constitutional Court's President must be elected by the Parliament with a two-thirds majority (before he/she was appointed by the judges of the same Court) (Meschini 2016). Art. 24 also stipulates that the specific and detailed arrangement of the Court must be established through cardinal laws.

About such changes, some first concerns have been immediately raised by the Venice Commission (opinion 621/2011), worried that the afore-mentioned transformations might undermine the neutrality

¹⁵⁸ Some others are, instead, based on no fulfillment of duties. For example artt. IV (right to personal safety), VI (right to protection of personal life and personal data), VII (right of thought and religion), VIII (right to peaceful assembly), IX (right to express one's own opinion), art. XI (right to education), etc (Fleck et al. 2011).

¹⁵⁹ Hungary's Constitutional Court was established in 1990, and soon became the core of Hungary's constitutional apparatus (Pogány 2013; Lambert 2018).

of the legal body. A first risk is represented by the appointment of the Constitutional Court's President via a political actor, that could decide him/her on potential political reasons (Venice Commission 2011b). Secondly, for the election of Constitutional judges only a two-thirds majority in Parliament is needed – the exact configuration of Fidesz – meaning that Constitutional Court's members can be appointed even without the consideration of opposition parties, and preference can be given to those judges sharing the same political conception of the ruling government (Bíró-Nagy 2017; Norwegian Helsinki Committee 2013; Fleck et al. 2011; Lambert 2018). As far as the detailed management of the Court's competencies and organization through cardinal laws is concerned, the risk is that by leaving to the incumbent government the great possibility of affecting the functioning of an entity of paramount importance, its independence might be further and excessively undermined (Norwegian Helsinki Committee 2013).

In addition, with the fourth amendment to the constitutional text, approved in 2013, it has been established that the Constitutional Court's sentences produced before 1 January 2012 lose their validity, and that new decisions must be taken by such legal body with reference to only the provisions defined by the new document and its interpretative line (Meschini 2016; De Simone 2014; Lambert 2018). Such a decision has been seriously criticized by the Venice Commission because unjustified and disproportionate, whose only effect can be that of hindering legal certainty and undermining the rule of law (Venice Commission 2013; De Simone 2014). The same amendment also restricts access to the Constitutional Court, abolishing the so-called *actio popularis*, which allowed every single individual or entity to ask the Court for the constitutionality of any law, even without having a connected interest to it (Enyedi 2016; Vincze and Varju 2012; Bánkuti, Halmai and Scheppele 2012). According to Fidesz, such a practice, based on abstract demands, was abused and slowed down the work of the body (Meschini 2016). However, even without such a provision, individuals still have the right to address the Constitutional Court in case a law has violated some of their rights, that is, when they have related interests. The Venice Commission (2011) did not object to the elimination of the *actio popularis*, for its removal is not incompatible with European standards; it suggested nonetheless to introduce alternative ways of constitutional review to compensate for such loss of control, so that the country could still be characterized by an efficient system of checks and balances. The amendment stipulated also that laws can be brought to the Constitutional Court for abstract constitutional review by 25% of MPs. However, it has been noted how such a provision is hardly implementable for at least at the moment, opposition parties are fragmentary (Bánkuti, Halmai and Scheppele 2012).

The final novelty brought about by the fourth amendment, as far as the legal body is concerned, is the Court's impossibility to judge the contents of government's amendments to the Constitution – a measure which has been soon attacked by communitarian media, and by the same Hungarian opposition, with the first Constitutional Court's president, László Solyom, even stating that it was ‘‘the end of the separation of powers¹⁶⁰’’ (Meschini 2016; Lambert 2018).

The last modification to the Constitutional Court's functioning carried out by the populist government through its new Fundamental Law, has to do with the very powers of the institution. Art. 37 of the new constitutional text restricts the legal body's constitutional review power concerning fiscal matters, establishing that until the national debt exceeds half of the GDP, the Court can check the constitutionality of legislation about the annual budget, its implementation, national taxes and local taxation, only if this specifically violates the rights to life, human dignity, protection of personal data and freedom of thought, conscience and religion¹⁶¹. Even though such a transformation directly touches the Constitutional Court's functions, it has an effect also on citizens' life, for people are left ‘‘vulnerable to the strict fiscal policy advocated by [the] government’’ (Vincze and Varju 2012). Such a restriction to the Court's powers has been alerted by the Venice Commission (opinion 621/2011), recalling what already highlighted in its opinion 614/2011: limiting the body's constitutional review powers does not enhance the protection of people's fundamental rights, which should instead be the objective of ‘‘the constitutional legislature in the Hungarian parliament’’ (Venice Commission 2011b; Venice Commission 2011; Lambert 2018). It rather seems that in order for the government to maintain a certain national budget, also unconstitutional legislation detrimental to human rights can be passed (Venice Commission 2011b). Moreover, the possibility to exercise constitutional review power according to the subject considered, has no precedent or comparison in the world (Fleck et al. 2011).

Concerning the judiciary, two other items are worth being analyzed. In 2011, a new law was passed (Law CLXI/2011) setting up the National Judicial Office (*Országos Bírósági Hivatal*), a legal body charged of carrying out important tasks related to the administration of justice (Lambert 2018b).

Among his/her other functions, the President of such a new body – which is elected by the Parliament with a two-thirds majority – has the power to nominate judges (but not those of the Supreme Court or of the Constitutional Court), to move judges from one court to another, to move cases from one court to

160 Translation by me.

161 Such a restriction of the Constitutional Court's powers was introduced after the body had declared unconstitutional a bill passed by the government in 2010, which imposed a 98% retroactive tax for certain civil servants (Decision 184/2010 of 28 October 2010) (Vincze and Varju 2012; Lambert 2018).

another¹⁶², to initiate disciplinary proceedings, and to decide on new rules that all national courts must then respect (Norwegian Helsinki Committee 2013; Bánkuti, Halmai and Scheppele 2012; Lambert 2018b; Pogány 2013). The NJO President's term lasts nine years, but in case in which no successor can be appointed because of a lack of majoritarian consensus in the National Assembly, he/she can remain in charge until a solution is finally found (Bánkuti, Halmai and Scheppele 2012).

After the enactment of the bill, the Parliament has immediately appointed Tünde Handó as President of the NJO, wife to one of Fidesz's founders who has also been involved in the drafting of the new Hungarian Constitution, and close friend of Orbán since university times (Pogány 2013; Norwegian Helsinki Committee 2013; Bánkuti, Halmai and Scheppele 2012; Lambert 2018b).

The concentration of so important tasks in the hands of a single person, the NJO President, has been criticized by US Secretary of State Hillary Clinton, worried that such a situation could severely threaten Hungary's system of checks and balances, and the country's judiciary independence (Pogány 2013).

The concentration of too many powers in the hands of a single person, and what this implies in terms of judicial independence, has been lamented also by the Venice Commission, which has highlighted how a similar situation does not have equals in any other state of the Council of Europe (Venice Commission 2012; Norwegian Helsinki Committee 2013; Bánkuti, Halmai Scheppele 2012; Lambert 2018b; Pogány 2013). Beyond the potential dangers linked to the NJO President position as defined by the new law, then, a contingent concern arises also with regard to the specific appointment done for such an office, for the evident political elements attached to the person of Ms. Tünde Handó breach 'the spirit of the separation of powers' (Pogány 2013).

The other interesting novelty introduced in the judiciary field by the new Constitution has to do with judges' retirement age. Art. 26 of the new Fundamental Law establishes that with the only exception of the Curia's President (i.e. the President of the Hungarian Supreme Court), 'no judge may serve who is older than the general retirement age', corresponding to 62 years (Venice Commission 2011b).

Following such a measure, 274 judges between 62 and 70 were forced to retire, thus leaving an important number of judicial offices open for new members to be elected, with the risk of judiciary independence loss¹⁶³ (Norwegian Helsinki Committee 2013; Halmai 2017; Venice Commission 2011b).

In July 2012, the Hungarian Constitutional Court (Decision 33/2012) intervened to declare the

¹⁶² The possibility to move cases from one court to another has been removed from the powers of the National Judicial Office's President because of the many criticisms the measure had received internationally (De Simone 2014; Lambert 2018e). This has been done in the fifth amendment to the Constitution.

¹⁶³ According to art. 26 of the new Fundamental Law, judges are appointed by the President of the Republic, and the details of such a procedure are to be specified by a cardinal law (Venice Commission 2011b).

provision unconstitutional because infringing judges' independence, and established that a lowering of the retirement age could only happen in a gradual fashion (Norwegian Helsinki Committee 2013; Halmai 2017; European Commission 2012). This notwithstanding, the sentence did not reinstate the already removed judges. Under request of the European Commission, also the EU Court of Justice (Case C-286/12) intervened on the subject, declaring that Hungarian provisions to suddenly lower judges' retirement age be in violation of EU equal treatment rules, as defined by Directive 2000/78/EC, for they constitute "unjustified age discrimination" (European Commission 2012; Norwegian Helsinki Committee 2013).

4.2.1.4 From four specialized ombudspersons to one Commissioner for Fundamental Rights

The new Fundamental Law, art. 30, replaces the old system of four specialized ombudspersons with one single Commissioner for Fundamental Rights, charged with the protection of people's fundamental rights, "the interests of future generations and the rights of nationalities¹⁶⁴ living in Hungary". The article also explains that detailed rules about the body's functioning will be given in a separate law. Regarding this change, the Venice Commission (2011b) appeared concerned that such a lowering of commissioners might have a negative impact on Hungary's system of check and balances. Indeed, the centralization of the newly established Commissioner for Fundamental Rights, "reduces the level of independence of individual areas enjoyed in the current system of ombudsmen", risking to undermine the accountability of the institution (Vincze and Varju 2012). According to Bánkuti, Halmai and Scheppele (2012) such a simplification – accompanied by an important staff decrease – has weakened the old apparatus of fundamental rights monitoring. An impression which seems to be confirmed by the appointment of the current commissioner, László Székely (Bíró-Nagy 2017), whose connection with Fidesz might threaten its impartiality of action.

4.2.1.5 With due regard to public morals: the reform of the media

Another policy worth mentioning for the purposes of this work is the one related to the restructuring of the media system. The new Fundamental Law stipulates, in art. IX, that freedom of the press shall be recognized and defended by the country, leaving the description of its management and regulation to cardinal laws. The Venice Commission has expressed concerns already about this first point, for it

¹⁶⁴ With reference to the word 'nationalities', it has been noted that it would not necessarily include ethnic minorities, like the Roma, whose presence in Hungary is a reality. In such a case, then, the protection of ethnic minorities' fundamental rights would not appear explicitly guaranteed in the new Fundamental Law (Vincze and Varju 2012).

considers the article's formulation of press freedom as a state obligation rather than as an individual's right, problematic from the point of view of fundamental constitutional rights' protection; and regards the management of press freedom through cardinal laws as dangerous for a democratic system (Venice Commission 2011b; Pogány 2013; Norwegian Helsinki Committee 2013). The fast-track procedure typical of the adoption of cardinal laws has been denounced also by the Council of Europe's Commissioner for Human Rights (2011), which has highlighted the problematic aspects of its deriving lack of public debate and consultation.

The Media-Package¹⁶⁵ (*Médiacsomag*) enacted by the government at the very beginning of 2011 resulted particularly controversial, for it altered in a negative fashion "the working conditions of media outlets" in Hungary (Norwegian Helsinki Committee 2013). Such Fidesz's reform has likely been one of the most criticized (Bíró-Nagy 2017; Pogány 2013), being contested by local entities, ordinary people, striking journalists, NGOs, single countries, and international organizations like the EU, the Council of Europe, the Organization for Security and Cooperation in Europe, and the United Nations (Norwegian Helsinki Committee 2013).

The package consists of three pieces of legislation: Law LXXXII/2010 ('amending certain laws regulating the media and telecommunications'); Law CIV/2010 ('on freedom of the press and the fundamental rules of media content'); and Law CLXXXV/2010 ('on media service and mass media') (Lambert 2018c).

Law LXXXII/2010's main provision is the creation of an independent body charged with the task of supervising media and telecommunications outlets in the country: the National Media and Infocommunications Authority, of which the Media Council is a working branch (Lambert 2018c; Norwegian Helsinki Committee 2013; Bíró-Nagy 2017; Commissioner for Human Rights 2011). The body's main responsibility is that of distributing media frequencies among local channels in total autonomy, for the Media Council has the power to freely decide "the allocation criteria" (Bajomi-Lázár 2015). In the 18 months after its creation, the Authority has granted 18 out of 35 radio

165 Such a legislation is not directly part of the new Fundamental Law, being instead a package of cardinal laws enacted in order to give substance to the Constitution's provisions about press freedom and management. After the intervention of the Hungarian Constitutional Court, which had judged many measures of the legislation unconstitutional, media laws were partly amended in 2012 (Norwegian Helsinki Committee 2013; Pogány 2013). Many of the previous concerns, however, have been left untouched by the new modifications, including the way Media Council's members are appointed, and the fines imposed on journalists who spread news against public morals (Norwegian Helsinki Committee 2013). In light of this, the OSCE Representative on Freedom of the Media stressed that the new amendments done to the Media-Package "only add to the existing concerns over the curbing of critical or differing views in the country" (Pogány 2013).

frequencies to pro-government channels (Lázár 2015), thus hindering pluralism of information¹⁶⁶. A situation which has been amplified by the important number of pro-Fidesz journalists who have been hired, and pro-Fidesz media entrepreneurs who have been favored in the media sector in order to spread a certain vision of the world¹⁶⁷ (Lázár 2015; Bíró-Nagy 2017; Lendvai 2019).

Law CIV/2010 (Press and Media Act), while recognizing freedom of the press, also imposes that media cannot produce contents which are, among others, in violation of public morality or moral rights. All media must accordingly provide a ‘‘comprehensive, factual, up-to-date, objective and balanced coverage’’ of issues (Pogány 2013; Commissioner for Human Rights 2011). The Commissioner for Human Rights (2011) considers the provisions of the Press and Media Act incompatible with European values as defended by the Council of Europe. More precisely, imposing an *a priori* regulation which makes it illegal to spread news not considered ‘balanced’ or aligned with public morality, is regarded as a violation of art. 10 (freedom of expression) ECHR, for the press has to report – in a democratic society – also unconventional or disturbing information, necessary for the creation of a comprehensive public opinion. Additionally, since the concept of public morals appears rather elusive and subjective – leaving room for (mis)interpretation – its presence in a piece of legislation does not only undermine law certainty, but also appears in contrast with the spirit of art. 10 ECHR, requiring clearly defined criteria for the restriction of freedom of the press (Commissioner for Human Rights 2011).

Law CLXXXV/2010 (Mass Media Act) establishes, among other measures, that the President of the National Media and Infocommunications Authority be appointed by Hungary’s President of the Republic under the recommendation of the Prime Minister, making of him/her also the *de facto* chairperson of the Media Council. The other members of the Media Council are then selected by a parliamentary committee with a two-thirds majority of members (Commissioner for Human Rights 2011; Bajomi-Lázár 2015; Lambert 2018c). The legislation also attributes the Media Council the power to sanction those media which do not respect the provisions of Law CIV/2010 (Commissioner for Human Rights 2011).

The Media Council’s current chairperson is Annamária Szalai, former Fidesz MP; and also the remaining members of the body are Fidesz MPs (Bajomi-Lázár 2015). The result is that the body is not so independent from the executive, being even regarded ‘‘as an extended arm of the Hungarian

¹⁶⁶ The newly created National Media and Infocommunications Authority also denied the left-liberal and independent station Klubrádió a renewal of frequencies concession (Bajomi-Lázár 2015). According to its website, the radio station is ‘‘the only talk and news radio station in Hungary with a scrutinizing attitude towards government and social issues’’ (Norwegian Helsinki Committee 2013).

¹⁶⁷ Many non-Fidesz journalists have also been fired with financial excuses (Norwegian Helsinki Committee 2013).

government” (Norwegian Helsinki Committee 2013; Pogány 2013). Balázs Dénese, former Executive Director of the NGO Hungarian Civil Liberties Union, has showed his worries regarding the Media Council’s excessive powers. Accordingly, the new body runs the risk of using its mandate to silence voices from the opposition, at the advantage of Fidesz, which would be granted more favorable services (Norwegian Helsinki Committee 2013). Reservations have also been expressed concerning the sanctions imposed by the Mass Media Act, for such a mandatory punishment could discourage the press from expressing criticism, thus undermining the very essence of freedom of the press (Commissioner for Human Rights 2011, Pogány 2013). If journalists stop being critical of government’s actions and the likes, indeed, a sort of auto-censorship is triggered, which consequently threatens one of the most important principles of democracy.

With the imposition of fines for the spread of critical opinions, the favoring of pro-Fidesz journalists and entrepreneurs, and the settlement of pro-government officials in media top bodies – who in turn concede more frequencies to pro-government services than to opposition ones – the result of the Media-Package is that it hinders media pluralism and independence, making the principle of freedom of the press only formal. For this reason, in 2012 Freedom House has rated Hungary as a ‘partly-free’ democracy – a judgment which has been criticized by the country’s Minister of Government Communication, Zoltán Kovács, as biased against Fidesz (Norwegian Helsinki Committee 2013; Bíró-Nagy 2017). The importance of media pluralism has been many times stressed by the European Court of Human Rights (ECtHR) in its case law, in which the body has repeatedly declared that “there can be no democracy without pluralism, especially in the realm of freedom of expression” (Commissioner for Human Rights 2011).

4.2.1.6 A new electoral system

Fidesz has carried out – via a cardinal law – also important modifications to Hungary’s electoral system. Such changes have been passed by the Parliament in Law CCIII/2011, also know as ‘The Act on the elections of Members of Parliament in Hungary’. The piece of legislation maintains the same electoral system the country already had, that is, a mixed proportional and single-member districts system, while introducing significant novelties (Norwegian Helsinki Committee 2013; Renwick 2011). Among the many news, the number of parliament seats has been reduced from 386 to 199; the number of electoral districts has been reduced from 176 to 106, while their size has been increased; ethnic Hungarians not having a place of residence in Hungary have been allowed to vote; candidates running

for elections must have a bigger number of endorsements; and the proportion of single-member districts has been increased of little less than 10%, so that the system now results more majoritarian than the old one (Norwegian Helsinki Committee 2013; Renwick 2011; Renwick 2011b; Lambert 2018d). Voted against by Jobbik and boycotted by the other opposition parties, the new electoral law proved soon to be controversial, for it was regarded as putting Fidesz in advantage¹⁶⁸ (Norwegian Helsinki Committee 2013; Bíró-Nagy 2017; Renwick 2011b; Lambert 2018d).

4.2.1.7 A constitution dependent on cardinal laws

Hungary's new Fundamental Law has been much criticized for its numerically significant references to the use of cardinal bills, as far as the detailed explanation of many constitutional issues is concerned (Vincze and Varju 2012; Mazza 2013; Bánkuti, Halmai and Scheppele 2012). The legal text contains, according to the Venice Commission, more than 50 references to such pieces of legislation, regulating among others, the Constitutional Court, the electoral system, the judiciary, the media, family policies, the pension system, basic rules of public finance, state-religious organizations relations, armed forces, the nomination of ministries and other public servants etc. (Venice Commission 2011b; Vincze and Varju 2012; Bánkuti, Halmai and Scheppele 2012; Mazza 2013). A so extensive appeal to cardinal laws inevitably links the constitutional text – which should be a neutral and non-partisan document – to the current political government of the country, thus introducing “a kind of limitation to the realization of the democratic will” (Mazza 2013). By making the implementation of some provisions of the new Constitution possible only with the enactment of cardinal acts, the Parliament with a two-thirds majority (that is, the number of seats currently took by Fidesz) has to produce such bills. At the same time, even though future governments have the possibility to amend such cardinal laws, it will be extremely difficult for them to collect the required two-thirds majority necessary to act this way, with the risk that Fidesz-produced partisan bills will be hardly modifiable in the future (Vincze and Varju 2012). The Venice Commission (2011b) has denounced the way the Constitution has made use of cardinal laws, for the document appears very little specific on important questions, whose regulations should not be a political matter. Additionally, it has also expressed skepticism about the regulation of social and taxation questions through organic legislation, for in cases of crisis, the Parliament should be able to change laws in a more flexible way in order to face specific challenges, something which is

¹⁶⁸ In order to understand why it should be so, Renwick (2011b) reports an estimate “which seems to be widely accepted”. Accordingly, if in 2010, with the old electoral system, Fidesz's 53% of vote share translated into 68% of parliamentary seats, with the changes brought about by the new electoral law, the same vote share would have translated into 76% of seats in the National Assembly. The advantage, therefore, appears straightforward.

impeded by the very fact that a cardinal law requires a supermajority for its amendment. Mazza (2013) notes that a so wide use of cardinal laws by the Constitution has appeared problematic also in the Hungarian legal literature, which instead would find the use of ordinary laws to regulate social and taxation matters more appropriate.

When the legislator – who has been elected by the majority of the population – is not in the situation of changing a legislation, thus expressing the will of the majority, the very same principle of democracy is at risk (Venice Commission 2011b).

4.2.1.8 The politicization of independent institutions

Besides creating a new Constitution and passing many biased laws, Fidesz tried to make it difficult for future governments to change the current executive's direction, also by appointing partisan officials to strategic state positions (Bozóki 2015). This means that if any non-Fidesz government should ever make it to be elected, it would be pretty hard for it to govern in its own way, because all the country's main institutions would continue to be supervised by the populist party (Bánkuti, Halmai and Scheppele 2012). The President of the Republic represents an important constitutional guarantee in the parliamentary system of Hungary¹⁶⁹, and for this reason – without bothering transforming his/her office – Fidesz nominated a former party's deputy, Pál Schmitt¹⁷⁰, to such a position (Pogány 2013; Bíró-Nagy 2017; Bánkuti, Halmai and Scheppele 2012). In the selection process, Schmitt – in a rather naive or maybe unconcerned for constitutionalism way – declared that he had no intention to hinder the executive's program, and that, had he been appointed, he would not have acted as a "counterweight to the government" (Pogány 2013). In practice, he followed such a commitment, never opposing the signing of any bill referred to him by the Fidesz government (Bánkuti, Halmai and Scheppele 2012). It is clear, then, that with such a nomination, the guarantor and supra-political role of the President of the Republic has been undermined, with a consequent violation of the separation of powers democratic principle. Hungary's President is not anymore an office checking the government, but rather one favoring it, no matter what.

169 Under the old constitution, indeed, he/she had a suspensive veto power on legislation proposals, which he/she could send back to the Parliament for further revision; additionally the President could also raise a doubt of constitutional legitimacy to the Constitutional Court, if he/she believed a law to be in contradiction with the country's Constitution (Bánkuti, Halmai and Scheppele 2012).

170 In 2012, after a plagiarism scandal, Pál Schmitt was obliged to resign from his role and Fidesz appointed János Áder – one of the co-founders of the party – as his successor (Bíró-Nagy 2017; Pogány 2013; Bánkuti, Halmai and Scheppele 2012). It is clear, then, that despite the person's change, the President of the Republic is still a very partisan figure.

Additionally, as seen above, the Media Council's staff is entirely made up of former Fidesz's MPs, presidency included (Bajomi-Lázár 2015). In the media field, also key positions have been filled by pro-Fidesz journalists and activists (Bajomi-Lázár 2015; Bíró-Nagy 2017). The Commissioner for Fundamental Rights is led by László Székely, very much connected to Fidesz (Bíró-Nagy 2017). The National Judicial Office President, Tünde Handó, is wife to one of the co-founders of the political party, who was also involved in the drafting of the new constitutional text (Pogány 2013; Norwegian Helsinki Committee 2013; Lambert 2018b). But the list continues. Péter Polt, former Fidesz member, is now chief prosecutor, while László Domokos, former MP of Fidesz, is now chairman of the State Audit Office (body tasked with the supervision of the executive's spending) (Bíró-Nagy 2017; Bánkuti, Halmai and Scheppele 2012).

From the above list, it is clear that Fidesz fostered clientelism in order to maintain control over Hungary even in case it should not be elected again.

4.2.2 Anti-immigration focus and 'Stop-Soros' policies: Fidesz third and fourth cabinets

Fidesz was the most voted party also in the national elections of 2014 and 2018, setting up two other cabinets with its ally KDNP¹⁷¹ (Kubas and Czyż 2018). The third and fourth Fidesz governments are characterized by a focus on migration and NGOs' operations, and the policies implemented in such a period have to do mainly with these matters. The most significant legislation produced in this sense is the so-called 'Stop-Soros package', hindering migration-related NGOs' activities.

4.2.2.1 Opposition to refugee-seekers and to the EU allocation system

As we have seen above, the party promotes an anti-migration rhetoric since its ideological shift, considering migrants – especially if Muslim – a threat to the local community, grounded on a specific Eastern European culture and Christian values. The line of thought supported by Orbán includes also attacks to international and foreign organizations, as well as opposition to NGOs, especially if of foreign origin, regarded as an interference in domestic affairs.

The party's aggressive stance toward migratory fluxes has become clear as soon as the migration crisis started to touch Europe. In 2015, indeed, Orbán ordered the installation of a 175km-long barb-wired

¹⁷¹ The 2014 national elections have also been the first ones in which the provision introduced by Fidesz during its previous mandate – concerning the granting of voting rights to ethnic Hungarians with no residence in Hungary – has been applied (Kubas and Czyż 2018). Because of the newly adopted electoral law, the extension of voting rights, and the important control exercised by Fidesz over a big part of the country's media, such elections have been defined "free but unfair" (Bíró-Nagy 2017; Bozóki 2015).

fence along the Hungarian border with Serbia, so as to stop asylum seekers who, coming from the Middle East, were traveling to Germany (Carpinelli 2018; Kubas and Czyż 2018; Poggeschi 2018). The following year, in order to gain popular legitimacy for what Fidesz was doing, a national referendum was organized asking people whether they supported the EU allocation system of migrants on Hungarian territory. Despite 98% of people answering they did not want the EU to decide how many migrants were to be hosted in Hungary, the referendum turned out to be illegal, for less than 40% of Hungarians took part in it, while the 2011 Fundamental Law mandates, for the validity of referenda, a turnout of at least half of the Hungarian population entitled to participate (Carpinelli 2018; Kubas and Czyż 2018).

4.2.2.2 Fighting migration-related NGOs: the so-called ‘Stop-Soros legislative package’

The most relevant line of action carried out by Fidesz during its third and fourth terms has been the Stop-Soros policy. The so-called ‘Stop-Soros legislative package’ is a set of bills produced in May 2018 with the objective of stopping illegal immigration by penalizing all people and entities involved in illegal-migration related activities.¹⁷² (Poggeschi 2018; Krekó and Enyedi 2018). The package is specifically named after the Hungarian-American philanthropist George Soros because of his engagement with NGOs, his support for liberalism and his activities aimed at protecting minority groups. In a broader defamatory campaign, George Soros was depicted by Fidesz as the author of an international conspiracy plotted against Hungary, which wants the Eastern European country overrun by refugees in the name of a wild globalization (Lendvai 2019; Bíró-Nagy 2017; Krekó and Enyedi 2018; Poggeschi 2018; Boros 2018).

The Stop-Soros package includes three bills: Bill T/19776 (dealing with licenses and permits for organizations supporting migration); Bill T/19775 (dealing with immigration-related organizations’ financing duty); and Bill T/19774 (dealing with immigration restraint orders) (Venice Commission and OSCE/ODIHR 2018; Boros 2018). The legislation’s targets are migrants, but its effects are felt especially by humanitarian NGOs working in the field of migration (Poggeschi 2018; Boros 2018).

¹⁷² Following the same rationale, a month before the Stop-Soros package was passed, the government produced an amendment to Hungary’s Fundamental Law (Bill T/332, better known as the seventh amendment) establishing, among others, that alien people cannot be settled in Hungary and that it is forbidden to live in public areas (Poggeschi 2018; Venice Commission and OSCE/ODIHR 2018; Lambert 2018e; Carpinelli 2018). The theoretical explanation provided by the government for such a measure, is that migrants would represent a serious threat to the country – from a cultural, religious and social point of view – and that, as a consequence, they cannot be accepted (Venice Commission and OSCE/ODIHR 2018).

The provisions set forth in art. 353A of the afore-mentioned package appear as the most ambiguous from a rule of law perspective, and for this reason they deserve special attention. Firstly, the article orders punishment for whoever is engaged in activities aimed at facilitating illegal migrants not coming from unsafe countries. Secondly, the same article prescribes punishment – up to one year of detention – also for people who finance activities related to illegal migration, being these carried out by the same people or by other entities (Poggeschi 2018; Venice Commission and OSCE/ODIHR 2018; Kubas and Czyż 2018).

Concerns about such measures – and about the more general rationale that led the government to the creation of the Stop-Soros legislation, justified by Fidesz as a necessary step to take in order to avoid a cultural decadence caused by migration – have been expressed by the Venice Commission and the OSCE'S Office for Democratic Institutions and Human Rights (ODIHR) in a 2018 joint critical opinion (919/2018 + NGO-HUN326/2018). The first weak point of the legislation highlighted by the two bodies is the fact that it was passed without previous discussion with specialized actors, despite the Council of Europe Committee of Ministers' recommendation [CM/Rec(2007)14] to include NGOs in draft projects having to do with their activities. The Venice Commission (2018) has particularly highlighted how the participation of CSOs and NGOs in legislative processes to them related, increases the quality of the bill passed, and constitutes a good practice which Hungary has not respected in this case. Basically the Stop-Soros Package is a set of bills hindering NGO's activities, passed without consulting those same CSOs whose activities were obstructed by it. Also, the mention within the bill of a specific individual to whom the act package seems to be addressed, is problematic from a legal perspective, for laws should appeal to every citizen indistinctly and not to specific persons, at least if the principle of equality before the law is the starting point ¹⁷³ (Venice Commission and the OSCE/ODIHR 2018; Poggeschi 2018).

From a technical point of view, it has been stressed that the package was formulated in a too vague way, leaving a too large room for interpretation, thus undermining legal certainty¹⁷⁴ (Venice Commission and the OSCE/ODIHR 2018; Poggeschi 2018). Indeed, besides establishing punishment for activities carried out in the field of illegal migration, the text does not provide a comprehensive list of what such activities are, giving instead just few examples of what could be meant by it, like distribution of information materials. Concerning this last specification, important worries arise with reference to the principle of liberalism. The criminalization of activities usually carried out by

173 Let us recall here, art. 20 of the EU Charter, on equality before the law.

174 The request for legal clarity in the formulation of legislative bills is unequivocally enshrined in artt.10 and 11 ECHR.

humanitarian NGOs, like the distribution of information materials explaining the procedures to follow in order to apply for international protection, is indeed regarded as representing “an interference with their [of NGOs and their staff] freedom of association¹⁷⁵, and in some cases, expression” not justifiable in terms of legitimacy and necessity, for in a democratic society people can be deprived of their freedom of association only for reasons of public order and national security – a category from which cultural protection from migration is surely not mentionable (Venice Commission and the OSCE/ODIHR 2018; Poggeschi 2018). Additionally, since asking for asylum is not a crime¹⁷⁶, helping asylum-seekers in this sense, cannot be considered a crime either. Interference with freedom of association is evident also in the package’s provision establishing a detention punishment for people who financially support NGOs involved in helping migrants, for by being humanitarian NGOs accepted by the law, depriving people of their right to join them in the way they prefer appears unjustifiable in legal terms (Venice Commission and OSCE/ODIHR 2018).

The way the measures of art. 353A are formulated, create some doubts also from an international law perspective. Indeed, by criminalizing people’s and NGOs’ involvement in activities carried out to help illegal migrants coming from safe countries, the law not only seems to ignore the international practice according to which coming from a safe country does not necessarily entail exclusion from asylum protection, but also gives CSOs’ staff the duty to check by their own decision whether some migrants can classify or not for international protection (Venice Commission and OSCE/ODIHR 2018; Poggeschi 2018). Checking the possession of criteria for the granting of asylum is ultimately a state duty, and it cannot be performed by any other entity.

The main problem of the Stop-Soros act package, then, is that it lacks a humanitarian exception clause, which would make it possible to distinguish between NGOs’ humanitarian activities and migrants smugglers’ criminal ones. Many European countries have produced legislation directed at criminalizing the facilitation of migrants’ unauthorized entry – a practice consistent with EU Directive 2002/90/EC – but they all have introduced in their bills a humanitarian clause, in order not to violate international law and protect vulnerable social groups (Venice Commission and the OSCE/ODIHR 2018; Poggeschi 2018). Hungary seems instead to have intentionally ignored such a specification.

¹⁷⁵ Freedom of association is protected, from a European perspective, by art. 11 ECHR and art. 12 of the EU Charter. It is usually regarded as an extension of freedom of expression, in turn enshrined, among other instruments, in art. 10 ECHR, art. 11 of the EU Charter, and art. 19 of the UN Declaration of Human Rights. Freedom of expression entails also freedom to seek and receive information without government’s interference (Venice Commission and OSCE/ODIHR 2018).

¹⁷⁶ Hungary has ratified the 1951 Geneva Convention on the Status of Refugees. Additionally, the country is bound to comply with it also because of art. 18 (right to asylum) of the EU Charter.

The Stop-Soros package is just the most important policy carried out by the government against the billionaire, for Fidesz also targeted other institutions directly connected with the man (Kubas and Czyż 2018; Krekó and Enyedi 2018). For example in 2017 a legislation obliging Budapest's Central European University to close was approved: the university is an American institution founded by Soros (Lendvai 2019; Kubas and Czyż 2018). As further instances of Fidesz's pluralism and liberalism suppression, Carpinelli (2018) mentions the appearance of blacklists in newspapers owned by Orbán's friends – like *Figyelő* – collecting the names of activists, journalists, researchers and professors who have either ties with Soros or have engaged in minority groups' rights promotion and defense.

4.2.3 Assessing Fidesz: what is left of Hungary?

Analyzing Fidesz' ideology, its rhetoric and the policies it has authored and implemented, it is possible to grasp what the party's relationship with constitutionalism, and constitutional liberal democracy really is. The strong ideological emphasis on ethnic nationalism indicates a certain attitude to impose the will of the majority at the expenses of minority groups, not identifiable with Hungarian ethnicity. But such a marked focus on nationalism, which Fidesz pushes to its extreme by regarding individual Hungarians as units of a big community rather than single and autonomous persons, discriminates also within the same majoritarian group, for Hungarians not recognizing themselves as Christians or having traditional lifestyles tend to be marginalized, considering Fidesz Christian traditional values indispensable for Hungariness. Moreover, the very ideological creation of a single, united Hungarian community is profoundly in contradiction with liberalism, for individuals' preferences are not considered as relevant (they are rather regarded as detrimental) if not part of the national group. Already from these ideological items, it is clear that Fidesz also has an inclination for anti-pluralism. The rhetoric against communist and international elites – considered both as oppressive and dangerous groups – is a clear signal of the party's anti-elitism; while its appeal to the will of the majority highlights the party's conviction that it is the only political organization able to represent Hungarians, even though the kind of representation it offers is not compatible with individualism or liberalism. The policies carried out by Orbán's organization when in government are aligned with the party's strategic communication and core ideological approach. Fidesz has made out of the will of the majority, a real tyranny of the majority, where every minority group is not considered at all. This clearly appears in the way the new Fundamental Law was drafted. Opposition parties' proposals were never taken into

consideration during the constitution-making process, nor were such political groups involved in discussions of any kind. As noted above, the constitutional text seems to speak on behalf of only ethnic Hungarians rather than Hungarian citizens in more general terms, with the result that the Constitution is more a partisan text than a neutral and *super partes* one. In both cases mentioned, the will of the majority has prevailed – be it in the form of the most supported party in the constitution-making process phase, or in the text’s appeal to the people defined in ethnic terms. Minority groups have been excluded from consideration and account, remaining in both circumstances without equal protection or defense. If in the constitution-making process, the excluded minority group was made up of Hungary’s opposition parties, in the Constitution’s National Avowal, part of the minority group are both Hungarians of non-Hungarian ethnic origin and Hungarians of Hungarian ethnic origins who do not identify with the ‘Hungarian’ values provided by the same text. By linking Christianity and traditional lifestyles with being Hungarian, the Constitution legitimizes the non-consideration of Hungarian citizens in favor of abortion, same-sex marriages and whose goal in life is not that of settling down with a big family. From a human rights perspective, the non-protection of minority groups is particularly evident (and dangerous) when among the reasons why discrimination is forbidden in Hungary there is no reference to gender, thus making it legitimate not to defend minorities’ needs if these are incompatible with the majority will. The imposition of the majority’s will has been carried out also in the media field, where enormous percentages of frequencies have been granted to pro-Fidesz channels, with opposition stations minimized if left at all.

The prevalence of the will of the majority – as just made clear – brings with it an unavoidable opposition to pluralism: an opposition to different political ideologies, an opposition to non-conservative lifestyles, an opposition to non-religious values, an opposition to different ethnic origins, an opposition to different opinions. Additionally, since the Constitution clearly sees Hungarian people as just making up the Hungarian community, and considers their rights always in relation to their obligations toward the community, Fidesz has pragmatically shown its attitude against liberalism, basis of every democratic society. Also in this case, opposition to liberalism means opposition to pluralism. But Fidesz has also given example of its disrespect for constitutionalism and its principles of checks and balances, and separation of powers. Indeed, the politicization of the Constitutional Court and of the National Judicial Office, together with that of all other theoretically independent bodies like the Commissioner for Fundamental Rights, the Media Council and the President of the Republic, are unequivocal signs of unconcern for the separation of powers principle. Fidesz has made it so that the

most independent bodies of the system be not independent anymore, all at the advantage of the executive, that is, of itself. The politicization of theoretically neutral and independent bodies means also that the principle of checks and balances is not respected anymore. Such a principle has been completely bypassed when the Constitutional Court has been deprived of its function to review the constitutionality of the Fundamental Law's amendments or of budget-related legislation; when Constitutional Court judges have been obliged to retire in order for them to be replaced by politically-aligned new ones, and by the very political procedure to follow for the election of basically every independent entity in the country. The non-respect for the system of checks and balances and for the principle of separation of powers means that the protection of people's fundamental rights is at risk. Also the rule of law has been downgraded by Fidesz. This has first happened when the 1995 amendment to the 1989 Constitution has been abolished so to have less stringent requisites to respect in order to formulate a new constitution. But it is clear also when considering the huge number of cardinal laws used by the government at the expenses of the same constitutional text. Furthermore, since cardinal laws require a certain majority to be produced, once again the will of the majority prevails over the protection of minorities. As far as migration and NGO's activities are concerned, with the Stop-Soros Package Fidesz has provided a final example of its pragmatic opposition to the protection of minority groups, to pluralism, to liberalism, and to the rule of law.

By disrespecting constitutionalism, the rule of law, the separation of powers, the system of checks and balances, the protection of minority groups, liberalism, pluralism, and fundamental rights, Fidesz has made it clear that it disrespects democracy in itself as well, for modern democracy cannot exist without such elements. By making it impossible for future governments to change the ideological orientation of the country as defined by cardinal laws, or to remove pro-Fidesz officers put in top strategic positions, Orbán has hindered Hungary's democratic functioning, for the will of future majorities would be extremely hard to be heard.

Orbán, as spokesperson of Fidesz, has stated in a loud way that he did not believe in the values of liberalism, and that consequently, objective of the party was that of turning Hungary into an illiberal

democracy¹⁷⁷. Assessed that the country cannot be considered liberal anymore, the real problem is rather whether it can be regarded as a democracy “in any meaningful way”¹⁷⁸ (Bozóki 2015).

4.3 Hungarian populisms: is there a common denominator?

As seen in the present chapter, Hungary experienced four different manifestations of populism, developing out of different social contexts, and consequently adapting and exploiting different background circumstances and problems. The question at this point is: is there something common to all populist organizations considered? Do they have similar items, or a common approach and effect on liberal democracy?

All cases analyzed stress the language of ethnic nationalism, perceiving the Hungarian society as being made up exclusively of ethnic Hungarians dissatisfied with the way their country is or was working. All such populist organizations, therefore, aim at imposing what they consider to be the will of the majority.

All populist parties considered have an exclusivist approach toward minority groups, in whatever form these present themselves. Elites are minority groups to be found in all four instances, while other minorities change according to the historical and social context considered. For the *népi* movement, a minority not worth of being represented was that of the Jews. The same is true for the MIÉP. For Jobbik, along Jewish people, also Roma and migrants are to be excluded, together with ethnic Hungarians not having traditional lifestyles. Fidesz provides a more extensive list of people not included in the will of the majority, encompassing migrants, non-Christian people, non-ethnic Hungarians, and ethnic Hungarians having non-traditional, non-conservative lifestyles. By not protecting minorities, and by not regarding them as part of the country’s general will, all Hungarian populist parties have a discriminatory approach which is undemocratic, for democracy is simultaneously the expression of the will of the majority and the protection of minority groups’ rights. All populist movements here analyzed, then, by conceiving the nation in unitary and communitarian terms, embrace an anti-pluralism and anti-liberalism approach, always advocated manifestly by the

177 The quotation inserted at the very beginning of the present chapter is taken from a speech released by Prime Minister Orbán in 2014, at the 25th Bálványos Free Summer University. It was a speech in which Fidesz’ leader explained his mistrust in liberalism, and defended the idea of a positive illiberal state (Bíró-Nagy 2017; Murer 2015). Accordingly, the concept of liberalism had been corrupted by the West, being increasingly associated with non-patriotism, globalization, sexual promiscuity, multiculturalism, non-traditional family models and migration (Carpienelli 2018).

178 Rupnik (2012) speaks of a possible transition “away from democracy”, while Pogány (2013) thinks Hungary is in many respects “much closer to the practice of some of the post-Soviet states[,] than to that of EU Members”, for the country has undergone “a significant shift towards a more authoritarian political culture”. Bugarič (2016) defines it “a semi-authoritarian regime”.

party's leaders. In the specific case of Fidesz, as we have seen, anti-liberalism, anti-pluralism and the imposition of majority will are more evident than in the other cases, for the party is also the only one to have reached the government, thus having much room for concrete maneuver.

The four Hungarian populist parties show a similar approach to constitutionalism. Also in this case, however, while for the *népi* movement, for the MIÉP, and for Jobbik, such a consideration is deducible from the organizations' pretty limited ideological stance, in the case of Fidesz disrespect for constitutionalism has been further evidenced by the policies carried out by the party when in government. Fidesz proved its unconcern for the separation of powers and for the system of checks and balances when it transformed the Constitution, the Constitutional Court and all other Hungarian independent bodies into partisan entities pledging loyalty only to Orbán's party. But the same disregard for the principle of separation of powers and for the system of checks and balances is evident also in the three other cases of populism here considered, when analyzing their stance toward minority groups. The judiciary is the autonomous and non-political branch which should protect minorities' rights, while carrying out activities of checks and balances designed to avoid a tyranny of the majority. By aiming at representing only the will of the majority, the *népi* movement, the MIÉP and Jobbik appear ready to disrespect that single branch (the judiciary, indeed) which could hinder their actions. Consequently, the three organizations might prove unconcerned with the separation of powers and the system of checks and balances, because such principles' rationale would be inconsistent with the movements' main goal, that is the representation and the defense of only the majority's will at the expenses of minority groups. In conclusion, some common denominators can be found in the four populist parties here studied: a propensity to impose the will of the majority, a disrespect for minority groups, an anti-liberal stance, opposition to pluralism, an unconcern for the principle of separation of powers and for the system of checks and balances, and consequently a disinterest for democratic constitutionalism. All four Hungarian cases of populism appear to support democracy in its formal aspect, spreading instead principles which are intrinsically undemocratic. As undemocratic are also the four movements' opposition and discrediting of parties, actors and institutions which have previously been elected following democratic practices, and which in turn represent the will of the majority – even though not specifically that of the populist majority.

CHAPTER 5

POPULISM AS A THREAT TO THE RULE OF LAW IN THE EUROPEAN UNION?

The European Union is first and foremost a Union of values and of the rule of law. The conquest of these values is the result of our history. They are the hard core of the Union's identity and enable every citizen to identify with it.
(European Commission 2003)

Both Italian and Hungarian populisms – although with a different systematic approach – have shown to have a conflictual relationship with the rule of law and its principles. Before analyzing their relationship with the core values of the EU and the most important principle of EU rule of law – the independence of the judiciary – it is worth making a comparison between the two cases, so as to understand whether they behave in a similar fashion as regards constitutionalism and the rule of law.

5.1 A common *modus operandi*? Italian and Hungarian populisms in legal comparative perspective

In chapter 3, Italy's different manifestations of populism have been analyzed and compared in order to understand whether they had a common core. The same has been done in chapter 4 with regard to Hungary. At this stage, it seems appropriate and necessary to make a comparison between the two countries, so as to comprehend whether their populisms have a common denominator, behave in the same way, or elaborate policies whose effects on the rule of law, constitutionalism and liberal democracy are similar. To carry out such a comparison, only the cases of populism in government will be analyzed, for they provide a concrete evidence of the tangible effects populist ideologies can produce when given power. This reduces our analyses to the Forza Italia-Lega Nord (FI-LN) coalition¹⁷⁹, the M5S-Lega coalition, and Fidesz¹⁸⁰.

One first important observation has to be made. While in Hungary populism has been able to produce a new fully-fledged constitution (the Hungarian Fundamental Law), hence operating in a very

¹⁷⁹ It is worth recalling, that what is here called the Forza Italia-Lega Nord government/coalition, was in reality a broader center-right political alliance including also non-populist parties. However, since the focus of the present work is populism, only the coalition's populist parties have been taken into account. Concerning the same center-right alliance, then, it is important to specify that most of the group's decisional power was in Forza Italia's and its leader's hands, for it was the most supported party in the national elections.

¹⁸⁰ For the sake of clarity, what is here referred to as the Fidesz government is in reality a coalition government between Orbán's party and the KDNP, a small mainstream political organization. However, since the KDNP is not a populist party, and its electoral support has been pretty irrelevant, the cabinet will be named after its strongest member.

sophisticated way from a legal perspective; in Italy it has acted relying mainly on ordinary legislation. As we shall later, such a difference in legislative tools is destined to have important repercussions. Indeed, in Hungary populism has produced much stronger and systematic effects than in Italy, transforming the country's form of government from a liberal democratic regime into an illiberal one – something which has never occurred in the Italian peninsula.

Both populisms (Hungarian and Italian) have a strong and exclusionist majoritarian approach, at the expenses of minority groups. Both manifestations, indeed, claim to speak in the name of pure Hungarians and pure Italians, respectively. Both, consequently, conceive of the people as a monolithic and unified group, sharing the same life ideologies, interests and needs. From such majoritarian stances, and the understanding of the people in homogeneous terms, there follows that both populisms have an implicit opposition to pluralism. In the case of Hungary, majoritarianism and anti-liberalism/anti-pluralism are expressed in a more radical way.

Both manifestations of populism are characterized by a strong anti-elitism. Both oppose traditional politicians and parties. The elites are then connoted in a more specific way according to the peculiarities of the country in which the parties analyzed have developed. In Hungary, elites are equated to the politicians of the previous communist regime, while in Italy the same group is associated either with the parties of the pre-Tangentopoli period (in the case of the FI-LN coalition) or with mainstream career politicians (in the case of the M5S-Lega coalition). Opposition to the elites can also mean opposition to international elites – this is true especially for the Fidesz government and the Lega-M5S one.

In the cases of populism under investigation, the category of the enemy does not entail only elites, for many other groups are indeed included within it. The enemy varies according to the contingencies of each party's time of development, geographical collocation and historical legacy. For example, Forza Italia vehemently opposed 'communists'; the Lega (as also the Lega Nord) stands against migrants, Muslims and members of the LGBT community, the M5S considers journalists and media representatives as part the out-group, and Fidesz denies to recognize non-ethnic Hungarians, non-Christian people, migrants, and members of the LGBT community as part of the pure people. In this sense, Fidesz and the Lega show the most similarities, also because of their strong support for nationalism and souverainism.

The Fidesz government, as the FI-LN one, has been able to elaborate more policies and pieces of legislation than the M5S-Lega coalition – also because the latter's period of joint government,

especially if compared with the two other instances, has been much shorter. From a theoretical perspective, the policies produced by both cases of populism relate to constitutionalism and liberal democracy in a very similar way. In Hungary, however, the effects they have produced on the democratic system of the country are much more intense and systematic than in Italy. Such a divergent output is due to the creation of a new partisan constitutional text of reference, and the politicization of independent institutions – both phenomena which have unfolded in Hungary but not in Italy.

Fidesz, the FI-LN coalition and the M5S-Lega coalition have all three tried to strengthen the executive at the expenses of the two other constitutionally recognized branches (in a clear majoritarian approach). In the case of the FI-LN coalition, the reinforcement of the executive has been carried out mainly through the passage of a new majoritarian electoral law, the elaboration of a constitutional reform aimed to make the prime minister almost untouchable, and the passage of urgency legislation without the real involvement of the legislative branch. In the case of the M5S-Lega coalition, in order to reinforce the executive, the group has used especially the instrument of urgency legislation, with the government giving itself legislative powers traditionally in the hands of the Chamber of Deputies and of the Senate. In Hungary, the executive has been further empowered by nominating party affiliates to top positions of independent institutions¹⁸¹, and by drafting a Constitution whose functioning was enormously dependent on cardinal laws. As it is clear, in all cases analyzed the strengthening of the executive has gone hand in hand with a disrespect for the constitutional principle of the separation of powers. A principle which in Italy has been further undermined by the anti-judicial rhetoric adopted first by Berlusconi and then by Salvini – aimed at delegitimizing courts and judges on the ground of their non-majoritarian nature – and by the judicial reform carried out by the FI-LN coalition with the objective of politicizing the independent branch.

The violation of the principle of separation of powers inevitably entails also the violation of the system of checks and balances. By appointing party members to the presidency of independent institutions, and forcing Constitutional Court judges to retire in order to nominate new partisan ones, Fidesz has made it so that the executive could be free from any external control. The Hungarian Constitutional Court's deprivation of its constitutional review power as far as budget-related legislation is concerned, is just another example moving in the same direction. A similar situation has unfolded in Italy, with the FI-LN coalition trying to politicize the judiciary (through the so-called Castelli judicial reform), to reduce the

¹⁸¹ I am referring here to the National Judicial Office, the Media Council, the Commissioner for Fundamental Rights, the President of the Republic, and the State Audit Office, whose presidents – as explained in chapter 4 – are all former Fidesz members.

role of the Parliament and that of the President of the Republic (through the failed 2016 constitutional reform) and to rely on urgency legislation coupled with motions of confidence, so as to ‘force’ the legislative branch to act in a certain (biased) way.

When the separation of powers and the system of checks and balances are damaged, also the protection of fundamental rights is at risk. Indeed, if the judiciary is not anymore in the position to be neutral, and the Parliament is not more representative of all people because overwhelmed by a single irremovable majority, the respect of fundamental rights is no more guaranteed.

Both Fidesz and the FI-LN coalition (but not the M5S-Lega cabinet) have produced policies limiting freedom of the press and media pluralism respectively, thus undermining freedom of expression. Both governments have made it so that a higher quantity of broadcasting frequencies in the media be destined to them at the expenses of other opposition parties, while also trying to avoid negative advertisement for their political organizations (in the case of Italy, this has been done at the advantage of only Forza Italia, for – as we have seen – its leader was not only the country’s prime minister but also and simultaneously a media tycoon). The attempt at avoiding discrediting advertisement has been achieved by Fidesz via the appointment of pro-government journalists and the elaboration of a law prohibiting the spread of information not aligned with (the by the ruling party decided) public morals. In Italy, the same has instead be done by influencing the Board’s composition of the nationally-owned RAI TV channel, and by suing those newspapers which had talked negatively about Berlusconi¹⁸². Concerning migration, the M5S-Lega cabinet has passed a decree (the so-called *decreto sicurezza*) depriving migrants of those fundamental rights granted to them by the first part of the Italian Constitution; while Fidesz has drafted an amendment (the seventh amendment) to the Fundamental Law prohibiting aliens to be settled in Hungary. Both governments have showed a certain hostility also toward civil society – a trait absent in the FI-LN coalition – for both have tried to hinder NGOs’ activities. This has been carried out by Fidesz with the elaboration of the Stop-Soros Package, which prohibited *inter alia* the distribution of information materials to illegal migrants (thus violating freedom of association, intended as a broader interpretation of freedom of expression); and by the M5S-Lega coalition with the drafting of its *decreto sicurezza bis*, whose goal was the criminalization of rescue at sea.

One important distinction, however, must be made as far as the issue of fundamental rights’ protection is concerned, and the way this is addressed by the Hungarian and Italian manifestations of populism we

182 As we have seen, indeed, Italy and Hungary have both been categorized by Freedom House as partly free countries.

are analyzing. Indeed, while opposition to liberalism and pluralism – as we have seen – is present in both cases, such a stance has been made particularly extreme in Hungary, with Orbán explicitly declaring his intention to turn the country into an illiberal state made up of a national historical community rather than diverse individuals, and where specific rights were to be guaranteed only after the realization of specific duties.

Finally, a disregard for the constitutional principle of the rule of law can be found in both populisms. In the Italian case, this has been showed *stricto sensu* by the passing of urgency legislation and laws declared or declarable unconstitutional (in both governments here analyzed); while in Hungary it has expressed itself in the disrespect for EU law provisions and international commitments, and in the abolition of the 1995 amendment imposing a higher threshold for the drafting of a new constitution. To sum up, Hungarian and Italian populisms are characterized by a common core (majoritarianism, opposition to liberalism and pluralism, non-consideration of minority groups, exclusionist stances, anti-elitism), and act by using a common *modus operandi* (trying to strengthen the executive at the expenses of the Parliament and of the judiciary, trying to politicize independent institutions, disrespecting the protection of fundamental rights as far as minorities are concerned). Their approach to modern constitutionalism, as introduced, is rather similar: they disregard it by violating the principle of separation of powers, the system of checks and balances, minorities' rights' protection, liberalism, pluralism, and the principle of the rule of law. Despite their common core, a similar *modus operandi*, and a similar disregard for constitutionalism, however, it is of paramount importance to understand that the concrete outputs produced by the two cases of populism we have analyzed differ significantly. As we have seen, indeed, in Italy attempts at undermining the autonomy and power of independent bodies have been blocked, so that no politicization of the judiciary or of the President of the Republic has been effectively carried out. In a similar fashion, most unconstitutional bills have been partly or *in toto* annulled. The same cannot be said for Hungary. By drafting a new partisan constitution, the legal background of reference for the validity of any law has been irremediably altered, while the independence of guarantee bodies has been undermined through the appointment of party supporters. Additionally, Italy was never turned into a declared and persistent illiberal democracy, despite the anti-liberal implications of some policies. Hungary, instead, has been systematically adjusted precisely in that direction, making of the country a hybrid form of democracy. Its illiberalism has been irremediably enshrined in the provisions of the constitution, thus making it almost eternal. As a consequence, despite the common approach and common anti-liberalism that the two populisms share, the way they have

expressed themselves – or better said, the way they have had the opportunity to express themselves – has produced tangible results of an extremely different kind.

From the cases here analyzed, additionally, it is possible to see how populism effectively modeled the legal doctrine of liberal constitutionalism to its own ends, in line with what has been claimed by Blokker (2019; 2019b) (see section 1.4.3). Indeed, both Hungarian and Italian populist manifestations – even though in their own personal way, with different intensities and relying on different legislative acts – have produced pieces of legislation in the name of the general will, characterized by a strong majoritarian stance, unconcerned with classical constitutionalism, and conceived in an instrumental fashion to the realization of their objectives.

It has been viewed how both Hungarian and Italian populisms have a problematic relationship with modern constitutionalism. But since the latter is the cornerstone of every modern liberal democracy, such instances of populism, then, also have a troublesome relationship with liberal constitutional democracy itself. Such a consideration, together with an understanding of democracy which conceives of the same as more than just majority will, finds much support in the literature (Urbinati 1998; Halmai 2018; Pinelli 2011; Rummens 2017; Abts and Rummens 2007; Spadaro 2016; Huq and Ginsburg 2018; Akkerman 2003; Plattner 2010) (see section 1.2.4). Accordingly, even though populism emphasizes people sovereignty and the power of the *demos* – supporting people’s absolute centrality in the democratic process – by curtailing minorities’ rights, liberalism, pluralism, the separation of powers and the system of checks and balances, the phenomenon cannot be regarded as fostering democracy in its comprehensive meaning. Indeed, democracy cannot be said to exist if the will of the majority is not limited by constitutional liberal constraints defending minorities’ rights¹⁸³ (Spadaro 2016), for it would inevitably turn into what de Tocqueville defined a tyranny of the majority. For this reason, one has to admit that despite the rhetoric promoting popular power, both Hungarian and Italian populisms have a conflictual relationship not only with modern constitutionalism, but also with modern liberal constitutional democracy, which they threaten and jeopardize.

5.2 Is populism compatible with the European Union’s values?

The European Union is usually regarded as a *sui generis* entity whose competences are halfway between those of mainstream international organizations and those of nation-states (Weiler, Haltern and

¹⁸³ For an opposite view, see again section 1.2.4 of the present work, and in particular Canovan (1999), Mény (2005), Mény and Surel (2002), Mudde (2013), and Worsley (1969).

Mayer 1995). Despite not having a formal constitution, it still has its own constitutionalism made up of treaties and the case law produced by the European Court of Justice (van Gerven 2005).

5.2.1 Art. 2 and art. 7 TEU: the union's core values and constitutional identity

Of particular concern for the purposes of this work are artt. 2 and 7 of the Treaty on the European Union (TEU)¹⁸⁴, respectively establishing the core values upon which the EU is founded (Besselink 2016), and describing the procedure to follow in case of these same values' infringement by member states. For the sake of clarity, the two articles will be reported entirely. Art. 2 TEU stipulates that:

“The Union is founded on the values¹⁸⁵ of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

To take measures against possible violations of such values by EU member states, art. 7 TEU orders that:

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is *a clear risk of a serious breach by a Member State of the values referred to in Article 2*¹⁸⁶. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure. [...]
2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine *the existence of a serious and persistent breach by a Member State of the values referred to in Article 2*¹⁸⁷, after inviting the Member State in question to submit its observations.
3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. [...]

184 You can read it here: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:EN:PDF>.

185 Kochenov (2017) notes that what art. 2 TEU defines ‘values’ should in reality be called ‘principles’, therefore implying that the rule of law, democracy, respect for human rights etc. should not be just ‘desirable ideals’ but rather ‘binding rules’. These principles are indeed ‘unquestionable and enforceable parts of EU law’ (Szente 2017), and if their violation is not sanctioned, it would hinder the functioning of the very process of European integration (Bugarič 2016; Kochenov 2017; Szente 2017).

186 Emphasis not present in the original formulation of the provision.

187 Emphasis not present in the original formulation of the provision.

The importance of art. 2 TEU is evident when thinking that for the worldwide promotion of its core values, the EU gained the label of ‘normative power’ (Wollard 2018). These same values are indeed to be regarded as ‘the very foundations of [the] [EU] legal order’ (Kochenov 2017). In a 2014 ruling (opinion 2/13 of 18 December 2014), the European Court of Justice stated that the EU’s ‘legal structure is based on the fundamental premise that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the EU is founded, as stated in Article 2 TEU.’ (Oliver and Stefanelli 2016; Kochenov and Pech 2015).

Art. 7 TEU, instead, is sometimes referred to as the ‘‘homogeneity’ clause’’, because it protects the constitutional identity of the union and of its member states (Besselink 2016). As a consequence, it implies that a violation of the union’s values cannot be justified on the excuse of member states’ national identity, for this should be equally based on the principles of art. 2 TEU¹⁸⁸ (Besselink 2016; Szente 2017). Art. 7’s nature is intrinsically political¹⁸⁹, for it does not foresee the intervention of the European Court of Justice in the process of determination and punishment of those member states which infringe the principles of the union (Burgarič 2016; Carrera and Bárd 2018; Kochenov 2017; Kochenov 2017b; Besselink 2016; Kochenov and Pech 2015). At the same time, however, it does not even expressly exclude it¹⁹⁰ (Kochenov 2017; Besselink 2016).

Art. 7 TEU foresees two different and independent procedures: an early warning mechanism in the case of art. 2 TEU infringement risk, and a sanctions mechanism¹⁹¹ in the case of a systemic and persistent art. 2 TEU violation (Besselink 2016; Carrera and Bárd 2018; Kochenov and Pech 2015; Kochenov, Pech and Scheppele 2017). These mechanisms are not related or dependent, and as a consequence, the sanctions procedure may be triggered even if the early warning one has not been previously called (Kochenov 2017b). The article’s sanctions mechanism (art. 7.2 TEU) was introduced with the Treaty of

188 Respect, by the EU, of member states’ national identity is protected by art. 4.2 TEU. Such a provision has been frequently recalled by the Hungarian authorities during the infringement procedures carried out against the country by the Commission, a topic which we shall see later (Szente 2017).

189 In order to trigger art. 7.2 TEU, Council’s unanimity (minus the member state against which the measure is taken) is requested, making the activation of such a paragraph basically impossible (especially if the accused state has even just one friend sharing its ruling methods).

190 Since the Treaty of Nice, art. 7 TEU is not excluded anymore from the room of intervention of the European Court of Justice, but the latter’s jurisdiction is restricted to only procedural matters (Besselink 2016).

191 As far as the sanctions mechanism is concerned, art. 7.3 TEU is vague about what specific sanctions should be imposed. It has been noted that they can have both an economic and a non-economic nature, therefore entailing – *inter alia* – also access to EU funds suspension (Kochenov 2017b; Oliver and Stefanelli 2016). What is absolutely clear, however, is that art. 7 TEU does not foresee expulsion from the EU (Kochenov 2017b; Besselink 2016). On this basis, to reinforce the validity of its provisions – consequently strengthening also the legitimacy of the EU’s core values – Müller proposes a modification of the same article via the introduction of the possibility of expulsion in cases where the democratic apparatus of a state is basically in pieces (Bugarič 2016).

Amsterdam in 1997, probably in light of the union's future enlargements (Burgarič 2016; Sedelmeier 2013; Kochenov and Pech 2015; Kochenov, Pech and Scheppele 2017). The early warning one (art. 7.1 TEU) instead, was added only in a second moment, with the 2001 Treaty of Nice (Burgarič 2016; Kochenov, Pech and Scheppele 2017; Besselink 2016; Sedelmeie 2013; Kochenov and Pech 2015). The choice to introduce a second measure of a precautionary nature probably derived from a concern, stemming from the union's enlargement process, that new member states might not have such a historical tradition of democracy, rule of law, and respect for human rights, therefore needing to be reminded thereof (Kochenov 2017b). Indeed, while the Copenhagen Criteria – thought in light of the Eastern enlargement – imposed the respect of basic principles (among which democracy, the rule of law, human rights' respect, and minorities' protection) as a prerequisite for accession to the union, they did not simultaneously impose a constant check of their compliance (Szente 2017), thus creating what has been defined the "Copenhagen dilemma" (Kochenov 2017b; Kochenov 2017).

5.2.2. The EU's very late invocation of art. 7 TEU against Hungary

Recalling now the cases of populism analyzed in detail in chapter 3 (Italian populism) and 4 (Hungarian populism) – and keeping in mind what stressed in the previous section concerning the difference in output produced by the Fidesz cabinet in comparison with the FI-LN and M5S-Lega ones – there immediately emerges a clear violation, authored by Hungary, of the afore-mentioned EU values as established in art. 2 TEU¹⁹². The country – as explained – is characterized (for the last ten years) by an illiberal constitutional order, a persistent violation of the system of checks and balances, the corruption of the rule of law, a judiciary with a very limited independence, almost no freedom of the press, an extremely powerful executive, and a situation of very limited tolerance for civil society. There can, therefore, be no doubt about Hungary's infringement of the EU's core values (Burgarič 2016). Oliver and Stefanelli (2016) describe the situation in Orbán's Hungary as the most serious disregard for human rights ever carried out by a EU member state since the community was founded.

192 The sanctions mechanism of art. 7 TEU can be activated only when there is a systemic and persistent infringement of art. 2 TEU. This explains why such a provision has never been called in the case of Italy, not even when the country was evidently underperforming with respect to the EU's values, because of Berlusconi's conflict of interest and its consequent impact on the country's media pluralism conditions. In Italy, indeed – conversely to what is happening in Hungary – despite the government's assault on some principles, independent institutions have been able to intervene and correct such deficits. In this way, the peninsula never really experienced a systemic breach of the EU's core values (Kochenov 2017b).

Given the importance attributed by the union to its core values, as claimed, one would expect an immediate invocation of art. 7 TEU so as to stop Hungary's infringement practices. However, even though Fidesz seized power in 2010, the application of such an article by the EU only occurred in 2018. Art. 7 TEU has repeatedly been defined – and not without criticisms – “a nuclear option¹⁹³”, a too strong measure to be used (Bugarič 2016; Szente 2017; Kochenov 2017b; Besselink 2016). This is, however, an overestimation, for as Kochenov (2017b) notes, “there is nothing nuclear in this instrument”, and its application should be triggered as soon as the EU's values are threatened – at least if these are not to be regarded as “empty proclamations”. The delay which has characterized the invocation of such an article in the case of Hungary is attributable, according to Bugarič (2016), to a pure lack of political will. The European People's Party – the biggest coalition in the European Parliament, to which Fidesz is a member – has indeed been reluctant in the application of art.7 TEU, “repeatedly defend[ing] the Hungarian government's constitutional policy” (Szente 2017; Bugarič 2016), and voting against the invocation of any early warning mechanism (Kuchenov and Pech 2015). By not triggering art. 7 TEU, the European Commission has given the impression that a violation of the union's values is not enough for intervening, while at the same time avoiding to publicly accuse Hungary's political and legal changes, and the atmosphere in which these had been carried out (Szente 2017). The most important step, before 2018, to prevent rule of law backsliding within the union has come from the European Parliament in the form of the Tavares report¹⁹⁴ (Oliver and Stefanelli 2016) . Released in 2013, the report expressed the legal body's concerns for Hungary's human rights situation, asking for the installation of an independent mechanism checking member states' compliance with art. 2 TEU, on the model of the Copenhagen Commission proposed by Müller (Bugarič 2016; Scheppele 2013). Such a request, however, never materialized, and the Copenhagen Commission was never set up. For its part, the Council has been the least active European institution, having taken no real action to contrast the rule of law crisis¹⁹⁵ which was unfolding in Hungary (Oliver and Stefanelli 2016; Kuchenov and Pech 2015).

The inability of the EU to face the Hungarian crisis – that is, to promptly trigger art. 7 TEU – has been welcomed with much skepticism and criticism (Sedelmeier 2013; Carrera and Bárd 2018; Kochenov

193 The expression was first used by European Commission President Barosso (Bugarič 2016; Besselink 2016).

194 Scheppele (2013) regards the 2013 Tavares report as Europe's first real action against Hungary's democratic backsliding.

195 According to Oliver and Stefanelli (2016), this might be due to the fact that many governments in Eastern Europe are actually fascinated by Orbán's way of ruling, and that by taking measures against the violation of art.2 TEU, member states would automatically legitimate the possibility that the same practice be taken against them in the future.

2017b; Besselink 2016; Szente 2017; Oliver and Stefanelli 2016; Scheppele 2016; Kochenov, Pech and Scheppele 2017).

5.2.2.1 The Commission’s Rule of Law Initiative and the Council’s Rule of Law Dialogue: two inefficient mechanisms to solve rule of law backsliding in the union

As we have said, art. 7 TEU was applied only in 2018. Before that, the union tried to tackle the situation of democratic backsliding using other (inefficient) tools. The European Commission, in line with what stated in its 2003 Communication¹⁹⁶, launched in 2014 a ‘Rule of Law Initiative’ ‘setting out [a] new EU Framework to strengthen the Rule of Law ’’, intended as a preventive alternative to the nuclear option, and a more persuasive method to deal with possible backslidings (Besselink 2016; Kochenov, Pech and Scheppele 2017). It was a sort of ‘pre-Article 7 Procedure’ (Kochenov 2017; Carrera and Bárd 2018; Kuchenov and Pech 2015; Kochenov, Pech and Scheppele 2017), which in cases of failure should trigger the invocation of art. 7 TEU (Kuchenov and Pech 2015 2015). The new Rule of Law Framework is similar to the early warning mechanism defined in the first paragraph of art. 7 TEU (Besselink 2016): in situations where there is a risk of systematic breach of the rule of law, the Commission – after having assessed the danger – can start a dialogue with the member state in question, can provide recommendations, and can check whether such recommendations are effectively implemented (Kuchenov and Pech 2015; Besselink 2016). The application of such a framework has been inconsistent – ambiguously it has been used against Poland¹⁹⁷ but not against Hungary – and has produced no positive or significant effects, if not a delay in the application of art. 7 TEU (Kochenov 2017b; Kochenov 2017; Carrera and Bárd 2018). The Commission’s mechanism has been further criticized for ‘treating member states differently’, in that there seems to be no real reason why the body should start a discussion procedure with Poland but not with Hungary (Carrera and Bárd 2018) – especially if one considers that Hungary’s backsliding has gone much further¹⁹⁸.

196 I am referring here to the Commission’s conviction that in a union of values like the EU, there will never be the need to rely on the penalties established by art. 7 TEU (European Commission 2003;).

197 Also in this case, however, the mechanism proved rather inefficient, for after ‘Poland’s *de facto* refusal to cooperate’, instead of immediately triggering art. 7.1 TEU (which will be eventually triggered), the Commission produced just another recommendation (Kochenov 2017b).

198 It has been criticized also because it relies exclusively on constructive dialogue to fix rule of law backslidings, while the ability of such a tool to efficiently solve serious problems appears questionable. The mechanism seems, therefore, ‘excessively ‘soft’ in nature’ (Kuchenov and Pech 2015).

The Commission's Rule of Law Initiative has been negatively welcomed by the Council¹⁹⁹, which in response to the same has launched its very own initiative aimed at strengthening the rule of law (Besselink 2016; Kuchenov and Pech 2015) by promoting an annual Rule of Law Dialogue based on peer reviews (Oliver and Stefanelli 2016; Kochenov 2017b). Similarly to the initiative of the Commission, also this one seems to have produced no real effects, being criticized because of its vagueness and failure to address concrete shortcomings (Oliver and Stefanelli 2016), and being further defined 'anaemic' (Kuchenov and Pech 2015).

5.2.2.2 Hungary's infringement procedures

Apart from the above-mentioned mechanisms proposed by the Commission and the Council to halt the rule of law backsliding in the union, Hungary has been personally involved in (only) three infringement procedures, dealing with the independence of its central bank, data protection, and the forced retirement of Constitutional Court judges imposed by Fidesz (Pogány 2013; Oliver and Stefanelli 2016). Initiated by the Commission, such infringement procedures have focused on pretty secondary technical aspects, rather than substantial or comprehensive problems (Szente 2017; Carrera and Bárd 2018).

As far as data protection is concerned, the new Hungarian Fundamental Law foresaw the replacement of the old ombudsman specialized in data protection with a new body called 'National Data Protection and Freedom of Information Authority'. The Commission judged the old ombudsman's early termination in violation of Directive 95/46/EC, establishing the independence of media protection authorities (Szente 2017; Bánkuti, Halmai and Scheppele 2012). The procedure ended up before the European Court of Justice, which declared Hungary's imposition of forced retirement on the old ombudsman unlawful (Case C-288/12) (Bíró-Nagy 2017), without, by the way, reinstating him (Szente 2017).

A similar development unfolded – as we have seen in Chapter 4 – when Constitutional Court Judges were forced to retire. Also in this case, the Commission initiated an infringement procedure which ended up before the European Court of Justice (Bíró-Nagy 2017; Bánkuti, Halmai and Scheppele 2012). The judicial body defined such a law 'unjustified [and] discriminati[ng] on grounds of age', declaring it unlawful because in violation of Directive 2000/78/EC (Case C-286/12) (Szente 2017;

¹⁹⁹ The Legal Service of the Council, indeed, after having analyzed the framework set up by the Commission, produced an opinion about it (Opinion of the Legal Service 10296/14 of 27 May 2014) in which it declared such a rule of law mechanism unlawful because incompatible with EU treaties, further recalling that the only possible way to deal with art. 2 TEU violations was to rely on art.7 TEU (Besselink 2016; Oliver and Stefanelli 2016).

Bugarič 2016). The ruling, however, did not reinstate those judges who had already been dismissed (European Commission 2012; Norwegian Helsinki Committee 2013; Bugarič 2016; Szente 2017; Kochenov and Pech 2015).

The third and last infringement procedure was initiated by the Commission because of the non-independence of the Hungarian Central Bank, pressured by the Fidesz government to unconditionally approve its financial policies. Being such a practice judged inconsistent with the provisions of the Lisbon Treaty protecting central banks' independence, and after negotiations which brought Fidesz to soften its position, the infringement procedure was dropped by the Commission (Szente 2017).

5.2.2.3 The Sargentini report: art. 7 TEU is finally invoked

Basically, the just analyzed initiatives carried out by the Commission against Hungary have not limited the country's rule of law crisis, rather giving the impression to miss the point.

After 8 years, in September 2018, the European Parliament finally invoked the application of art. 7.1 TEU against Hungary, on the basis of a report presented by the Dutch member of the European Parliament Judith Sargentini. The report accused the Fidesz cabinet of representing a 'systemic threat' to the core values of the EU as formulated in art. 2 TEU (Beswick and Palfi 2018; Parlamento Europeo 2018). It included a list of concerns regarding the country's electoral and constitutional systems, the independence of the judiciary, data protection, freedom of expression, academic independence, freedom of association, freedom of religion, minorities' rights, migrants' rights, social and economic rights, conflict of interest, corruption, and right to gender equality (Parlamento Europeo 2018; Köves 2018; Beswick and Palfi 2018; Carrera and Bárd 2018; Carpinelli 2018). It was the first time in the history of the EU that the European Parliament called for the application of art. 7 TEU²⁰⁰(Carrera and Bárd 2018; Köves 2018; Parlamento Europeo 2018), an application which has been criticized because arriving too late (Carrera and Bárd 2018; Scheppele 2016; Kochenov, Pech and Scheppele 2017).

Accusing the EU of settling accounts with Hungary because of its strict migration policy and opposition to the organization's migrants relocation system (Beswick and Palfi 2018), Orbán defined the European Parliament's authorization vote a "fraud" and a "petty revenge" (Carrera and Bárd 2018).

200 In 2017, however, art. 7 TEU was invoked by the European Commission against Poland, in order to defend the independence of the country's judiciary (Köves 2018; European Parliament 2020; Kochenov, Pech and Scheppele 2017).

After the invocation of art. 7 TEU, two meetings have been held between the Council and Hungarian authorities to discuss the issues raised by the Sargentini report, respectively in September 2019 and December 2019 (European Parliament 2020; Makszimov 2019). This means that the first meeting was organized more or less one year after the European Parliament's vote to proceed (Makszimov 2019; Makszimov 2019b), and that the procedure is still at the very beginning, especially because – as it has been noted by some European Parliament members – “the hearings organized by the Council [...] are neither regular nor structured” (European Parliament 2020). As far as the first meeting is concerned, Pech (2019) denounced its lack of transparency and the format of the process, which made it “easy for misleading or false statements [by the Hungarian authorities] to go unanswered”. It has further been pointed out that the situation in Hungary has deteriorated since the triggering of art. 7 TEU (European Parliament 2020).

The challenge posed by Hungary to the EU, as we have seen, has been tackled with much delay and without producing significant results, at least for the moment. The union's reaction to the violations of its core values has been rather cold and ineffective (Szente 2017; Kochenov 2017b), conversely to what happens when member states fail to transpose union directives, or to comply with treaties' economic provisions and the judgments of the European Court of Justice (Kochenov 2017; Bugarič 2016). Such a behavior, however, might be dangerous, for by failing the union to take measures against illiberal member states, other countries could feel legitimized to follow their turn, knowing that no serious actions will ever be taken to contain them (Carrera and Bárd 2018; Oliver and Stefanelli 2016). Indeed, it has been noticed (also by the European Parliament) how the EU' inability to handle and sanction rule of law disintegration might have contributed to its spreading in the community (Kochenov, Pech and Scheppele 2017). Art. 2 TEU – by being the milestone of what the union has become over time, going out its original economical milieu – should be given much more importance if the EU really wants to be coherent²⁰¹ and credible (Szente 2017, Kochenov and Pech 2015). Indeed, while the union regards itself as promoting universal values in the world, in reality it is unable to guarantee the respect of its principles within the territory of its own member states (Bugarič 2016). By sharing the same constitutional identity (the EU and its member states), a threat to the values of art. 2 TEU at the level of just one member state, automatically becomes a threat for the entire community (Besselink 2016).

201 Speaking of coherence, the EU has been accused of lacking such a feature also as far as its management of the migration issue is concerned, for the deal signed with Turkey is indeed very much inconsistent with the union's principle and promotion of human rights protection. The same can be said about the Italy-Lybia Agreement ratified by the peninsula with the “open support of the EU” (Woollard 2018).

Indeed, as Věra Jourová – current Vice President of the European Commission for Values and Transparency – put it, “if one national system of judiciary is broken, the EU system is broken [too]” (Kochenov, Pech and Scheppele 2017).

5.2.2.4 Fidesz’s late suspension from the European People’s Party

Because of its non-compliance with art. 2 TEU, Fidesz was suspended from the European People’s Party in March 2019 (de La Baume 2019; Brzozowski, Rios and Fortuna 2019; Pitchers 2020). Such a suspension means that Fidesz cannot present anymore candidates for posts, cannot vote, and cannot take part in any EPP’s meeting (BBC 2019; Brzozowski, Rios and Fortuna 2019; Pitchers 2020). The European party also set up a three-member panel to check the democratic development of the country. Fidesz’s suspension was reconfirmed by the EPP in a meeting held at the end of January 2020 (Pitchers 2020; Zalan 2019). However, as we have seen in chapter 4, Orbán’s party started to behave in a conflictual way with respect to the rule of law and its principles long before 2019, meaning that also in this case the intervention of the transnational organization was pretty late, and happened only when ‘forced’ by the Sargentini report and the invocation of art.7 TEU.

However, if the European People’s Party has failed to respond in an appropriate way to Fidesz’s behavior – as we have seen by “deliberately and continuously refusing to take any concrete actions against” it (Alemanno and Pech 2019) – for its part, the EU has failed (again) to tackle Hungary’s rule of law backsliding by directly addressing the European People’s Party. Indeed, European political parties must – if they do not want to be de-registered and excluded from funding – comply with specific norms of behavior intended to increase their accountability (Alemanno and Pech 2019). Such norms are to be found in Regulation 1141/2014²⁰² (which completely replaced Regulation 2004/2003 and was recently amended by Regulation 2018/673) and include, *inter alia*, observance of the core values of the EU as established by art. 2 TEU²⁰³. By being a member of the European People’s Party, Fidesz’s controversial behavior and disrespect of art. 2 TEU necessarily affected also the transnational organization hosting it, which by not intervening consented to its conduct (Alemanno and Pech 2019). As a consequence, the European People’s Party failed to persistently comply with the core values of the union, placing itself in violation of the Regulation’s conditions (Alemanno and Pech 2019). The decision to verify whether a certain European party complies or not with the EU core values can be made by either the European Parliament, the Commission or the Council, and can finally cause the de-

202 On the Statute and Funding of European Political Parties and European Political Foundations.

203 Regulation 1141/2014, art. 3.1 (c).

registration of the party in question only if a ‘manifest and serious’ violation has occurred²⁰⁴. As for art. 7 TEU, also this procedure is intrinsically political (Grasso and Perrone 2019). Similarly to art. 7 TEU, also in this case the main EU institutions have failed to use such a legal provision to address the serious problem of rule of law backsliding that was unfolding in Hungary. Fidesz’s late suspension is thus unrelated to any measure enacted against the European People’s Party – for indeed none was taken – being rather a choice of the same transnational organization made unavoidable by the presentation of the Sargentini report and the following invocation of art.7 TEU.

If the example of Hungary shows how detrimental populism can be for the institutions of the rule of law, and consequently for the EU; on the other hand, the inaction of the same organization shows how the union is unready to respond to the populist challenge (Bíró-Nagy 2017).

5.3 Rule of law and populism in the EU

It has been noted how Fidesz made it so that Hungary infringed the core values of the EU as defined by art. 2 TEU, placing itself in contrast with the rule of law. Despite not violating these same principles in a systematic way, also the cases of Italian populism analyzed in this work have shown to have a conflictual relationship with the EU’s core values and the rule of law. The most important principle of the rule of law, as intended by the European Court of Justice, is to be found in the independence of the judiciary. Indeed, it is only in the presence of an independent third branch that also the separation of powers and the protection of fundamental rights can be guaranteed. Conceived in such a way that law could prevail over politics, the EU was originally set up to be a union of member states characterized by the rule of law, by an integral legal system and by an independent judiciary (Rye, Koncewicz and Fasone 2019). How do Hungarian and Italian populisms relate to the independence of the judiciary, grounding principle of the EU rule of law? The answer is that both cases of populism have tried to undermine it. As we have seen, indeed, Fidesz imposed a forced retirement for Constitutional Court judges, so as to replace them with party-aligned new figures. Despite the infringement procedure initiated by the Commission in this sense, the judges who had already been removed were never reinstated. A party enthusiast was appointed also to the presidency of the National Judicial Office, while the Constitutional Court was further deprived of its power of constitutional review as far as

204 Regulation 1141/2014, art. 10.3.

budget-related legislation is concerned. All such practices limit the independence and the autonomy of the judiciary, putting at risk also the principles deriving from it.

With regard to Italy, the FI-LN coalition has tried to damage the judiciary in many ways: by passing *ad personam* laws meant to hinder judges' activities, by proposing the Castelli reform so as to make the management of justice closer to politics, and by suggesting to increase the number of Constitutional Court judges elected by the Parliament, a political organ. All such policies are clearly attempts at decreasing the independence of the legal branch. In the same fashion, also the M5S-Lega cabinet has tried to obstruct the judiciary, in particular depriving judges of some of their traditional functions. This has happened with the passage of the two security decrees, allowing political actors to determine whether there was a norm violation or not, and to expel also migrants charged with no final judgments. Additionally then, both examples of Italian populism (in the form of Berlusconi and Salvini) have tried to delegitimize the work of the third branch through an aggressive rhetoric.

Both Hungarian and Italian populisms have acted so as to undermine the independence of the judiciary, representing a serious threat to the same. With respect to the most important principle of EU rule of law, then, it can be concluded that both have put it at risk with serious consequences for the protection of fundamental rights and the separation of powers.

Conclusion

As explained, the present work's objective is to understand first the phenomenon of European populism, and then the effects of the same on that project of regional integration which is the European Union. To provide an answer to the research question formulated in the introduction – ‘how and with which effects has populism manifested itself in the framework of the European Union?’ – different steps have been carried out. Populism has been defined as a thin-centered ideology which conceives of society as divided into two homogenous and antagonistic groups – the pure people and the corrupt elite – and which claims to speak in the name of the general will (Mudde 2004). It has been explained how such a phenomenon is, from an ideological point of view, anti-liberal and anti-pluralist. Its main cause of development has been found in the crisis of representation which is lately being experienced by traditional parties as a consequence of the more general crisis of politics that has unfolded in Europe since the end of the 1960s, partially related to the important growth of technocratic organizations (of which the EU is just an example). Focusing on the two cases of Hungarian and Italian populism here analyzed, it has been shown that they share the same ideological core, grounded on majoritarianism, non-consideration of minority groups, exclusionist stances, anti-liberalism, anti-pluralism, and anti-elitism. It has further been evidenced that these two cases of populism also have a comparable approach to public law, and follow the same *modus operandi*, trying to strengthen the executive at the expenses of the parliament and the judiciary, to politicize independent institutions like legal bodies and the President of the Republic, and to disrespect fundamental rights – especially as far as minorities are concerned. Hungarian and Italian populisms relate in a similar fashion also to liberal constitutionalism, showing unconcern for the rule of law, the principle of separation of powers, the system of checks and balances, minorities' rights' protection, pluralism and liberalism. As a consequence, both instances of populism have a conflictual relationship with modern democracy, intended as hinging upon those same constitutional liberal principles. The first conclusion which can be drawn, hence, is that populism poses a relevant threat to democracy.

It has further been observed that despite the analogies existing between the two cases of populism, the tangible outputs produced by them are very different. Indeed, while in Italy populism has relied mainly on ordinary legislation, and its excesses have been contained by independent institutions; in Hungary it has completely altered the country's form of government, through the drafting of a new constitution

and the politicization of independent institutions. Hungarian populism can therefore be regarded as a concrete example of the consequences such a phenomenon may bring about if left ruling in its own way, without any interference or control.

Switching to the European Union, instead, it has been explained that this can be regarded as a unique example of supranational democracy, promoting the rule of law in the entire world. The Commission (2003), indeed, defined it mainly as a union of values – a stance stressed also by the European Court of Justice. The values in question can be found in art. 2 TEU, and are binding for all member states. They include respect for democracy, for the rule of law, for human rights, for minority groups' rights, for freedom, for equality, and for pluralism. EU values simultaneously represent the constitutional identity of the community and of its members. Such values are, however, the same values disregarded and disrespected by populism, being undermined by the same phenomenon once it is given broad room of action. The conclusion we can derive, therefore, is that populism, for its very nature, tends to infringe the EU's core values, consequently violating the community's constitutional identity. If there is even just one member state not complying with art. 2 TEU, indeed, the union is not anymore a union grounded on the rule of law, fundamental rights' protection, and pluralism. Its credibility loses ground. Accordingly, the Hungarian case poses a serious threat to the EU, a threat which can be escaped only by triggering an effective and far-reaching reaction. However, at least for the moment (or for the last ten years), the union seems to be unable (or unwilling?) to react.

It seems clear that populism is a threat to the core principles upon which modern European democracies – and with them the EU – are grounded. And yet its attractiveness on an important number of citizens is evident. Given the success experienced by the phenomenon, there must surely be some truth in it. Populism is indeed indicative of a malaise which is unfolding, and which needs to be taken into account. It must be regarded as a wake-up call, a symptomatic sign that the democratic process might be going too far from the people. It suggests that the way current democracy works needs to be improved in a more people-inclusive way. And this is true both at the national and at the supranational level. In this sense, the EU gives populist claims a certain legitimacy, because despite the small steps forward, it still remains a pretty distant organization.

To come back to the work's original research question, then, populism impacts on the European Union in a negative fashion, undermining the core values upon which the community is grounded – its essential constitutional identity – and putting in discussion its credibility and coherence. However, if there exists something even more alarming than the effects of populism on the EU, this is the latter's

impasse and incapacity to react in any meaningful way to the challenge thrown to it by the populist phenomenon.

References

- Abts, K. and Rummens, S. (2007) 'Populism Versus Democracy', *Political Studies*, 55(2), 405–424.
- Acemoglu, D., Egorov, G. and Sonin K. (2013) 'A Political Theory of Populism', *The Quarterly Journal of Economics*, 128(2), 771–805.
- Akkerman, T. (2003) 'Populism and Democracy: Challenge or Pathology?', *Acta Politica*, 38, 147–159.
- Akkerman, T. (2015) 'Gender and the Radical Right in Western Europe: A Comparative Analysis of Policy Agendas', *Patterns of prejudice*, 49(1-2), 37–60.
- Akkerman, T., de Lange S.L. and Rooduijn M. (2016) 'Inclusion and Mainstreaming? Radical Right-Wing Populist Parties in the New Millennium' in T. Akkerman, S.L. de Lange and M. Rooduijn (eds), *Radical Right-Wing Populist Parties in Western Europe. Into the Mainstream?* New York: Routledge, pp. 1–28.
- Albertazzi, D., Giovannini, A. and Seddone A. (2018) ' 'No Regionalism Please, We Are *Leghisti!*' The Transformation of the Italian Lega Nord Under the Leadership of Matteo Salvini', *Regional and Federal Studies*, 28(5), 645– 671.
- Alemanno, A. and Pech, L. (2019) 'Holding European Political Parties Accountable – Testing the Horizontal EU Values Compliance Mechanism', *Verfassungsblog*, 15 May 2019, <https://verfassungsblog.de/holding-european-political-parties-accountable-testing-the-horizontal-eu-values-compliance-mechanism/>.
- Algotino, A. (2018) 'Il decreto "sicurezza e immigrazione" (decreto legge n. 113 del 2018): estinzione del diritto di asilo, repressione del dissenso e diseguaglianza', *Costituzionalismo.it*, 2, 163–199.
- Allcock, J.B. (1971) 'Populism: A Brief Biography', *Sociology*, 5(3), 371–387.
- Antal, A. (2018) 'Populism and Nationalism in Eastern Europe. Success for the Right, Failure for the Left?', Draft Paper Prepared for ECPR General Conference 2018, 22-25 August 2018, Hamburg, Germany.
- Arato, A. (2013) 'Political Theology and Populism', *Social Research*, 80(1), 143–172.
- Arditi, B. (2003) 'Populism, or, Politics at the Edges of Democracy', *Contemporary Politics*, 9(1), 17–31.

- ASGI – Associazione per gli Studi Giuridici sull’Immigrazione (2019) ‘Analisi critica del c.d. “Decreto sicurezza bis” relativamente alle disposizioni inerenti il diritto dell’immigrazione’, 13 September 2019, https://www.asgi.it/wp-content/uploads/2019/09/2019_Commento-decreto-sicurezza-bis_13_9_.pdf.
- Aslanidis, P. (2015) ‘Is Populism an Ideology? A Refutation and a New Perspective’, *Political studies*, 64(1), 1–17.
- Bajomi-Lázár, P. (2015) ‘Party Colonization of the Media: The Case of Hungary’, in P. Krasztev and J. Van Til (eds), *The Hungarian Patient. Social Opposition to an Illiberal Democracy*. New York: Central European University Press, pp. 59–80.
- Baldassarre, A. (2004) ‘Se si “politicizza” la Costituzione...’, in F. Bassanini (ed.), *Costituzione una riforma sbagliata. Il parere di sessantatre costituzionalisti*. Firenze: Passigli, pp. 38–44.
- Bánkuti, M., Halmai, G. and Scheppele, K.L. (2012) ‘Hungary’s Illiberal Turn: Disabling the Constitution’, *Journal of Democracy*, 23(3), 138–146.
- Barr, R.R. (2009) ‘Populists, Outsiders and Anti-Establishment Politics’, *Party Politics*, 15(1), 29–48.
- Bartha, Á. (2015) ‘A magyar népi mozgalom története: 1920–1990 [History of the Hungarian Populist Movement: 1920–1990]. By István Papp.’, *Hungarian Historical Review*, 4(1), 215–219.
- Bassanini, F. (2002) ‘Ecco perché il d.d.l. Frattini è incostituzionale’, *L’Unità*, 13 April 2002, accessed 20 December 2019: http://www.astrid-online.it/static/upload/protected/Bass/Bassanini_unit_18_04_02.pdf
- Bayer, L. (2019) ‘Hungary Clashes With Other EU Members in Rule-of-Law Hearing’, POLITICO, 12 October 2019, <https://www.politico.eu/article/hungary-clashes-with-eu-governments-in-rule-of-law-hearing/>, accessed 1 February 2020.
- Bayer, L. and Cokelaere, H. (2019) ‘Internal Pressure Grows for EPP to Expell Fidesz’, POLITICO, 28 February 2019, updated 19 April 2019, <https://www.politico.eu/article/belgian-and-luxembourgish-conservatives-ask-epp-to-expel-fidesz/>, accessed 3 February 2020.
- BBC (2013) ‘In Quotes: Italy’s Silvio Berlusconi in His Own Words’, *BBC*, 2 August 2013, <https://www.bbc.com/news/world-europe-15642201>, accessed 26 December 2019.
- BBC (2019) ‘Hungary Orban: Europe’s Center-Right EPP Suspends Fidesz’, *BBC News*, 20 March 2019, <https://www.bbc.com/news/world-europe-47622921>, accessed 3 February 2020.

- Bellamy, R. (2010) 'Democracy Without Democracy? Can the EU's Democratic 'Outputs' Be Separated From the Democratic 'Inputs' Provided by Competitive Parties and Majority Rule?', *Journal of European Public Policy*, 17(1), 2–19.
- Berlin, I. (1968) 'To Define Populism', The Isaiah Berlin Virtual Library, <http://berlin.wolf.ox.ac.uk/lists/bibliography/bib111bLSE.pdf>.
- Berlin, I. (1994) *Russian Thinkers*. London: Penguin Books, pp.210–237.
- Berlin, I., Hofstadter R., McRae D., Shapiro L., Seton-Watson H., Touraine A., Venturi F., Walicki A. and Peter Worsley (1968) 'To Define Populism', *Government and Opposition*, 3(2), 137–179.
- Besselink, L. (2016) 'The Bite, the Bark and the Howl: Article 7 TEU and the Rule of Law Initiatives', Amsterdam Center for European Law of Governance Research Paper No. 2016-01, Amsterdam Law School Legal Studies Research Paper No. 2016-02.
- Beswick, E. and Palfi, R. (2018) 'Article 7 Sanctions: What Does the Sargentini Report Accuse Hungary of?', EURONEWS, 10 September 2018, <https://www.euronews.com/2018/09/10/article-7-sanctions-what-does-the-sargentini-report-accuse-hungary-of>, accessed 1 February 2020.
- Betz, H. (1993) 'The New Politics of Resentment. Radical Right-Wing Populist Parties in Western Europe', *Comparative Politics*, 25(4), 413–427.
- Betz, H. (1994) *Radical Right-Wing Populism in Western Europe*. New York: St. Martin's Press, p. 226.
- Betz, H. (2002) 'Conditions Favoring the Success and Failure of Radical Right-Wing Populist Parties in Contemporary Democracies', in Y. Mény and Y. Surel (eds), *Democracies and the Populist Challenge*. London: Palgrave Macmillan, pp. 197–213.
- Betz, H. (2017) 'Nativism Across Time and Space', *Swiss Political Science Review*, 23(4), 335–353.
- Betz, H. (2018) 'The Radical Right and Populism' in J. Rydgren (ed.), *The Oxford Handbook of the Radical Right*. Oxford: Oxford University Press, pp. 86–104.
- Betz, H. (2019) 'Populist Mobilization across time and space' in K. A. Hawkins, R. E. Carlin, L. Littvay and C. Rovira Kaltwasser (eds), *The Ideational Approach to Populism. Concept, Theory and Analysis*. London: Routledge, pp. 181–201.
- Biancalana, C. (2020) 'Four Italian Populisms', in P. Blokker and M. Anselmi (eds), *Multiple Populisms. Italy as Democracy's Mirror*. New York: Routledge, pp. 216–241.
- Bickerton, c. and Invernizzi Accetti, C. (2017) 'Populism and Technocracy', in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 326–341.

- Bickerton, C. and Invernizzi Accetti, C. (2017b) 'Populism and Technocracy: Opposites or Complements?', *Critical Review of International Social and Political Philosophy*, 20(2), 186–206.
- Bidet, J. (2019) 'Marxism and Left Populism in Southern Europe Today', *International Critical Thought*, 9(3), 365–375.
- Bifulco, R. (2004) 'Costituzione; una riforma sbagliata', ASTRID, <http://www.astrid-online.it/static/upload/protected/GRAS/GRASSI-04-20-relazione-corretta.pdf>.
- Biorcio, R. (2012) 'I populismi in Italia', *Rivista delle politiche sociali*, 1, 1–14.
- Bíró-Nagy, A. (2017) 'Illiberal Democracy in Hungary: The Social Background and Practical Steps of Building an Illiberal State', Barcelona Center for International Affairs, Colección Monografía, 01/2017, pp. 31–42.
- Blatmann, S. (2003) 'A Media Conflict of Interest: Anomaly in Italy', *Reporters sans frontières*.
- Blokker, P. (2005) 'Populist Nationalism, Anti-Europeanism, Post-Nationalism, and the East-West Distinction', *German Law Journal*, 6(2), 371–389.
- Blokker, P. (2019) 'Populism as a Constitutional Project', *International Journal of Constitutional Law*, 17(2), 536–553.
- Blokker, P. (2019b) 'Populist Constitutionalism', in C. de la Torre (ed.) *Routledge Handbook of Global Populism*. New York: Routledge, Chapter 7.
- Blokker, P. (2020) 'The Populist Assault on the Constitution', in P. Blokker and M. Anselmi (eds), *Multiple Populisms. Italy as Democracy's Mirror*. New York: Routledge, pp. 196–215
- Bordignon, F. and Ceccarini, L. (2015) 'The Five-Star Movement: a Hybrid Actor in the Net of State Institutions', *Journal of Modern Italian Studies*, 20(4), 454– 473.
- Boros, T. (2018) 'The Hungarian "STOP Soros" Act. Why Does The Government Fight Human Rights Organizations?', Friedrich Ebert Stiftung, <https://library.fes.de/pdf-files/bueros/budapest/14205.pdf>.
- Börzel, T.A. and Risse, T. (2018) 'From the Euro to the Schengen Crises: European Integration Theories, Politicization, and Identity Politics', *Journal of European Public Policy*, 25(1), 83–108.
- Bozóki, A. (2015) 'The Illusion of Inclusion. Configurations of Populism in Hungary', in M. Kopeček and P. Wciślik (eds), *Thinking Through Transition. Liberal Democracy, Authoritarian Pasts, and Intellectual History in East Central Europe After 1989*. Budapest: Central European University Press, pp. 275–311.

- Bozóki, A. and Kriza, B. (2002) ‘The Hungarian Semi-Loyal Parties and their Impact on Democratic Consolidation’, https://www.researchgate.net/publication/278033568_The_Semi-Loyal_Parties_in_Hungary.
- Bracciale, R. and Martella A. (2017) ‘Define the Populist Political Communication Style: the Case of Italian Political Leaders on Twitter’, *Information, Communication & Society*, 20(9), 1310–1329.
- Brunazzo, M. and Gilbert, M. (2017) ‘Insurgents Against Brussels: Euroscepticism and the Right-Wing Populist Turn of the Lega Nord since 2013’, *Journal of Modern Italian Studies*, 22(5), 624– 641.
- Brzozowski, A., Rios, B. and Fortuna, G. (2019) ‘EEP Votes to Suspend Hungary’s Fidesz Party Membership’, EURACTIV.com, 20 March 2019, <https://www.euractiv.com/section/future-eu/news/epp-votes-to-suspend-hungarys-fidesz-party-membership/>, accessed 1 February 2020.
- Bugarič, B. (2016) ‘Protecting Democracy Inside the EU: On Article 7 TEU and the Hungarian Turn to Authoritarianism’, in C. Closa and D. Kochenov (eds.), *Reinforcing Rule of Law Oversight in the European Union*. Cambridge: Cambridge University Press, pp. 82–102.
- Bugaric, B. (2017) ‘The Populist at the Gates: Constitutional Democracy Under Siege?’, Conference: “Public Law and the New Populism”, workshop at the New York University School of Law / Jean Monnet Center for International and Regional Economic Law & Justice, September 15-17, 2017.
- Bull, M.J. (2006) ‘The Constitutional Referendum of June 2006: End of the “Great Reform” but Not of Reform Itself’, *Italian Politics*, 22, 99–118.
- Camilli, A. (2018) ‘Cosa prevede il decreto sicurezza e immigrazione’, *Internazionale*, 27 November 2018, <https://www.internazionale.it/bloc-notes/annalisa-camilli/2018/11/27/decreto-sicurezza-immigrazione-cosa-prevede>, accessed 23 December 2019.
- Camilli, A. (2019) ‘Tutto quello che c’è da sapere sul caso Diciotti’, *Internazionale*, 18 February 2019, <https://www.internazionale.it/bloc-notes/annalisa-camilli/2019/02/18/diciotti-matteo-salvini>, accessed 26 December 2019.
- Camilli, A. (2019b) ‘Cosa prevede il decreto sicurezza bis’, *Internazionale*, 18 June 2019, <https://www.internazionale.it/bloc-notes/annalisa-camilli/2019/06/18/decreto-sicurezza-bis-cosa-prevede>, accessed 26 December 2019.
- Camilli, A. (2019c) ‘Tutte le critiche al decreto sicurezza bis’, *Internazionale*, 24 May 2019, <https://www.internazionale.it/bloc-notes/annalisa-camilli/2019/05/24/decreto-sicurezza-bis-critiche>, accessed 26 December 2019.

- Camilli, A. (2019d) 'Tutto quello che c'è da sapere sul decreto sicurezza bis', *Internazionale*, 24 July 2019, <https://www.internazionale.it/bloc-notes/annalisa-camilli/2019/07/24/decreto-sicurezza-bis>, accessed 23 December 2019.
- Campani, G. and Pajnik M. (2017) 'Populism in Historical Perspectives' in G. Lazaridis and G. Campani (eds), *Understanding the Populist Shift. Othering in a Europe in Crisis*. New York: Routledge, pp. 13–30.
- Canovan, M. (1981) *Populism*. New York: Harcourt Brace Jovanovich.
- Canovan, M. (1984) 'People', Politicians and Populism', *Government and Opposition*, 19(3), 312–327.
- Canovan, M. (1999) 'Trust the People! Populism and the Two Faces of Democracy', *Political Studies*, 47(1), 2–16.
- Canovan, M. (2004) 'Populism for Political Theorists?', *Journal of Political Ideologies*, 9(3), 241–252.
- Carpinelli, C. (2018) 'I Presupposti del corso politico ungherese. L'Ungheria di Orbán', *Centro Studi Problemi Internazionali*, Dicembre 2018.
- Carrera, S. and Bárd, P. (2018) 'The European Parliament Vote on Article 7 TEU Against the Hungarian government. Too Late, Too Little, Too Political?', *Center for European Policy Studies*, Commentary 14 September 2018.
- Carta, C. (2018) 'Beyond Closed Ports: the New Italian Decree-Law on Immigration and Security', *EU Migration Law Blog*, 31 October 2018, <https://eumigrationlawblog.eu/beyond-closed-ports-the-new-italian-decree-law-on-immigration-and-security/>, accessed 23 December 2019.
- Caruso, L. (2017) 'Digital Capitalism and the End of Politics: The Case of the Italian Five Star Movement', *Politics and Society*, 45(4), 585–609.
- Ceccanti, S. and Curreri, S. (2015) 'I partiti antisistema nell'esperienza italiana: il MoVimento 5 Stelle come partito personale autoescluso', *Diritto pubblico comparato ed europeo*, 3, 799–832.
- Centeno, M.A. (1993) 'The New Leviathan: The Dynamics and Limits of Technocracy', *Theory and Society*, 22(3), 307–335.
- Cerretelli, A. (2015) 'La deriva populista pericolo per l'Europa', *Il Sole 24 Ore*, 17 June 2015, <https://st.ilsole24ore.com/art/commenti-e-idee/2015-06-17/la-deriva-populista-pericolo-l-europa-072058.shtml?uuid=ACmL51B>, accessed 10 February 2020.

- Cheeseman, N. (2016) 'Populism in Africa: Ethnicity, Solidarity, and the Potential for Inclusive Politics', in *Populism in Comparative Perspectives – Comparative Politics Newsletter*, American Political Science Association, 26(2), 25–31.
- Chrysochoou, D.N., Stavridis, S. and Tsinisizelis, M.J. (1998) 'European Democracy, Parliamentary Decline and the 'Democratic Deficit' of the European Union', *The Journal of Legislative Studies*, 4(3), 109–129.
- Combeau, Y. (1993) 'Le Boulangisme dans tous ses mouvements (1886-1891)', *Mappemonde*, 3, 46–48.
- Commissioner for Human Rights (2011) 'Opinion of the Commissioner for Human Rights. Hungary's Media Legislation in Light of Council of Europe Standards on Freedom of the Media', 25 February 2011.
- Corduwener, P. (2017) 'Challenging Parties and Anti-Fascism in the Name of Democracy: The *Fronte dell'Uomo Qualunque* and its Impact on Italy's Republic', *Contemporary European History*, 26(1), 69–84.
- Cornelius, D. S. (1990) 'The Recreation of the Nation – Origins of the Hungarian Populist Movement', *Hungarian Studies*, 6(1), 29–40.
- Corrias, L. (2016) 'Populism in a Constitutional Key: Constituent Power, Popular Sovereignty and Constitutional Identity', *European Constitutional Law Review*, 12(1), 6–26.
- Corriere della Sera (2013) 'Legge Calderoli, il «Porcellum»', *Il Corriere della Sera*, 29 May 2013, https://www.corriere.it/politica/speciali/2013/elezioni-legge-elettorale/notizie/legge-calderoli-porcellum_dd0d98c2-c849-11e2-8fbd-d55cdeb0d621.shtml, accessed 2 February 2020.
- Corsi, C. (2019) 'Evaluating the 'Salvini Decree': Doubts of Constitutional Legitimacy', Policy Briefs 6, Migration Policy Center, Retrieved from Cadmus, European University Institute Research Repository.
- Corso, L. (2019) 'When Anti-Politics Becomes Political: What Can the Italian Five Star Movement Tell Us About the Relationship Between Populism and Legalism', *European Constitutional Law Review*, Special Section: Populism and Constitutionalism, 15, 462–487.
- Csepeli, G. (1996) 'In the Captivity of Narratives: The Political Socialization of Populist Writers in Hungary, and the Origin of National Narratives in Eastern Europe', in J. Held (ed.), *Populism in Eastern Europe. Racism, Nationalism, and Society*. New York: Columbia University Press, pp. 129–144.

- Curreri, S. (2018) 'Prime considerazioni sui profili d'incostituzionalità del decreto legge n. 113/2018 (c.d. "decreto sicurezza")', *federalismi.it*, 22.
- Curreri, S. (2019) 'La condizione giuridica del richiedente asilo alla luce del c.d. decreto sicurezza', *Quaderni costituzionali*, 1, 169–172.
- Curtis, M. (1985) 'Populismo: Destra o Sinistra?', *Rivista Italiana di Scienza Politica*, 15(3), 455–466.
- Custodi, J. (2016) 'Left-Wing Populism in Latin America and Southern Europe: A New Form of Social Patriotism or a Left Path to Regional Integration?', *Political Studies Association of Ireland – Annual Conference 2016: Changing Political Landscapes*, 7th-9th October 2016 at Belfast
- Custodi, J. (2017) 'Populism, Left-wing Populism and Patriotism. A Contribution to the Theorization of Left-Populism' Thesis for the Degree of Master in Political Philosophy, https://www.academia.edu/33779894/Populism_Left-wing_Populism_and_Patriotism
- Daalder, H. (2002) 'Parties: Denied, Dismissed or Redundant? A Critique', in R. Gunther, J.R. Montero and J. Linz (eds), *Political Parties: Old Concepts and New Challenges*. Oxford: Oxford University Press, pp. 39–57.
- Dallara, C (2015) 'Powerful Resistance Against a Long-Running Personal Crusade: the Impact of Silvio Berlusconi on the Italian Judicial System', *Modern Italy*, 20(1), 59–76.
- Danna, S. (2013) 'La democrazia va rifondata', *Corriere della Sera*, Il Club de La Lettura, 23 June 2013, <http://lettura.corriere.it/la-democrazia-va-rifondata/>, accessed 3 February 2020.
- De Giorgi, E. and Tronconi, F. (2018) 'The Center-Right in a Search for Unity and the Re-Emergence of the Neo-Fascist Right', *Contemporary Italian Politics*, 10(4), 330–345.
- de La Baume, M. (2019) 'Donald Tusk: EPP Will Decide on Fidesz Expulsion 'At the End of January'', *POLITICO*, 21 November 2019, <https://www.politico.eu/article/donald-tusk-epp-will-decide-on-fidesz-expulsion-at-the-end-of-january/>, accessed 3 February 2020.
- de la Torre, C. (2017) 'Populism in Latin America', in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 195–213.
- de Nardis, F. (2020) 'Depoliticization, Anti-Politics and the Moral People', in P. Blokker and M. Anselmi (eds), *Multiple Populisms. Italy as Democracy's Mirror*. New York: Routledge, pp. 49–61.
- De Rosa, R. (2013) 'The Five Star Movement in the Italian Political Scenario', *eJournal of Democracy*, 5(2), 128–140.

- De Simone, M. (2014) ‘Ungheria: note sul quarto e quinto emendamento alla Legge Fondamentale’, Forum di Quaderni Costituzionali, http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/telescopio/0065_desimone.pdf.
- Delwit, P. (2011) ‘Still in Decline? Party Membership in Europe’, in E. van Haute (ed.), *Party Membership in Europe: Exploration Into the Anthills of Party Politics*. Brussels: Editions de l’Université de Bruxelles, pp. 25–42.
- Di Maggio, M. and Perrone, M. (2019) ‘The Political Culture of the Movimento Cinque Stelle, from Foundations to the Reins of Government’, *Journal of Modern Italian Studies*, 24(3), 468– 482.
- Di Maria, R. (2018) ‘Una “clausola vessatoria” in bilico fra la democrazia rappresentativa e la tutela giurisdizionale dei diritti’, *federalismi.it*, n.13.
- Di Virgilio, A. (2007) ‘La riforma elettorale della Casa delle libertà alla prova del voto’, *Polis*, 1, 119–148.
- Diamanti I. (2006) ‘Gli alleati inquieti nella Casa ostile’, *La Repubblica*, 28 June 2006, <https://www.repubblica.it/2006/06/sezioni/politica/referendum-quattro/diamanti-ostili/diamanti-ostili.html>, accessed 18 December 2019.
- Diamanti, I. (2011) ‘L’infinito corpo a corpo con i pm che divide destra e sinistra’, *La Repubblica*, 7 March 2011, https://www.repubblica.it/politica/2011/03/07/news/mappe_magistratura-13273693/, accessed 11 February 2020.
- Dickmann, R. (2015) ‘Riforme costituzionali e legge elettorale’, *Diritti Fondamentali*, http://dirittifondamentali.it/wp-content/uploads/2019/04/articolo_dickmann_riforme-costituzionali.pdf.
- Dornbusch, R. and Edwards, S. (1990) ‘Macroeconomic Populism’, *Journal of Development Economics*, 32(2), 247–277.
- Doyle, G. (2002) *Media Ownership. The Economics and Politics of Convergence and Concentration in the UK and European Media*. London: Sage, pp. 11–12.
- Dustmann, C., Eichengreen, B., Otten, S., Sapir, A., Tabellini, G. and Zoega, G. (2017) ‘Europe’s Trust Deficit: Causes and Remedies. Monitoring International Integration 1’, Center for Economic Policy Research. London: CEPR Press, https://cepr.org/sites/default/files/Europes_Trust_Deficit_Press_Copy.pdf.
- Eatwell, R. (2017) ‘Populism and Fascism’ in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 363–383.

- Egedy, G. (2009) 'Political Conservatism in Post-Communist Hungary', *Problems of Post-Communism*, 56(3), 42–53.
- Elia, L. (2004) 'Una forma di governo unica al mondo', in F. Bassanini (ed.), *Costituzione una riforma sbagliata. Il parere di sessantatré costituzionalisti*. Firenze: Passigli, pp. 363–374.
- Enroth, H. (2017) 'Cartelization Versus Representation? On a Misconception in Contemporary Party Theory', *Party Politics*, 23(2), 124–134.
- Enyedi, Z. (2016) 'Paternalist Populism and Illiberal Elitism in Central Europe', *Journal of Political Ideologies*, 21(1), 9–25.
- Epstein, S. (1996) *Extreme Right Electoral Upsurges in Western Europe: The 1984-1995 Wave as Compared with the Previous Ones*. Jerusalem: The Vidal Sassoon International Center for the Study of Antisemitism, p. 20.
- European Commission (2003) 'Communication From the Commission to the Council and the European Parliament on Article 7 of the Treaty on the European Union. Respect for and Promotion of the Values on Which the Union is Based', 15 October 2003, <https://ec.europa.eu/transparency/regdoc/rep/1/2003/EN/1-2003-606-EN-F1-1.Pdf>.
- European Commission (2012) 'Court of Justice Rules Hungarian Forced Early Retirement of Judges Incompatible With EU Law', MEMO/12/B32, 6 November 2012.
- European Parliament (2019) 'Rule of Law in Poland and Hungary: Debate with Council and Commission' Press Releases, 16 December 2019, <https://www.europarl.europa.eu/news/en/press-room/20191216IPR69104/rule-of-law-in-poland-and-hungary-debate-with-council-and-commission>, accessed 1 February 2020.
- European Parliament (2020) 'Rule of Law in Poland and Hungary has worsened', Press Releases, 16 January 2020, <https://www.europarl.europa.eu/news/en/press-room/20200109IPR69907/rule-of-law-in-poland-and-hungary-has-worsened>, accessed 1 February 2020.
- Fábián, K. (2010) 'Can Politics Be Different? The Hungarian Green Party's Entry into Parliament in 2010', *Environmental Politics*, 19(6), 1006–1011.
- Fasone, C. (forthcoming) 'Is There a Populist Turn in the Italian Parliament? Continuity and Discontinuity in the Non-Legislative Procedures'
- Fazekas, C. and Fekete, S. (2018) 'Historical Outline of the Development of the Hungarian Party System', *Review of History and Political Science*, 6(2), 36–46.

- Fenger, M. (2018) 'The Social Policy Agenda of Populist Radical Right Parties in Comparative Perspective', *Journal of International and Comparative Social Policy*, 34(3), 188–209.
- Fischer-Galati, S. (1996) 'Conclusions' in J. Held (ed.), *Populism in Eastern Europe. Racism, Nationalism, and Society*. New York: Columbia University Press, pp. 245–247.
- Fleck, Z., Gadó, G., Halmai, G., Hegyi, S., Juhász, G., Kis, J., Körtvélyesi, Z., Majtényi, B. and Tóth, G.A. (2011) 'Opinion on the Fundamental Law of Hungary', <http://lapa.princeton.edu/hosteddocs/amicus-to-vc-english-final.pdf>.
- Forcellese, T. (2015) 'Nascita e sviluppo dell'Uomo qualunque: la precarietà dell' «antipolitica»', *Diritto pubblico comparato ed europeo, Rivista trimestrale*, 3, 599–618.
- Fratelli d'Italia (2018) 'Il voto che unisce l'Italia. Il programma. Le priorità in 15 punti', Programma elettorale per le elezioni del 2018, fratelli-ditalia.it, https://www.fratelli-italia.it/wp-content/uploads/2018/01/PROGRAMMA_A4_REV2.pdf, accessed 29 December 2019.
- Fregosi, R. (2017) 'Les populismes: côté obscure de la démocratie', *Le Figaro*, 28 February 2017, <https://www.lefigaro.fr/vox/societe/2017/02/28/31003-20170228ARTFIG00274-les-populismes-cote-obscure-de-la-democratie.php>, accessed 10 February 2020.
- Fulton, B. (1991) 'The Boulanger Affair Revisited: The Preservation of the Third Republic, 1889', *French Historical Studies*, 17(2), 310–329.
- Fusaro, C. (2004) 'Prendere o lasciare? Io prenderei, nonostante tutto e cerco di spiegare perché', *Forum di Quaderni Costituzionali*, https://piattaformacostituzione.camera.it/application/xmanager/projects/piattaformacostituzione/file/EventiCostituzione2007/cd_rom_studi/4_Dottrina/1%20Questioni%20generali/2004_10_24_Fusaro_ForumCQ.pdf.
- Gagliardi, A. (2014) 'M5s, con il nuovo regolamento Grillo rafforza e ufficializza I suoi poteri', *Il Sole 24 Ore*, 27 December 2014, <https://st.ilsole24ore.com/art/notizie/2014-12-27/m5s-il-nuovo-regolamento-grillo-rafforza-e-ufficializza-suoi-poteri-155342.shtml?uuid=ABEXozVC>, accessed 3 February 2020.
- Gambarota, P. (2018) 'Uomo Qualunque: The Transnational Making of Italian Post-War Populism', *The Italianist*, 39(1), 44–63.

- Gandesha, S. (2019) ‘Understanding Right and Left Populism’, in *Open Democracy*, <https://www.opendemocracy.net/en/can-europe-make-it/understanding-right-and-left-populisms/> accessed 14 November 2019.
- Gazzetta Ufficiale della Repubblica Italiana (2018) ‘Decreto-Legge 4 ottobre 2018 n. 113’, n. 231, 4 October 2018, pp. 1–16, <https://www.gazzettaufficiale.it/eli/id/2018/10/04/18G00140/sg>.
- Gazzetta Ufficiale della Repubblica Italiana (2019) ‘Decreto-Legge 14 giugno 2019, n.53’, n.138, 14 July 2019, 1–6, <https://www.gazzettaufficiale.it/eli/id/2019/06/14/19G00063/sg>.
- Gianfrancesco, E. (2018) ‘Chi esce paga: la «penale» prevista dallo Statuto del MoVimento 5 Stelle della Camera’, *Quaderni Costituzionali*, 2, 484–486.
- Gidron, N. and Bonikowski B. (2013) ‘Varieties of Populism: Literature Review and Research Agenda’, in Weatherhead Working Paper Series, 13-0004.
- Giglio, V. (2019) ‘Il decreto legge 53/2019, cosiddetto sicurezza bis: contenuto e profili problematici’, *Filodiritto*, 26 June 2019, <https://www.filodiritto.com/il-decreto-legge-532019-cosiddetto-decreto-sicurezza-bis-contenuto-e-profilo-problematici>, accessed 24 December 2019.
- Ginsburg, T., Huq, A.Z. and Versteeg, M. (2018) ‘The Coming Demise of Liberal Constitutionalism?’, *The University of Chicago Law Review*, 85(2), 239–255.
- Goodhart, M. (2007) ‘Europe’s Democratic Deficits Through the Looking Glass: The European Union as a Challenge for Democracy’, *Perspectives on Politics*, 5(3), 567–584.
- Goodwin, M. (2018) ‘The European Union claims to be more popular than ever, but is being slowly destroyed by populism’, *The Telegraph*, 28 October 2018, <https://www.telegraph.co.uk/politics/2018/10/28/eu-claims-popular-ever-slowly-destroyed-populism/>, accessed 10 February 2020.
- Grant, S. A. (1976) ‘Obshchina and Mir’, *Slavic Review*, 35(4), 636–651.
- Grassi, S. (2004) ‘Motivi di un giudizio negativo sulla legge di revisione della parte II della Costituzione nel testo approvato dal Senato il 25 Marzo 2004’, ASTRID, <http://www.astrid-online.it/static/upload/protected/GRAS/GRASSI-04-20-relazione-corretta.pdf>.
- Grasso, G. (2017) ‘La cifra democratica del MoVimento 5 Stelle alla prova dell’art. 49 della Costituzione’, *Quaderni Costituzionali*, 3, 616–619.
- Grasso, G. and Perrone, R. (2019) ‘European Political Parties and the Respect for the Values on Which the European Union is Founded Between the European Legislation and the National Laws’, *European Public Law*, 25(4), 665–688.

- Greven, T. (2016) 'The Rise of Right-wing Populism in Europe and the United States. A Comparative Perspective', Friedrich Ebert Foundation.
- Grillo, B. (2013) 'Circonvensione di elettore', Il Blog di Beppe Grillo, 3 March 2013, <https://www.beppegrillo.it/circonvensione-di-elettore/>, accessed 3 February 2020.
- Halász, I. (2011) 'Creation and Characteristics of the new Fundamental Law of Hungary', *The Lawyer Quarterly*, 1(2), 85–105.
- Halikiopoulou, D., Kyriaky N. and Vasilopoulou S. (2002) 'The Paradox of Nationalism: The Common Denominator of Radical Right and Radical Left Euroscepticism', *European Journal of Political Research*, 51(4), 504–539.
- Halmai, G. (2017) 'The Early Retirement Age of the Hungarian Judges', in N. Fernanda and B. Davies (eds), *EU Law Stories: Contextual and Critical Histories of European Jurisprudence*. Cambridge: Cambridge University Press, pp. 471–488.
- Halmai, G. (2018) 'Is There Such a Thing as 'Populist Constitutionalism'? The Case of Hungary', *Fudan Journal of the Humanities and Social Sciences*, 11, 323–339.
- Hanley, S. and Sikk A. (2012) 'Paths to "Centrist Populism"? Explaining the Emergence of Anti-Establishment Reform Parties', Paper prepared for the IPSA World Congress, Madrid 8–12 July 2012, Panel 'New Parties on the Block: New Approaches and New Developments'.
- Hasebe, Y. and Pinelli, C. (2013) 'Constitutions', in H. Tushnet, T. Fleiner and C. Saunders (eds), *Routledge Handbook of Constitutional Law*. New York: Routledge, pp. 7–32.
- Havlík, V, and Mareš M. (2017) 'Sociocultural legacies in Post-Transition Societies in Central and Eastern Europe and the Relationship to the Resurgence of Right-Wing Extremism and Populism in the Region', in R. Heinisch, C. Holtz-Bacha, and O. Mazzoleni (eds), *Political Populism. A Handbook*. Baden-Baden: Nomos, pp. 181–192.
- Hawkins, A. (1999) 'Populism in Russia', *Lost in Thought*, 2, 29–32.
- Hawkins, K. A. and Rovira Kaltwasser C. (2019) 'Introduction', in K. A. Hawkins, R. E. Carlin, L. Littvay and C. Rovira Kaltwasser (eds), *The Ideational Approach to Populism. Concept, Theory and Analysis*. London: Routledge, pp. 1–24.
- Hawkins, K. A., Read M. and Pauwels T. (2017) 'Populism and Its Causes', in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 267–286.

- Heinisch, R., Holtz-Bacha C. and Mazzoleni O. (2017) 'Introduction', in R. Heinisch, C. Holtz-Bacha, and O. Mazzoleni (eds), *Political Populism. A Handbook*. Baden-Baden: Nomos, pp. 19–37.
- Held, J. (1996) 'Antecedents' in J. Held (ed.), *Populism in Eastern Europe. Racism, Nationalism, and Society*. New York: Columbia University Press, pp. 1–20.
- Hellmann, O. (2017) 'Populism in East Asia', in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 161–178.
- Hermet, G. (2001) *Les populismes dans le monde. Une histoire sociologique XIXe-Xxe siècle*. Paris: Fayard.
- Hermet, G. (2017) 'Permanences et mutations du populisme', *Critique*, selected Articles, (0), 62–74.
- Hibberd, M. (2004) 'Italian Democracy Gone Mad? Public Service Broadcasting in the Berlusconi Era', *Trends in Communication*, 12(1), 15–31.
- Hibberd, M. (2007) 'Conflicts of Interest and media Pluralism in Italian Broadcasting', *West European Politics*, 30(4), 881–902.
- Hofstadter, R. (1969) 'North America', in G. Ionescu and E. Gellner (eds), *Populism: Its Meanings and National Characteristics*. Letchworth: The Garden City Press, pp. 9–27.
- Hooghe, L. and Marks, G. (2008) 'A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus', *British Journal of Political Science*, 39(1), 1–23.
<https://verfassungsblog.de/the-return-of-the-hungarian-constitutional-court/>, accessed 15 January 2020.
- Huq, A. and Ginsburg, T. (2018) 'How to Lose a Constitutional Democracy', 65 *UCLA Law Review*, 78–169.
- Hutton, P.H. (1976) 'Popular Boulangism and the Advent of Mass Politics in France, 1886-90', *Journal of Contemporary History*, 11(1), 85–106.
- Hutton, P.H. (1990) 'Reviewed Work: The Boulanger Affair Reconsidered by William D. Irvine', *French Politics and Society*, 8(1), 101–104.
- Ignazi, P. (1996) 'The Crisis of Parties and the Rise of New Political Parties', *Party Politics*, 2(4), 549–566.
- Il Fatto Quotidiano (2019) 'Conte: "Salvini ha compromesso gli interessi nazionali per i suoi personali. Su piazze e pieni poteri la sua concezione mi preoccupa"', *Il Fatto Quotidiano*, 20 Agosto 2019,
<https://www.ilfattoquotidiano.it/2019/08/20/conte-salvini-ha-compromesso-interessi-nazionali-per-i-suoi-su-piazze-e-poteri-la-sua-concezione-mi-preoccupa/5398018/>, accessed 12 February 2020.

- Ionescu, G. (1969) 'Eastern Europe' in G. Ionescu and E. Gellner (eds), *Populism: Its Meanings and National Characteristics*. Letchworth: The Garden City Press, pp. 97–121.
- Ionescu, G. and Gellener E. (1969) 'Introduction', in G. Ionescu and E. Gellner (eds), *Populism: Its Meanings and National Characteristics*. Letchworth: The Garden City Press, pp. 1–5.
- Ionescu, G. and Gellener E. (1969) *Populism: Its Meanings and National Characteristics*. Letchworth: The Garden City Press.
- Irvine, W.D. (1988) 'French Royalists and Boulangism', *French Historical Studies*, 15(3), 395–406.
- Ismail, Z. (2015) 'The Rise of Populism in Southern Africa's Dominant Party States' in *OXPOL*, <https://blog.politics.ox.ac.uk/rise-populism-southern-africas-dominant-party-states/> accessed 20 November 2019.
- Italia Stato Di Diritto (2019) 'Qualche ragione di incostituzionalità del DL 14 giugno 2019 n.53 c.d. "sicurezza bis"', <https://italiastatodidiritto.it/index.php/news/71-qualche-ragione-di-incostituzionalita-del-dl-14-giugno-2019-n-53-c-d-sicurezza-bis>, accessed 24 December 2019.
- Ivaresflaten, E. (2008) 'What Unites Right-Wing Populists in Western Europe? Re-Examining Grievance Mobilization Models in Seven Successful Cases', *Comparative Political Studies*, 41(1), 3–23.
- Jaffrelot, C. and Tillin L. (2017) 'Populism in India', in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 179–194.
- Jansen, R. S. (2011) 'Populist Mobilization: A New Theoretical Approach to Populism', *Sociological Theory*, 29(2), 75–96.
- Joly, B. (2008) 'Les projets constitutionnels du Boulangisme', *Bibliothèque de l'école des chartes*, 166(2), 515–541.
- Judis, J. B. (2016) 'Us v Them: The Birth of Populism' in *The Guardian*, <https://www.theguardian.com/politics/2016/oct/13/birth-of-populism-donald-trump> accessed 15 November 2019
- Katsambekis, G. (2017) 'The Populist Surge in Post-Democratic Times: Theoretical and Political Challenges', *The Political Quarterly*, 88(2), 202–210.
- Kiss, C. (2002) 'From Liberalism to Conservatism: The Federation of Young Democrats in Post-Communist Hungary', *East European Politics and Society*, 16(3), 739–763.
- Knight, A. (1998) 'Populism and Neo-Populism in Latin America, Especially Mexico', *Journal of Latin American Studies*, 30(1), 223–248.

- Kochenov, D. (2017) 'The *Acquis* and Its Principles: the Enforcement of the 'Law' versus the Enforcement of 'Value' in the European Union', in n A. Jakab and D. Kochenov (eds.), *The Enforcement of EU Law and Values: Ensuring Member States' Compliance*. Oxford: Oxford University Press, pp. 9–27.
- Kochenov, D. (2017b) 'Busting the Myths Nuclear: A Commentary on Article 7 TEU', EUI Working Papers LAW 2017/10.
- Kochenov, D. and Pech, L. (2015) 'Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality', *European Constitutional Law Review*, 11(3), 512–540.
- Kochenov, D., Pech, L. and Scheppele, K.L. (2017) 'The European Commission's Activation of Article 7: Better Late Than Never?', *Verfassungsblog*, 23 December 2017, <https://verfassungsblog.de/the-european-commissions-activation-of-article-7-better-late-than-never/>.
- Kögl, I. (2010) 'A Clash of Paradigms: Populism and Theory Building', *Sociedade e Cultura*, 13(2), 173–180.
- Kolakowski, L. (1990) 'Uncertainties of a Democratic Age', *Journal of Democracy*, 1, 47–50.
- Kovács, A. (2013) 'The Post-Communist Extreme Right: The Jobbik Party in Hungary' in R. Wodak, M. KhosraviNik and B. Mral (eds), *Right-Wing Populism in Europe: Politics and Discourse*. Chennai, India: Bloomsbury Academic, pp. 223–234.
- Kövers, N. (2018) 'The Sargentini Report – Its Background and What it Means For Hungary and for the EU', Heinrich Böll Stiftung, 19 September 2018, accessed 1 February 2020.
- Kratochvíl, P. and Sychra, Z. (2019) 'The End of Democracy in the EU? The Eurozone Crisis and the EU's Democratic Deficit', *Journal of European Integration*, 41(2), 169–185.
- Krekó, P. and Enyedi, Z. (2018) 'Explaining Eastern Europe: Orbán's Laboratory of Illiberalism', *Journal of Democracy*, 23(9), 39–51.
- Kriesi, H. (2015) 'Populism. Concepts and Conditions for its Rise in Europe', *Comunicazione Politica*, 16(2), 175–194.
- Kubas, S. and Czyż, A. (2018) 'From a Liberal Opposition Party to a Right-Wing Party of Power. Three Decades of the Hungarian Fidesz (1988-2018)', *Annales Universitatis Mariae Curie-Skłodowska. Sectio M. Balcaniensis et Carpathiensis*, vol. 3, pp. 47–65.
- Kyle, J. and Mounk, Y. (2019) 'Tutti I pericoli del populismo', *Il Foglio*, 20 January 2019, <https://www.ilfoglio.it/esteri/2019/01/20/news/tutti-i-pericoli-del-populismo-233461/>, accessed 10 February 2020.

- La Repubblica (2016) ‘Commissione europea, voto di fiducia a von der Leyen: 5Stelle si dividono’, *La Repubblica*, 27 November 2019;
https://www.repubblica.it/politica/2019/11/27/news/commissione_europea_voto_di_fiducia_a_von_der_leyen-242035089/, accessed 12 February 2020.
- La Repubblica, (2016) ‘L’appello degli intellettuali per salvare l’Europa: “É tempo di mobilitarsi per fermare i populistici”’, *La Repubblica*, 18 November 2016,
https://www.repubblica.it/esteri/2016/11/18/news/appello_degli_intellettuali_per_salvare_l_europa_e_t_empo_di_mobilitarsi_per_fermare_i_populisti_-152242198/, accessed 10 February 2020.
- La Rosa, P. (2019) ‘Caso Gregoretti, perché accusano Salvini’, *Il Tempo*, 20 December 2019,
<https://www.iltempo.it/politica/2019/12/20/news/matteo-salvini-caso-gregoretti-migranti-accuse-processo-luigi-di-maio-giuseppe-conte-governo-senato-1258475/>, accessed 26 December 2019.
- Lackó, M. (1996) ‘Populism in Hungary: Yesterday and Today’, in J. Held (ed.), *Populism in Eastern Europe. Racism, Nationalism, and Society*. New York: Columbia University Press, pp. 107–128.
- Laclau, E. (2005) ‘Populism: What’s in a Name?’, in F. Panizza (ed.), *Populism and the Mirror of Democracy*. London: Verso, pp. 32–49.
- Lambert, S. (2018) ‘The Constitutional Court’, The Orange Files, 11 May 2018,
<https://theorangefiles.hu/the-constitutional-court/>, accessed 11 January 2020.
- Lambert, S. (2018b) ‘The National Judicial Office’, The Orange Files, 15 May 2018,
<https://theorangefiles.hu/national-judicial-office/>, accessed 11 January 2020.
- Lambert, S. (2018c) ‘Media Laws’, The Orange Files, 18 May 2018, <https://theorangefiles.hu/media-laws/>, accessed 11 January 2020.
- Lambert, S. (2018d) ‘National Assembly Election Procedure’, The Orange Files, 10 May 2018,
<https://theorangefiles.hu/national-assembly-election-system/>, accessed 20 January 2020.
- Lambert, S. (2018e) ‘Amendments to the Fundamental Law’, The Orange Files, 21 June 2018,
<https://theorangefiles.hu/amendments-to-the-fundamental-law/>, accessed 11 January 2020.
- Lanzone, L. and Woods, D. (2015) ‘Riding the Populist Web: Contextualizing the Five Star Movement (M5S) in Italy’, *Politics and Governance*, 3(2), 54–64.
- Lee, M. J. (2006) ‘The Populist Chameleon: The People’s Party, Huey Long, George Wallace, and the Populist Argumentative Frame’, *Quarterly Journal of Speech*, 92(4), 355–378.
- Lega, Programma di Governo Elezioni 2018, ‘Salvini Premier – La rivoluzione del buonsenso’, <https://www.leganord.org/programma-politiche>, accessed 23 December 2019.

- Lendvai, P. (2019) ‘The transformer: Orban’s Evolution and Hungary’s Demise’, *Foreign Affairs*, 98, 44–54.
- Leonard, M. (2011) ‘Four Scenarios for the Reinvention of Europe’, *European Council of Foreign Relations*, 43.
- Lowndes, J. (2017) ‘Populism in the United States’, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 232–247.
- Lupo, N. (2019) ‘Una riforma giusta con la motivazione sbagliata’, *La Rivista Il Mulino*, 14 October 2019, https://www.rivistailmulino.it/news/newsitem/index/Item/News:NEWS_ITEM:4889, accessed 1 February 2020.
- MacRae, D. (1969) ‘Populism as an Ideology’, in G. Ionescu and E. Gellner (eds), *Populism: Its Meanings and National Characteristics*. Letchworth: The Garden City Press, pp.153–165.
- Magri, M. (2019) ‘Obbligo di soccorso in mare, funzioni della Guardia costiera e respingimenti “delegati”’: sui poteri del Ministro dell’interno’, *Istituzioni del Federalismo*, 1, 149–180.
- Makszimov, V. (2019) ‘Soros Orchestra’: The Next Chapter in Hungary’s Article 7 Odyssey’, *EURACTIV.com*, 11 December 2019, <https://www.euractiv.com/section/justice-home-affairs/news/soros-orchestra-the-next-chapter-in-hungarys-article-7-odyssey/>, accessed 1 February 2020.
- Makszimov, v. (2019b) ‘MEPs Shut Out of Hungary Council Hearing As Rule of Law Situation Worsens’, *EURACTIV.com*, 22 November 2019, <https://www.euractiv.com/section/justice-home-affairs/news/meps-shut-out-of-hungary-council-hearing-as-rule-of-law-situation-worsens/>, accessed 1 February 2020.
- Mammone, A. (2019) ‘How a Migrant Rescue Boat Became a Symbol for a Divided Europe’, *The Washington Post*, 1 July 2019, <https://www.washingtonpost.com/opinions/2019/07/01/how-migrant-rescue-boat-became-symbol-divided-europe/>, accessed 5 January 2020.
- Mancino, N. (2014) ‘Ne’ premier, ne’ presidente: un capo assoluto’, *ASTRID*, <http://www.astrid-online.it/static/upload/protected/MANC/MANCINO-N—premier.pdf>.
- March, L. (2007) ‘From Vanguard of the Proletariat to *Vox Populi*: Left-Populism as a ‘Shadow’ of Contemporary Socialism’, *SAIS Review of International Affairs*, 27(1), 63–77.

- March, L. (2017) 'Populism in the Post-Soviet States', in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 214–231.
- Marinelli, A. (2016) 'Populism and the Crisis of Representative Democracy', in A. Marinelli (ed.), *Beyond Trump. Populism on the Rise*. Novi Ligure: Edizioni Epoké-ISPI, pp. 16–31.
- Marsala, A. (2019) 'Salvini non poteva bloccare la Diciotti, «va processato»', *Il Manifesto*, 25 January 2019, <https://ilmanifesto.it/salvini-non-poteva-bloccare-la-diciotti-va-processato/>, accessed 26 December 2019.
- Mastropaolo, A. (2017) 'Populism and Political Representation', in R. Heinisch, C. Holtz-Bacha and O. Mazzoleni (eds), *Political Populism. A Handbook*. Baden-Baden: Nomos, pp. 59–72.
- Matteucci, P. (2018) 'Elezioni politiche: vincono M5s e Lega. Crollo del Partito democratico. Centrodestra prima coalizione. Il Carroccio sorpassa Forza Italia. *La Repubblica*, 4 March 2018, https://www.repubblica.it/speciali/politica/elezioni2018/2018/03/04/news/risultati_elezioni_politiche_pd_centrodestra_m5s_fi_lega-190424815/, accessed 23 December 2019.
- Mauro, E. (2006) 'La sconfitta del progetto populista', *La Repubblica*, 27 June 2006, <https://www.repubblica.it/2006/06/sezioni/politica/referendum-quattro/commento-mauro-referendum/commento-mauro-referendum.html>, accessed 18 December 2019.
- Mazgaj, P. (1987) 'The Origins of the French Radical Right: A Historiographical Essay', *French Historical Studies*, 15(2), 287–315.
- Mazza, M. (2013) 'The Hungarian Fundamental Law, the New Cardinal Laws and European Concerns', *Acta Juridica Hungarica*, 54(2), 140–155.
- Mazzoleni, G. (2008) 'Populism and the Media', in D. Albertazzi and D. McDonnell (eds), *Twenty-First Century Populism. The Spectre of Western European Democracy*. Basingstoke: Palgrave MacMillan, pp. 49–64.
- Mazzoleni, G. and Bracciale, R. (2018) 'Socially Mediated Populism: the Communicative Strategies of Political Leaders on Facebook', *Palgrave Communications*, 4(50), 1–10.
- McDonnell, D. (2013) 'Silvio Berlusconi's Personal Parties: From Forza Italia to the Popolo della Libertà', *Political Studies*, 61(1), 217–233.
- Mény, Y. (2005) 'Populismo e democrazia in Europa', *il Mulino*, 1, 5–14.
- Mény, Y. and Surel, Y. (2002) 'The Constitutive Ambiguity of Populism', in Y. Mény and Y. Surel (eds), *Democracies and the Populist Challenge*. London: Palgrave Macmillan, pp. 1–21.

- Meschini, G. (2016) ‘Cenni sulla nuova Legge Fondamentale ungherese’, *Rivista di Studi Ungheresi*, 15, 103–124.
- Mészáros, J., Solymosi, N. and Speiser, F. (2007) ‘Spatial Distribution of Political Parties in Hungary 1990–2006’, *Political Geography*, 26, 804–823.
- Milell, L. (2019) ‘Caro Salvini, il costituzionalista Azzariti: “Neppure l’interesse pubblico legittima la violazione della legge”’, *La Repubblica*, 30 January 2019, https://www.repubblica.it/politica/2019/01/30/news/matteo_salvini_gaetano_azzariti_costituzionalista_migranti-217864654/, accessed 26 December 2019.
- Milella, L. (2019) ‘De Siervo “Testo sgantherato ma ha fatto bene a promulgarlo”’, *La Repubblica*, 9 August 2019.
- Milella, L. (2019) ‘De Siervo “Testo sgantherato ma ha fatto bene a promulgarlo”’, *La Repubblica*, 9 August 2019.
- Minkenberg, M. (2013) ‘From Pariah to Policy-Maker? The Radical Right in Europe, West and East: Between Margin and Mainstream’, *Journal of Contemporary European Studies*, 21(1), 5–24.
- Minogue, K. (1969) ‘Populism as a Political Movement’, in G. Ionescu and E. Gellner (eds), *Populism: Its Meanings and National Characteristics*. Letchworth: The Garden City Press, pp. 197–211.
- Moffett, M. and Feher, M. (2015) ‘Criticized Abroad, Hungary’s Orban Gains Support at Home with Migrant crackdown’, *The Wall Street Journal*, 17 September 2015, <https://www.wsj.com/articles/criticized-abroad-hungarys-orban-gains-support-at-home-with-migrant-crackdown-1442517065>, accessed 16 January 2020.
- Moffitt, B. (2017) ‘Populism in Australia and New Zealand’, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 121–139.
- Moffitt, B. and Tormey S. (2014) ‘Rethinking Populism: Politics, Mediatization and Political Style’, *Political Studies*, 62(2), 381–397.
- Morelli, A. (2018) ‘Principio di legalità vs. preminente interesse pubblico? Il caso Diciotti e le sue conseguenze’, *Quaderni Costituzionali*, 4, 898–201.
- Mosca, L and Tronconi, F. (2019) ‘Beyond Left and Right: the Eclectic Populism of the Five Star Movement’, *West European Politics*, 42(6), 1258–1283.
- Mosca, L. (2018) ‘Democratic Vision and Online Participatory Spaces in the Italian Movimento 5 Stelle’, *Acta Politica*, 1(18).

- Mounk, Y. (2018) 'How populist uprisings could bring down liberal democracy', *The Guardian*, 4 March 2018, <https://www.theguardian.com/commentisfree/2018/mar/04/shock-system-liberal-democracy-populism>, accessed 10 February 2020.
- MoVimento 5 Stelle (2018) '20 punti per la qualità della vita degli italiani', 21 January 2018, https://www.ilblogdellestelle.it/2018/01/20_punti_per_la_qualita_della_vita_degli_italiani.html, accessed 23 December 2019
- MoVimento 5 Stelle (2018) 'Ecco la Sintesi del Contratto per il Governo del Cambiamento', 18 May 2018, https://www.ilblogdellestelle.it/2018/05/ecco_la_sintesi_del_contratto_per_il_governo_del_cambiamento.html, accessed 23 December 2019.
- MoVimento 5 Stelle and Lega (2018), 'Contratto per il governo del cambiamento', *La Repubblica*, https://download.repubblica.it/pdf/2018/politica/contratto_governo.pdf, accessed 23 December 2019.
- Mudde, C. (2000) *The Ideology of the Extreme Right*. Manchester: Manchester University Press, pp. 1–24.
- Mudde, C. (2002) 'In the Name of the Peasantry, the Proletariat, and the People: Populisms in Eastern Europe' in Y. Mény and Y. Surel (eds), *Democracies and the Populist Challenge*. London: Palgrave Macmillan, pp. 214–232.
- Mudde, C. (2004) 'The Populist Zeitgeist', *Government and Opposition*, 39(4), 541–563.
- Mudde, C. (2007) *Populist Radical Right Parties in Europe*. Cambridge: Cambridge University Press.
- Mudde, C. (2013) 'Are Populists Friends or Foes of Constitutionalism?', Policy Brief, The Foundation for Law, Justice and Society.
- Mudde, C. (2017) 'Populism: An Ideational Approach', in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 27–47.
- Mudde, C. and Rovira Kaltwasser C. (2011) 'Voice of the People: Populism in Europe and Latin America compared', working paper #378
- Mudde, C. and Rovira Kaltwasser C. (2012) 'Exclusionary vs. Inclusionary Populism: Comparing Contemporary Europe and Latin America', *Government and Opposition*, 48(2), 157–174.
- Mudde, C. and Rovira Kaltwasser C. (2017) *Populism. A Very Short Introduction*. Oxford: Oxford University Press.

- Müller, J. (2014) ‘ “The People must Be Extracted From Within the People”: Reflections on Populism’, *Constellations*, 21(4), 483–493.
- Müller, J. (2015) ‘Parsing Populism. Who is and Who is not a Populist These Days?’, *Juncture*, 22(2), 80–89.
- Müller, J. (2015b) ‘Populist Constitutionalism: A Contradiction in Terms?’, Draft for NYU Colloquium, http://www.law.nyu.edu/sites/default/files/upload_documents/JWMueller%20-NYULaw-Populist%20Constitutionalism.pdf.
- Müller, J. (2016) *What is Populism?* Philadelphia: University of Pennsylvania Press.
- Müller, J. (2017) ‘Populism and Constitutionalism’, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 590–606.
- Murer, J.S. (2015) ‘The Rise of Jobbik, Populism, and the Symbolic Politics of Illiberalism in Contemporary Hungary’, *The Polish Quarterly of International Affairs*, 2, 79–102.
- Murray, P. and Longo, M. (2018) ‘Europe’s Wicked Legitimacy Crisis: The Case of Refugees’, *Journal of European Integration*, 40(4), 411–425.
- Natale, A. (2019) ‘A proposito del decreto sicurezza-bis’, *Questione Giustizia*, 20 June 2019, http://questionegiustizia.it/articolo/a-proposito-del-decreto-sicurezza-bis_20-06-2019.php, accessed 24 December 2019.
- Nelken, D. (2002) ‘Legitimate Suspicions? Berlusconi and the Judges’, *Italian Politics*, 18, 112–128.
- Newell, J.L. (2013) ‘The Berlusconi Legacy: How Has It Changed and What Remains?’ in G. Pasquino, J.L. Newell and P. Mancini (eds), *The Future of the Western Liberal Order. The Case of Italy*. Transatlantic Academy Paper Series, no. 2, pp. 1–2.
- Norris, P. and Inglehart R. (2019) *Cultural Backlash. Trump, Brexit, and Authoritarian Populism*. Cambridge University Press, pp.32–64.
- Norwegian Helsinki Committee (2013) ‘Democracy and Human Rights at Stake in Hungary: The Viktor Orbán Government’s Drive For Centralization of Power’, Report 1/2013, https://www.nhc.no/content/uploads/2018/08/Rapport_1_13_web.pdf.
- Oliver, P. and Stefanelli, J. (2016) ‘Strengthening the Rule of Law in the EU: The Council’s Inaction’, *Journal of Common Market Studies*, 54(5), 1075–1084.
- Olivetti, M (2008) ‘Il referendum costituzionale del 2006 e la storia infinita (e incompiuta) delle riforme costituzionali in Italia’, *Cuestiones Constitucionales*, 18, 107–168.

- Orbán, V. (2014) ‘Prime minister Viktor Orbán’s Speech at the 25th Bálványos Summer Free University and Student Camp’, Website of the Hungarian Government, 30 July 2014, <https://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp>, accessed 10 January 2020.
- Orsina, G. (2013) ‘L’antipolitica dei moderati: Dal Qualunquismo al Berlusconismo’, *Ventunesimo Secolo*, 12(30), 91–111.
- Orsina, G. (2014) *Berlusconism and Italy. A Historical Interpretation*. Basingstoke: Palgrave.
- Orsina, G. (2017) ‘Perfectionism Without Politics. Politicisation, Depoliticisation, and Political History’, *Ricerche di storia politica*, fascicolo speciale, 75–86.
- Orsina, G. (2018) *La democrazia del narcisismo. Breve storia dell’antipolitica*. Venezia: Marsilio Editori.
- Orsina, G. (2019) ‘L’Autodestruction du politique, 1968–2008’, *Commentaire*, 166, 253–260.
- Orsina, G. (2019b) ‘Genealogy of a Populist Uprising. Italy 1979-2019’, *The International Spectator*, 54(2), 50–66.
- Ostiguy, P. (2017) ‘Populism: A Socio-Cultural Approach’, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 73–97.
- Padovani, C. (2015) ‘Berlusconi’s Italy’: The Media Between Structure and Agency’, *Modern Italy*, 20(1), 41–57.
- Palermo, F. (2019) ‘Riformare, ma con giudizio’, *La Rivista Il Mulino*, 14 October 2019, https://www.rivistailmulino.it/news/newsitem/index/Item/News:NEWS_ITEM:4890, accessed 1 February 2020.
- Pallante, F. (2018) ‘Decreto immigrazione: dal Colle una reazione troppo prudente’, *il manifesto*, 12 October 2018, <https://ilmanifesto.it/decreto-immigrazione-dal-colle-una-reazione-troppo-prudente/>, accessed 13 February 2020.
- Pallante, F. (2019) ‘L’incostituzionalità del “decreto Salvini”’, *Libertàgiustizia.it*, 2 March 2019, <http://www.libertaegiustizia.it/2019/03/02/lincostituzionalita-del-decreto-salvini/>.
- Palombarini, G. (2011) ‘La politica della giustizia di Silvio Berlusconi’, *Belfagor*, fascicolo 5, 477–486.
- Panizza, F. (2005) ‘Introduction: Populism and the Mirror of Democracy’, in F. Panizza (ed.), *Populism and the Mirror of Democracy*. London: Verso, pp. 1–31.

- Pap, N. and Glied, V. (2018) 'Hungary's Turn to the East: *Jobbik* and Islam', *Europe-Asia Studies*, 70(7), 1036–1054.
- Parlamento Europeo (2018) 'Stato di diritto in Ungheria: il Parlamento chiede all'UE di agire', Comunicati Stampa, 12 September 2018, <https://www.europarl.europa.eu/news/it/press-room/20180906IPR12104/stato-di-diritto-in-ungheria-il-parlamento-chiede-all-ue-di-agire>, accessed 1 February 2020.
- Parlamento Italiano: <https://leg16.camera.it/561?appro=668&Legge+51%2F2010+-+Legittimo+impedimento>, accessed 30 December 2019.
- Pasquino, G. (2007) 'Tricks and Treats: The 2005 Italian Electoral Law and Its Consequences', *South European Society and Politics*, 12(1), 79–93.
- Pasquino, G. (2013) 'Leaders, Institutions, and Populism: Italy in a Comparative Perspective' in G. Pasquino, J.L. Newell and P. Mancini (eds), *The Future of the Western Liberal Order. The Case of Italy*. Transatlantic Academy Paper Series, no. 2, pp. 17–28.
- Pasquino, G. (2013) 'Leaders, Institutions, and Populism: Italy in a Comparative Perspective' in G. Pasquino, J.L. Newell and P. Mancini (eds), *The Future of the Western Liberal Order. The Case of Italy*. Transatlantic Academy Paper Series, no. 2, pp. 3–16.
- Pasquino, G. (2018) 'Introduction: Not a Normal Election: Roots and Consequences', *Journal of Modern Italian Studies*, 23(4), 347–361.
- Passarelli, G. (2015) 'Populism and the Lega North', in E. Jones and G. Pasquino (eds), *The Oxford Handbook of Italian Politics*. Oxford: Oxford University Press, pp. 224–239.
- Patta, E. (2019) 'Parlamentari: un taglio drastico che rischia essere solo uno spot', *Il Sole 24 Ore*, 10 May 2019, <https://www.ilsole24ore.com/art/parlamentari-taglio-drastico-che-rischia-essere-solo-spot-ACK18CB>, accessed 1 February 2020.
- Pech, L. (2019) 'From "Nuclear Option" to Damp Squib?', *Verfassungsblog*, 13 November 2019, <https://verfassungsblog.de/from-nuclear-option-to-damp-squib/>.
- Pederzoli, P. and Guarnieri, C. (1997) 'The Judicialization of Politics, Italian Style', *Journal of Modern Italian Studies*, 2(3), 321–336.
- Pinelli, C. (2006) 'The 1948 Italian Constitution and the 2006 Referendum: Food for Thought', *European Constitutional Law Review*, 2(3), 329–340.
- Pinelli, C. (2006b) 'Sul referendum del 25-26 giugno 2006', *Diritto Pubblico – Rivista fondata da Andrea Rossi Battaglini*, 2, 607–612.

- Pinelli, C. (2011) 'The Populist Challenge to Constitutional Democracy', *European Constitutional Law Review*, 7, 5–16.
- Pinelli, C. (2018) 'Libertà di mandato dei parlamentari e rimedi contro il transfughismo', *federalismi.it*, n. 13.
- Pipes, R. (1964) 'Narodnichestvo: A Semantic Inquiry', *Slavic Review*, 23(3), 441–458.
- Pitchers, C. (2020) 'Hungarian Fidesz Party suspension upheld by EPP', *Euronews*, 4 February 2020, <https://www.euronews.com/2020/02/04/hungarian-fidesz-party-suspension-upheld-by-epp>, accessed 8 February 2020.
- Plattner, M.F. (2010) 'Populism, Pluralism, and Liberal Democracy', *Journal of Democracy*, 21(1), 81–92.
- Pogány, I. (2013) 'The Crisis of Democracy in East Central Europe: The 'New Constitutionalism' in Hungary', *European Public Law*, 19(2), 341–368.
- Poggeschi, G. (2018) 'Il cosiddetto pacchetto legislativo "stop-soros" e la nuova revisione costituzionale ungherese: un altro passo (xenofobo) verso il consolidamento di una democrazia illiberale', *DPCE Online*, 35(2), 617–623.
- Pollicino, O. and Vigevani, G.E. (2019) 'Perché Salvini non può chiedere «pieni poteri»', 9 August 2019, <https://www.ilsole24ore.com/art/perche-salvini-non-puo-chiedere-pieni-poteri-ACYu05d>, accessed 12 February 2020.
- Pombeni, P. (1997) 'Typologie des populismes en Europe (19e-20e siècles)', *Vingtième Siècle, revue d'histoire*, 56, 48–76.
- Portanova, M. (2004) 'La riforma costituzionale e l'onnipotente Primo Ministero B.', ASTRID, <http://www.astrid-online.it/static/upload/protected/PORT/PORTANOVA-Riforme-Astrid-per-Diario.pdf>.
- Quigley, B. (2011) 'Immunity, Italian Style: Silvio Berlusconi Versus the Italian Legal System', *Hastings International and Comparative Law Review*, 34(2), 435–463.
- Raniolo, F. (2006) 'Forza Italia: A Leader with a Party', *South European Society & Politics*, 11(3-4), 439–455.
- Razzoli, D. (2010) 'The State of the Media in Italy: A European Problem', *European Alternatives*.
- Renwick, A. (2011) 'Hungary's New Electoral Law, Part 1: The Basics', Blog of the Department of Politics and International Relations at the University of Reading (UK), 25 December 2011, <https://blogs.reading.ac.uk/readingpolitics/2011/12/25/hungary%e2%80%99s-new-electoral-law-part-1-the-basics/>, accessed 19 January 2020.

- Renwick, A. (2011b) 'Hungary's New Electoral Law, Part 2: Analysis', Blog of the Department of Politics and International Relations at the University of Reading (UK), 26 December 2011, <https://blogs.reading.ac.uk/readingpolitics/2011/12/26/hungary%e2%80%99s-new-electoral-law-part-2-analysis/>, accessed 19 January 2020.
- Resnick, D. (2016) 'Two Generations of African Populism: Applying a Cumulative Conceptual Approach', in *Populism in Comparative Perspectives – Comparative Politics Newsletter*, American Political Science Association, 26(2), 62–69.
- Resnick, D. E. (2017) 'Populism in Africa', in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 101–120.
- Rooduijn, M. and Akkerman T. (2017) 'Flank Attacks: Populism and Left-Right Radicalism in Western Europe', *Party Politics*, 23(3), 193–204.
- Rooduijn, M., Van Kessel, S., Froio, C., Pirro, A., De Lange, S., Halikiopoulou, D., Lewis, P., Mudde, C. and Taggart, P. (2019). *The PopuList: An Overview of Populist, Far Right, Far Left and Eurosceptic Parties in Europe*. <http://www.popu-list.org>.
- Rovira Kaltwasser, C. (2012) 'The Ambivalence of Populism: Threat and Corrective for Democracy', *Democratization*, 19(2), 184–208.
- Rovira Kaltwasser, C. (2013) 'Populism vs. Constitutionalism? Comparative Perspectives on Contemporary Western Europe, Latin America, and the United States', Policy Brief, The Foundation for Law, Justice and Society.
- Rovira Kaltwasser, C., Taggart P., Ochoa Espejo P. and Ostiguy P. (2017) 'Populism: An Overview of the Concept and the State of Art', in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 1–24.
- Rovny, J. (2013) 'Where do Radical Right Parties Stand? Position Blurring in Multidimensional Competition', *European Political Science Review*, 5(1), 1–26.
- Rummens, S. (2017) 'Populism as a Threat to Liberal Democracy', in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 554–570.
- Ruotolo, M. (2019) 'Sui vizi formali del decreto-legge e della legge di conversione', *Osservatoriosullefonti.it*, 3, 1–23.
- Rupnik, J. (2012) 'Hungary's Illiberal Turn: How Things Went Wrong', *Journal of Democracy*, 23(3), 132–137.

- Rydgren, J. (2007) 'The Sociology of the Radical Right', *Annual Review of Sociology*, 33, 241–261.
- Rye, L., Koncewicz, T.T. and Fasone, C. (2019) 'Ideas of Democracy and the Rule of Law Across Time and Space: Developments in the EU, Poland and Italy', RECONNECT, <https://reconnect-europe.eu/wp-content/uploads/2019/12/D4.1.pdf>, accessed 15 December 2019.
- Santoro, E. (2019) 'I fondamenti del costituzionalismo alla prova del caso Diciotti: il sindacato sulle decisioni parlamentari e il punto di equilibrio fra poteri', *Questione Giustizia*, 14 March 2019, <http://www.questionegiustizia.it/articolo/i-fondamenti-del-costituzionalismo-alla-prova-del-14-03-2019.php>, accessed 26 December 2019.
- Santoro, G. (2019) '10 questioni di legittimità costituzionale' in G. Santori (ed.) *I profili di illegittimità costituzionale del Decreto Salvini*. Roma: Antigone Edizioni, pp. 103–108.
- Sartori, G. (2005) 'La riforma con il veleno. Il sistema elettorale proposto dal Polo', *Corriere della Sera*, 16 Settembre 2015, https://www.corriere.it/Primo_Piano/Editoriali/2005/09_Settembre/15/sartori.shtml, accessed 2 February 2020.
- Sartori, G. (2006) 'La scelta oscurata', *Corriere della Sera*, 16 June 2016, https://www.corriere.it/Primo_Piano/Editoriali/2006/06_Giugno/16/sartori.shtml, accessed 12 February 2020.
- Sartori, G. (2006b) 'Referendum, la tv inganna', *Corriere della Sera*, 13 June 2006, https://www.corriere.it/Primo_Piano/Editoriali/2006/06_Giugno/13/sartori.shtml, accessed 12 February 2020.
- Scheppele, K.L. (2013) 'In Praise of the Tavares Report: Europe Finally Said No to Viktor Orbán', *Verfassungsblog*, 5 July 2013, <https://verfassungsblog.de/in-praise-of-the-tavares-report-europe-finally-said-no-to-viktor-orban/>.
- Scheppele, K.L. (2016) 'Can Poland Be Sanctioned by the European Union? Not Unless Hungary is Sanctioned Too', *Verfassungsblog*, 24 October 2016, <https://verfassungsblog.de/can-poland-be-sanctioned-by-the-eu-not-unless-hungary-is-sanctioned-too/>.
- Schmidt, V. (2005) 'Democracy in Europe: The Impact of European Integration', *Perspectives on Politics*, 3(4), 761–779.
- Sciacca, A. and Sclaunich, G. (2019) 'Open Arms, I migranti sbarcano a Lampedusa dopo il sequestro della nave da parte della Procura', *Corriere della Sera*, 21 August 2019, https://www.corriere.it/cronache/19_agosto_20/open-arms-altro-migrante-si-buttato-acqua-attesa-il-trasferimento-spagna-6a14a386-c321-11e9-a7af-46fd3e83594f.shtml, accessed 26 December 2019.

- Sedelmeier, U. (2013) 'Anchoring Democracy From Above? The European Union and the Democratic Backsliding in Hungary and Romania after Accession', *Journal of Common Market Studies*, 52(1), 105–121.
- Shields, J. G. (2000) 'The Poujadist Movement: A Faux 'Fascism' ', *Modern and Contemporary France*, 8(1), 19–34.
- Shields, J.G. (2004) 'An Enigma Still: Poujadism Fifty Years On', *French Politics, Culture and Society*, 22(1), 36–56.
- Shils, E. (1956) *The Torment of Secrecy. The Background and the Consequences of American Security Policies*. Glencoe: Free Press, p. 98
- Skenderovic, D. (2017) 'Populism: A History of the Concept', in R. Heinisch, C. Holtz-Bacha and O. Mazzoleni (eds), *Political Populism. A Handbook*. Baden-Baden: Nomos, pp. 41–58.
- Smilov, D. and Krastev I. (2008) 'the Rise of Populism in Eastern Europe: Policy Paper' in G. Mesežnikov, O. Gyárfášová and D. Smilov (eds), *Populist Politics and Liberal Democracy in Central and Eastern Europe*. Institute for Public Affairs: Bratislava, pp. 7–13.
- Spadaro, A. (2016) 'Costituzionalismo versus Populismo. Sulla c.d. deriva populistico-plebiscitaria delle democrazie costituzionali contemporanee', *Forum Costituzionale*, http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0145_spadaro.pdf.
- Stanley, B. (2008) 'The Thin Ideology of Populism', *Journal of Political Ideologies*, 13(1), 95–110.
- Stanley, B. (2017) 'Populism in Central and Eastern Europe' in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 140–160.
- Stefanoni, F. (2019) 'Presidenza Commissione Ue, il M5S: «C'era un accordo con la Lega». Salvini: «No al minestrone»', *Corriere della Sera*, 17 July 2019, https://www.corriere.it/politica/19_luglio_17/presidenza-commissione-ue-m5s-c-era-accordo-la-lega-salvini-no-minestrone-7345e4da-a880-11e9-ad04-d2eaa84e69e7.shtml, accessed 12 February 2020.
- Stewart, S. (1969) 'The Social Roots', in G. Ionescu and E. Gellner (eds), *Populism: Its Meanings and National Characteristics*. Letchworth: The Garden City Press, pp. 180–196.
- Stockemer, D. (2019) 'Introduction', in D. Stockemer (ed.), *Populism Around the World. A Comparative Perspective*. Cham, Switzerland: Springer, 1–8.

- Szabo, S.T. (2013) 'Introduction' in G. Pasquino, J.L. Newell and P. Mancini (eds), *The Future of the Western Liberal Order. The Case of Italy*. Transatlantic Academy Paper Series, no. 2, pp. 1–2.
- Szente, Z. (2017) 'Challenging the Basic Values – Problems in the Rule of Law in Hungary and the Failure of the EU to Tackle Them', in A. Jakab and D. Kochenov (eds.), *The Enforcement of EU Law and Values: Ensuring Member States' Compliance*. Oxford: Oxford University Press, pp. 456–475.
- Szôcs, L. (1998) 'A Tale of the Unexpected: The Extreme-Right *vis-à-vis* Democracy in Post-Communist Hungary', *Ethnic and Racial Studies*, 21(6), 1096–1115.
- Taggart, P. (2000) *Populism*. Buckingham: Open University Press.
- Taggart, P. (2002) 'Populism and the Pathology of Representative Politics', in Y. Mény and Y. Surel (eds), *Democracies and the Populist Challenge*. Basingstoke: Palgrave MacMillan, pp. 62–80.
- Taggart, P. (2004) 'Populism and Representative Politics in Contemporary Europe', *Journal of Political Ideologies*, 9(3), 269–288.
- Taggart, P. (2017) 'New Populist Parties in Western Europe' in C. Mudde (ed.), *The Populist Radical Right. A Reader*. New York: Routledge, pp. 159–171.
- Taggart, P. (2017b) 'Populism in Western Europe' in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 248–263.
- Tarchi, M. (2002) 'Populism Italian Style', in Y. Mény and Y. Surel (eds.), *Democracies and the Populist Challenge*. New York: Palgrave, pp. 120–138.
- Tarchi, M. (2015) 'Italy: the Promised Land of Populism?', *Contemporary Italian Politics*, 7(3), 273–285.
- Tarchi, M. (2016) 'Populism: Ideology, political style, mentality?', *Politologický časopis – Czech Journal of Political Science*, 23(2), 95–109.
- Tarchi, M. (2018) *Italia populista. Dal qualunquismo a Beppe Grillo*. Bologna: Il Mulino.
- Tarchi, M. (2018b) 'Voters Without a Party: The 'Long Decade' of the Italian Center-Right and its Uncertain Feature', *South European Society and Politics*, 23(1), 147–162.
- Tarchi, Marco (1998) 'Estrema Destra e Neopopulismo in Europa', *Rivista Italiana di Scienza Politica*, 28(2), 379–389.
- Taylor, A. (2016) 'The Global Wave of Populism That Turned 2016 Upside Down', in *The Washington Post*, <https://www.washingtonpost.com/news/worldviews/wp/2016/12/19/the-global-wave-of-populism-that-turned-2016-upside-down/>, accessed 20 November 2019.

Venice Commission (2005) ‘Opinion on the Compatibility of the Laws “Gasparri” and “Frattini” of Italy with the Council of Europe Standards in the Field of Freedom of Expression and Pluralism of the Media’, opinion no. 309/2004, 10-11 June 2005.

Venice Commission (2011) ‘Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution of Hungary’, opinion no. 614/2011, 26 March 2011.

Venice Commission (2011b) ‘Opinion on the New Constitution of Hungary’, opinion no. 621/2011, 20 June 2011.

Venice Commission (2012) ‘Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organization and Administration of Courts of Hungary’, opinion no. 663/2012, 19 March 2012.

Venice Commission (2013) ‘Opinion on the Fourth Amendment to the Fundamental Law of Hungary’, opinion no. 720/2013, 17 June 2013.

Venice Commission and OSCE/ODIHR (2018) ‘Joint Opinion on the Provisions of the So-Called “Stop-Soros” Draft Legislative Package Which Directly Affect NGOs’, VC opinion no. 919/2018 + OSCE/ODIHR opinion no. NGO-HUN/326/2018, 25 June 2018.

Vidra, Z. and Fox, J. (2014) ‘Mainstreaming of Racist Anti-Roma Discourses in the Media in Hungary’, *Journal of Immigrant & Refugee Studies*, 12(4), 437–455.

Vincze, A. and Varju, M. (2012) ‘Hungary The New Fundamental Law’, *European Public Law*, 18(3), 437–454.

Walicki, A. (1969) ‘Russia’, in G. Ionescu and E. Gellner (eds), *Populism: Its Meanings and National Characteristics*. Letchworth: The Garden City Press, pp. 62–96.

Walicki, A. (1977) ‘Russian Social Thought: An Introduction to the Intellectual History of Nineteenth-Century Russia’, *The Russian Review*, 36(1), 1–45.

Walker, N. (2019) ‘Populism and Constitutional Tension’, *International Journal of Constitutional Law*, 17(2), 515–535.

Weiler, J.H.H., Haltern, U. and Mayer, F. (1995) ‘European Democracy and its Critique. Five Uneasy Pieces’, EUI Working Paper RSC No. 95/11.

Weyland, K. (2017) ‘Populism: A Political-Strategic Approach’, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo and P. Ostiguy (eds), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 48–72.

- Wiles, P. (1969) 'A Syndrome, not a Doctrine', in G. Ionescu and E. Gellner (eds), *Populism: Its Meanings and National Characteristics*. Letchworth: The Garden City Press, pp.166–179.
- Winock, M. (1997) 'Populismes Français', *Vingtième Siècl, revue d'histoire*, 56, 77–91.
- Winock, M. (2007) 'Les populismes français', in J.P. Rioux (ed.), *Les Populismes*. Paris: Perrin.
- Woollard, C. (2018) 'Has the Mediterranean Refugee Crisis Undermined European Values?', European Institute of the Mediterranean, Dossier: Europe and the Mediterranean, Mediterranean Yearbook 2018, https://www.iemed.org/recursos-compartits/pdfs/Europe_Crisis_Wollard_2_Medyearbook2018.pdf.
- Worsley, P. (1969) 'The Concept of Populism', in G. Ionescu and E. Gellner (eds), *Populism: Its Meanings and National Characteristics*. Letchworth: The Garden City Press, pp. 212–250.
- Worsley, P. (1969) 'The Concept of Populism', in G. Ionescu and E. Gellner (eds), *Populism: Its Meanings and National Characteristics*. Letchworth: The Garden City Press, pp. 212–250.
- Wortman, R. (1967) *The Crisis of Russian Populism*. Cambridge: Cambridge University Press, p.16.
- Wright, G. (1955) 'The Resurgence of the Right in France', *Yale French Studies*, 15, 3–11.
- Wyland, K. (2001) 'Clarifying a Contested Concept. Populism in the Study of Latin American Politics', *Comparative Politics*, 34(1), 1–22.
- Zaccaria, R. (2004) 'Il controllo dell'informazione raddoppia I poteri del Premier. Le proposte di riforma costituzionale e il nodo pregiudiziale del pluralismo', ASTRID, <http://www.astrid-online.it/static/upload/protected/ZACC/ZACCARIA-Il-controllo-dell-informazi.pdf>.
- Zalan, E. (2019) 'EPP To Keep Orban's Fidesz Suspension', EUobserver, 29 January 2019, <https://euobserver.com/political/147300>, accessed 8 February 2020.
- Zanatta, L. (2002) 'Il populismo. Sul nucleo forte di un'ideologia debole', *Polis, Ricerche e studi su società e politica*, 2, 263–294.
- Ziniti, A. (2019) 'Migranti, Salvini sotto accusa per il blocco della nave Gregoretti. Di Maio: "Voteremo autorizzazione a procedere"', *La Repubblica*, 18 December 2019, https://www.repubblica.it/cronaca/2019/12/18/news/migranti_-243765910/, accessed 26 December 2019.
- Ziniti, A. (2019b) 'Open Arms, la Procura decide il sequestro della nave: sbarcati i migranti', *La Repubblica*, 20 Agosto 2019, https://www.repubblica.it/cronaca/2019/08/20/news/open_arms_migrante_si_getta_in_mare_recuperato_-233948936/, accessed 26 December 2019.

- Ziniti, A. (2019c) ‘Open Arms, Salvini indagato per sequestro di persona e omissione d’atti d’ufficio’, *La Repubblica*, 29 November 2019, https://www.repubblica.it/cronaca/2019/11/29/news/open_arms_salvini_indagato_per_sequestro_di_persona_e_omissione_d_atti_d_ufficio-242239175/, accessed 26 December 2019.
- Ziniti, A. (2019d) ‘Migranti, ripescati altre sette corpi. Caso Open Arms, accuse anche per Matteo Piantedosi’, *La Repubblica*, 30 November 2019, <https://www.repubblica.it/cronaca/2019/11/30/news/migranti-242277527/>, accessed 26 December 2019.
- Zirulia, S. (2019) ‘Decreto sicurezza-bis: novità e profili critici’, *Diritto Penale Contemporaneo*, 18 June 2019, <https://www.penalecontemporaneo.it/d/6738-decreto-sicurezza-bis-novita-e-profilo-critici>, accessed 24 December 2019.
- Zsiros, S. (2019) ‘Article 7: EU Grills Hungary Over Rule of Law Concerns’, *Euronews*, 19 September 2019, <https://www.euronews.com/2019/09/17/article-7-eu-grills-hungary-over-rule-of-law-concerns>, accessed 1 February 2020.
- Zulianello, M. (2019) ‘Varieties of Populist Parties and Party Systems in Europe: From State-of-the-Art to the Application of a Novel Classification Scheme to 66 Parties in 33 Countries’, *Government and Opposition*, 1–21.
- Zweifel, T.D. (2002) ‘...Who Is Without Sin Cast the First Stone: The EU’s Democratic Deficit in Comparison’, *Journal of European Public Policy*, 9(5), 812–840.

Summary

From Europe to the Americas, from the Philippines to New Zealand, a common reality seems to be characterizing the political life of the entire globe: populism. One could even speak of a populist *Zeitgeist* (Mudde 2004) persuading the world. The populist phenomenon, however, is not in itself new, originating indeed at the end of the nineteenth century. This notwithstanding, its recent success in Europe has raised many concerns, for according to some, such a phenomenon would be intrinsically incompatible with the core principles upon which European modern liberal democracies – and with them the EU – are grounded.

1. Populism

Populism is probably one of the most controversial phenomena in the world, whose definition and categorization results incredibly problematic. It has appeared in different geographical contexts and developed under different historical circumstances, thus making it hard for scholars to individuate its essential core. For this reason it has been defined as chameleonic, mercurial and impalpable (Taggart 2000). Over time it has been understood as ‘something more than an ideology’ (MacRae 1969), as a particular kind of regime (Hawkins and Rovira Kaltwasser 2019), as a ‘political syndrome’ (Wiles 1969), as a special economic approach (Dornbusch and Edwards 1990), as a political strategy (Weyland 2001), as a discursive frame, (Aslanidis 2015) and the list could go on forever. At the moment of writing, indeed, there is still no universal and unequivocal agreement about what is the definition best fitting such a phenomenon. It has even become common practice to start writing about the topic by lamenting the lack of clarity which surrounds it (Moffit and Tormey 2014; Panizza 2005). For the purposes of this work, however, populism will be intended – following Mudde’s formulation (2004) – as a thin-centered ideology which conceives of society as being ultimately divided between two homogeneous and antagonist groups – the pure people and the corrupt elite – and which claims to represent the *volonté générale* of the common people. This configuration implies that populism has two opposites: elitism and pluralism. Being a thin-centered ideology, the phenomenon cannot in itself provide a comprehensive vision of the world, and for this reason it usually attaches itself to other secondary ideologies, coming either from the political spectrum or the legal world.

Its core components are three: the people, the elite and the general will. The notion of ‘the people’ has a central importance, for it defines also the other two as its opposite and its manifest expression. In its nature, the concept is a rather vague one, lending itself to different interpretations. Despite contingent connotations, however, the populist people is always intended as a homogeneous and unified group, with a collective rather than an individual identity, and characterized by the best human values. The elite is its opposite. It is corrupt and self-referential, and for this reason excluded from the imagined community of the heartland, and considered part of the enemy. It can have a political, an economic, an intellectual or a technocratic nature: it does not matter, for at the end of the day all elites are equally interested only in the realization of their own advantages at the expenses of ordinary citizens. The third and last component of populism is the *volonté générale* of the people. By being the latter intended as a monolithic community with the same needs and requests, also its general will is to be understood in homogeneous terms. In this sense, the populist leader claims to be the only political actor who knows it and can realize it, for while mainstream politicians act to promote their vested interests, he is instead ‘one of us’. Since populism’s objective is the implementation of the general will of the people – the will of the majority – it advocates for democratic regimes where the *demos* is to prevail over any other constraint, regarding the people as the ultimate locus of power, which cannot be limited by anything. Such an understanding of democracy, however, is evidently at odds with the modern idea of liberal constitutional democracy. The latter is indeed regarded as deriving from a tension between majority will and minority groups’ protection: majority will is to be necessarily limited, for it would otherwise turn into a ‘tyranny of the majority’. While modern democracy tries to make it so that the rule of law prevails over the rule of man, populism has a tendency to make the rule of people prevail over constitutionalism.

Populist resentment toward the elites – coupled by its ambition to give the people back the sovereignty they have been deprived of – is to be intended, in contemporary Europe, as consequential to a crisis of political representation: traditional parties are perceived as too instant from ordinary people, more interested in governing than in being responsive to their electorate (Enroth 2017). However, while politicians are still held responsible for every societal malfunctioning and unsatisfied request, their room for collective intervention has notably decreased, for many of their political powers have indeed been delegated to non-majoritarian bodies and technocratic entities (Orsina 2018). In the domain of technocracy, the EU is probably the best case in point. Halfway between a nation state and an international organization (Weiler, Haltern and Mayer 1995), its most important bodies are not

accountable to the people, for indeed they are not elected by the same, their legitimacy deriving only from their expertise. There is evidently an inherent contrast between technocracy's *modus operandi* and populism, and indeed in both Western and Eastern Europe the phenomenon has many times made of Brussels one of its main targets of criticism.

2. Populism in Europe

Populism was not born out of a European context: its first appearances are indeed to be found in North America and Russia at the end of the nineteenth century, where it took the form of the People's Party and the *narodnichestvo* movement respectively.

Despite being recognized as a populist manifestation only lately – being originally interpreted mainly in an authoritarian fashion – Boulangism is to be regarded as the first example of founding populism developing in Europe, and more precisely in France (Skenderovic 2017; Hermet 2001; Winock 2007). Capitalizing on the country's economic recession, prospects of industrialization, and regional losses to the Germans, General Boulanger emerged soon before the beginning of the twentieth century presenting himself as the defender of all French people, and harshly criticizing the incumbent political elites for having ‘assassinate[d] *la patrie*’ (Betz 2019). Convinced that the government was destroying the values of republicanism upon which the entire country was profoundly grounded, the movement of Boulangism had as its main objective the drafting of a new constitution finally representative of the real French people – a project which, however, was never turned into practice because the movement never reached the government.

After the experience of Boulangism, populism will reappear in Western Europe only following WW2, with the Italian *Fronte dell'Uomo Qualunque* (Front of the Common Man) and the French Poujadist Movement. Set up by Guglielmo Giannini – who claimed to be the real voice of all Italians (Gambarota 2019) – the Fronte opposed both fascist and anti-fascist elites, for at the end of the day, there was no real difference between them, being the two equally interested only in imposing their vision of the world on the masses (Gambarota 2019; Corduwener 2017; Orsina 2014; Orsina 2013). In the same way, the Poujadist movement – established after Pierre Poujade's initiative – opposed the establishment in every of its form, considering it responsible of sacrificing people's wellbeing ‘in the name of progress’ (Shields 2000).

If in post-WW2 Western Europe populism remained a scattered phenomenon never gaining much success, its story is destined to change from the 1980s, and even more so between the 1990s and 2000s, for in this period it became an almost unavoidable feature of the region's political scenario.

In Eastern Europe, populism has followed instead a different route. Influenced by its Russian predecessor, it firstly emerged in the interwar period in Bulgaria, Czechoslovakia, Hungary, Croatia, Rumania, Poland, Serbia and Slovenia, under the leadership of intellectual groups. Praising the peasants in name of their sacred virtues, such movements criticized the elites of exploiting the common people, for these had indeed to labour everyday in order to make the establishment survive (Ionescu 1969). Eastern Europe's first experiment of populism was, however, to fall soon victim of dictatorship, being unable to influence the region in any tangible way. If it is true that populism was contained for many decades by the communist regime, it is even more true that since after the fall of the Soviet Union, its presence has been so broad that it was even regarded as a "general phenomenon" (Mudde 2002) of Eastern Europe. The primary leitmotiv of post-transition populism has been that of the "stolen revolution": the democratic elite is nothing else but a reshuffled version of its communist predecessor, and for this reason the "victimized majority" of the people has been unforgivably deprived of its revolutionary moment of liberation (Mudde 2012).

While in Western Europe traditional parties have a critical stance toward their populist colleagues, usually trying to distance them, the attractiveness exercised by the populist phenomenon on the mainstream of Europe's other side has been notably more important. In Poland and Hungary, indeed, populism has undergone a process of normalization, with traditional parties – like the Polish Law and Justice and the Hungarian Fidesz – abandoning their liberal stances to turn populist (Stanley 2017). Even though it is just two cases, their importance should not be underestimated, for it was them to open the doors of government to populism.

Stretching from Western to Eastern Europe, nowadays the whole continent seems to be affected by a populist resentment. To call back the example of the EU, all of its member states but Latvia, Malta Portugal and Romania present at least one populist organization, with many of them having also present or past governmental experiences (Zulianello 2019).

3. Populism in Italy

Italy has been the first Western European country to deeply experience the consequences of that crisis of politics which is at the heart of the populist rise (Orsina 2014; Orsina 2018), being also the first

Western European country to have an exclusively populist government (Orsina 2019). Its experience with populists is so extensive that the peninsula was even defined the ‘‘promised land of populism’’ (Tarchi 2015), or alternatively ‘‘the cradle of populism in Europe’’ (Passarelli 2015).

After its first encounter with the phenomenon in the form of the *Fronte dell’Uomo Qualunque* – regarded by some scholars as the forerunner of populism in all Europe (Tarchi 2012; Corduwener 2017; Gambarota 2019) – Italy went through four other populist cases: Berlusconi’s *Forza Italia* (Go Italy) – emerging from the judicial investigation of *Mani Pulite* (Clean Hands) and the collapse of the entire party system it brought about – the *Lega Nord* (Northern League) – moving originally on regionalist lines, even calling for Northern Italy secession, and later turned into a comprehensive national party, the *Lega* – the *MoVimento Cinque Stelle*²⁰⁵ (Five Star Movement) – raising as a reaction to the broken promises of post-Tangentopoli Italy – and *Fratelli d’Italia* – established probably in reaction to the way the eurocrisis was managed through the setting up of a technocratic cabinet.

In the peninsula, populism entered the government for the first time in 1994 – through a coalition cabinet set up by Berlusconi with other parties, among which the *Lega Nord* – to do it again many other times in the same configuration. As any other ideology, when in government populism implemented policies deemed useful for the realization of its objectives. Such policies have, however, placed themselves in contrast with the principles of the rule of law and constitutionalism, threatening the grounding values of liberal democracy. Berlusconi has had a conflictual relationship with the judiciary, which he – and his cabinet – have tried to undermine and obstruct. This has happened firstly through the passage of different *ad personam* laws, intended to both protect the Cavaliere and his colleagues from possible trials, and to hinder the activities of judges. The goal of such pieces of legislation was that of making politics prevail over law, bypassing constitutional provisions and opening the room for important discriminations. Most of them were drafted relying on urgency legislation, and later presented with a motion of confidence – thus showing a certain disrespect of the legislator for the separation of powers and its subsequent system of checks and balances. Many of these personal laws were entirely or partially declared unconstitutional, thus highlighting also a certain disregard for legal norms. Apart from the *ad personam* laws, Berlusconi tried to undermine the independence of the third branch also by promoting a reform of the same (the Castelli Reform).

205 The *M5S* is the only modern populist party, among those considered, advocating for direct democracy via the web. Despite its important emphasis on horizontality and democracy, the group is marked by a strong centralization, with Grillo having almost absolute decisional power over the party.

Sponsored as to improve the efficiency of the legal system, the project threatened instead to politicize the judiciary, for its objective was that of bringing the administration of justice closer to politics (for example proposing the separation of public prosecutors' and judges' careers, and the transfer of some judicial competences from the *Consiglio Superiore della Magistratura* to entities close to the government). Additionally, Berlusconi promoted a discrediting rhetoric toward legal bodies and personalities, aimed at making their legitimacy in the eyes of the Italian public decrease. The government's unconcern for the rule of law has been made evidently clear also and especially with the 2016 constitutional reform, intended mainly to create a premiership without constraints and free from any check, and a Chamber of Deputies subject to the government and the decisions of the prime minister. Some of the reform provisions further challenged the independence of the Constitutional Court and of the President of the Republic, risking reducing the latter to a mere figure of symbolic value. Even though such a project was rejected via a referendum, its implications for the system of checks and balances and democracy were huge, to the point that the reform has indeed been accused of depriving Italy of its democratic substance (Bull 2006) and almost completely destroying the system of checks and balances (Baldassarre 2004; Grassi 2004; Pinelli 2006; Olivetti 2008; Blokker). The coalition's inclination to create a very strong executive was further made evident with the passage of a new electoral law (Law 270/2005, better known as *porcellum*), whose intent was that of turning a very small relative majority in the Parliament, into an absolute one – with important consequences also for the first part of the Italian Constitution. With the passage of media-related laws – intended mainly to safeguard Forza Italia's leader's interests – the populist government in question also showed a certain unconcern for media pluralism, the independence of the media, and freedom of expression more in general, undermining some of the most important principles upon which the Italian Republic is indeed based. A tendency which was further evidenced by Berlusconi's interference with the RAI platform.

The second case of Italian populism in government is to be found in the coalition cabinet established in 2018 between the M5S and the Lega, the se-called 'government of change'. As for the previous case, also this time populist parties enacted policies contrasting with principles of the rule of law and constitutionalism, with further implications for the very system of democracy. The most important ones are the *decreto sicurezza* and the *decreto sicurezza bis*. Both pieces of legislation deal with the issue of migration, trying to restrict it. While the first decree was mainly intended to deprive refugee-seekers of some of their rights (humanitarian assistance in the first place), the second was drafted especially to

compromise activities of rescue at sea, and obstruct NGOs. Both bills have been enacted following the same *modus operandi*, which evidences a stance of disrespect for the separation of powers, and consequently for the system of checks and balances. Indeed, both pieces have been drafted relying on urgency legislation so as to bypass the Parliament, later presented to the same for approval with a motion of confidence that further deprived the body of any possibility of comprehensive debate. The very use of urgency legislation can find a constitutional justification only if there is a necessary and urgent circumstance to address, for otherwise it is unconstitutional – in both cases here considered there was absolutely no urgent threat to face. Additionally, an important number of provisions are in contrast with constitutional principles, European norms and international commitments – also in this case, the objective has been that of making politics prevail over law. The non-respect for the separation of powers was, however, not limited to the legislative branch, for indeed also the judiciary was deprived of some of its traditional functions. This happened specifically when, in the first decree, political actors were given the power to expel migrants even if these were not charged with final judgments; and in the second decree when the same political actors were instead given the competence to decide whether or not a norm infringement had occurred. The most evident effect of both decrees has been that of undermining the protection of fundamental rights as far as minority groups are concerned. Similarly to Berlusconi, also Salvini adopted a discrediting rhetoric toward the judiciary, aimed at undermining its legitimacy in the name of politics supremacy.

These examples of populism in government display a common core and *modus operandi*. Populism has in both cases threatened the separation of powers, trying to make the executive the strongest branch of the system, at the expenses of both the Parliament and the judiciary. In both cases populism has challenged constitutionalism, the system of checks and balances, the rule of law, and the protection of fundamental rights. Even though Italy was in neither instance turned into an authoritarian regime of the Chinese or Russian kind, populism has in both of its governmental experiences questioned the very foundation of liberal democracy, intended as more than just majority will.

4. Populism in Hungary

Populism has developed in Hungary for the first time after WW1, in the form of the *népi* movement. Made up of writers, the organization was in a second moment turned into a political party praising the impressive values of rural people, while simultaneously criticizing the elites because of their unconcern

for the poor conditions of common men and women. The first example of post-transition populism, instead, presented itself in the form of the MIÉP, moving along illiberal lines and attacking parties of promoting a politics of pacts just to remain in power (Bozóki 2015). Instances of modern populist parties are then provided by Jobbik – which grounds its entire existence on exclusionistic stances, particularly opposing the Roma community – and Fidesz, a former liberal party recently converted to populism.

In Hungary, Fidesz is the only populist party that made it to the government. Since 2010 it rules the country with another small organization, whose weight in the alliance is so insignificant that it was even defined a ‘satellite party’ (Norwegian Helsinki Committee 2013). Fidesz is most notably known for having turned the country into an illiberal form of democracy. Such a change has been possible because of a series of laws passed, and the enactment of a new constitution. The Hungarian new Fundamental Law is an unmistakable example of majority will’s supremacy at the expenses of minority groups: it has been drafted without the involvement of opposition parties, and is conceived so as to be representative of only ethnic Hungarians. The latter are then intended by the same text, in its National Avowal, as a homogeneous national and Christian community, with a preference for heterosexuality. Fidesz has thus showed its disregard for pluralism, liberalism and minority rights’ protection. The major criticism addressed to the new constitution, however, has been expressed with regard to the important number of cardinal laws requested by the same document to function. These are indeed to be produced by the Parliament with a two-third majority, with the effect that the current Fidesz majority will be able to influence also the decisions of future governments. But this is not the entire story, for Orbán’s party went indeed much further. Forcing the retirement of all Constitutional Court judges, the organization made it so that these vacancies could be filled by party supporters, hence undermining the independence of the judiciary, and further violating the principle of separation of powers and the system of checks and balances. Also the National Judicial Office, the Media Council, the Commissioner for Fundamental Rights, and the State Audit Office were politicized, with their presidency given to sympathizers of Fidesz. A similar thing happened with regard to the newly appointed President of the Republic, whose links with Orbán’s party are undeniable. The Constitutional Court was then deprived of its power of constitutional review as far as budget-related laws are concerned; while in the media domain laws were passed that made it compulsory for journalists to

spread only information aligned with the country's public moral – decided, incidentally, by no less than Fidesz.

Another controversial measure has been the so-called 'Stop-Soros legislative package', intended to halt migration by hindering the activities of NGOs. The most ambiguous point of such a legislation establishes that certain activities related to the domain of illegal immigration – including also the distribution of information materials, for example concerning humanitarian protection applications – are prohibited. Such a provision contrasts with freedom of association and freedom of expression.

The way populism has unfolded in Hungary – completely free and unchecked – can be considered as an example of how such a phenomenon would behave, were it left completely free. In Hungary Fidesz has undermined the system of checks and balances, the principle of separation of powers, the protection of fundamental rights, pluralism, liberalism, and the very core of the rule of law. Even though the country is still regarded as a democracy, it is hard to conceive of functioning democratic regimes without liberalism or constitutionalism.

5. Populism as a threat to the rule of law in the European Union?

Despite the differences in output and systematic character between the Italian²⁰⁶ and Hungarian cases of populism, some common behaviors and attitudes can be individuated as far as the rule of law and constitutionalism are concerned. Both cases of populism try to strengthen the power and the centrality of the executive at the expenses of both the parliament and the judiciary, showing a sincere disrespect for the principles of separation of powers and checks and balances. Such a stance is widely confirmed by their approach toward the judiciary, a branch which both Italian and Hungarian populist parties have consistently attempted (and in Hungary succeeded) at politicizing. When the separation of powers and the system of checks and balances are damaged, also the protection of fundamental rights is at risk. Indeed, if the judiciary is not anymore in the position to be neutral, and the Parliament is not more representative of all people because overwhelmed by a single irremovable majority, the respect of fundamental rights is no more guaranteed. And indeed, both examples of government populism have shown to be not so worried about the protection of fundamental freedoms. In the specific case of the Forza Italia-Lega Nord coalition and Fidesz, both populisms have tried to undermine the independence of the media, and media pluralism. Considering the other populist coalition of Italy and Fidesz, instead,

²⁰⁶ I am referring here to the two experiences of populism in the government in Italy, and namely the coalition Forza Italia-Lega Nord (with other traditional parties), and the M5S-Lega cabinet.

both cases have had a conflictual relationship with civil society in the form of NGOs. Additionally, all cases of populism have proved disrespectful of laws and legal norms, violating them so as to make politics prevail over law.

To say it with few words, then, both Italian and Hungarian populisms have had a conflictual stance with constitutionalism and the rule of law, which indeed they have threatened. The results the two cases have produced, however, vary importantly, for while in Italy populist excesses have been contained by independent institutions or blocked by the people, in Hungary this has not happened. The systematic character of Fidesz's disrespect for the rule of law is precisely what distinguishes the two cases of populism (Hungarian and Italian) here analyzed.

By undermining the values of the rule of law and constitutionalism, Hungarian and Italian populisms have showed a contrasting relationship also with the core values of the EU, of which both countries are members. These are enshrined in art. 2 TEU and include "respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities". They are in turn protected by art. 7 TEU, which establishes two procedures of intervention in case of infringement: an early warning mechanism when there is a risk of violation, and a sanctions mechanism when the breach is serious and persistent²⁰⁷. Fidesz has been undermining rule of law principles since when it entered the government ten years ago. This notwithstanding, art. 7 TEU has been invoked only very recently – in 2018 – being usually regarded as a "nuclear option" despite not having anything nuclear at all (Kochenov 2017b). Both the Commission and the Council have never directly tackled Hungarian's rule of law backsliding, thus giving the impression that the principles enshrined in art. 2 TEU are just empty definitions. Indeed, they have failed to acknowledge that in this member state, violations of legal principles considered binding are occurring. In particular, in 2014 the Commission launched a Rule of Law Initiative intended as a preventive alternative to art. 7 TEU, which however moved on the same lines of the early warning mechanism, and was based on dialogue. Regrettably, such a framework has never been used with Hungary. In response to the Commission's initiative, the Council proposed its very own idea of dealing with the issue of rule of law in the union: an annual Rule of Law Dialogue. Its results were, however, pretty much disappointing. (Only) three infringement procedures have been initiated by the Commission against Hungary, dealing respectively with data protection, the independence of the central bank and the forced retirement of

²⁰⁷ Since the European Court of Justice is not involved in such a procedure for substantial matters, art. 7 TEU has a very political nature.

Constitutional Court judges. All of them have tackled mainly technical problems, completely missing the point.

Before the invocation of art. 7 TEU in 2018, the most relevant intervention to solve the problem of rule of law backsliding in Hungary came from the European Parliament, via the 2013 Tavares report, advocating for the establishment of a Copenhagen commission. Such a control institution, however, was never realized.

Additionally, the main political bodies of the EU have proved unable (and unwilling) to take measures against Fidesz also as far as the European People's Party is concerned. They had the power to initiate an investigation procedure against the transnational organization in order to check whether in its activities the same complied with art. 2 TEU²⁰⁸, but never used it.

Art. 7 TEU was finally invoked by the European Parliament only in 2018, after the presentation of the Sargentini report. As a consequence, Fidesz was eventually suspended from the European People's Party. The procedure linked to the early warning mechanism is, however, still in its early stages: only a couple of hearings have been organized with Hungarian authorities, and no serious measures have been taken until now.

If the example of Hungary shows how detrimental populism can be for the institutions of the rule of law, and consequently for the EU; on the other hand, the inaction of the same organization shows how the union is unready to respond to the populist challenge (Bíró-Nagy 2017).

One last observation needs to be made concerning the relationship between populism and the rule of law as specifically intended by the EU. The European Court of Justice, indeed, regards the independence of the judiciary as the most important principle of EU rule of law. In this sense, both Italian and Hungarian populisms have – as seen above – tried to undermine it. Both cases of populism, then, have represented a threat to the same, with serious consequences also for the protection of fundamental rights and the separation of powers.

Conclusion

It seems clear that populism is a threat to the core principles upon which modern European democracies – and with them the EU – are grounded. And yet its attractiveness on an important number

²⁰⁸ As foreseen by Regulation 1141/2014, art. 3.1 (c).

of citizens is evident. Given the success experienced by the phenomenon, there must surely be some truth in it. Populism is indeed indicative of a malaise which is unfolding, and which needs to be taken into account. It must be regarded as a wake-up call, a symptomatic sign that the democratic process might be going too far from the people. It suggests that the way current democracy works needs to be improved in a more people-inclusive fashion. And this is true both at the national and at the supranational level. In this sense, the EU gives populist claims a certain legitimacy, because despite the small steps forward, it still remains a pretty distant organization.