

Changing perspectives on human rights

Will human rights survive illiberal democracy?

Edited by Arne Muis & Lars van Troost



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List of Authors and Editors

Tineke Cleiren is a Professor of Criminal Law and Criminal Procedure at Leiden University. She is also a deputy justice at The Hague Court of Appeal and a member of the Advisory Council on International Affairs.

Steve Crawshaw is a senior advocacy adviser at Amnesty International, and the author of *Street Spirit: The Power of Protest and Mischief*, foreword by Ai Weiwei.

Robert Dekker is the Executive Secretary of the Human Rights Committee of the Dutch Advisory Council on International Affairs.

Ela Goksun holds an MSc in Political Science from Leiden University where she focused on the relationship between the EU accession process and illiberal practices in EU candidate countries. She works as a researcher on rule-of-law and migration projects in EU member states and neighborhood countries.

Daniel Hegedüs is research consultant in the Nations in Transit program of Freedom House and visiting lecturer at the Humboldt University in Berlin. He has studied Political Science and History at the Eötvös Loránd University Budapest as well as European law at the Humboldt University in Berlin. In the past he has worked in different research, lecturer and project management positions at the German Council on Foreign Relations (DGAP), at the German Institute for International and Security Affairs (SWP), at the Free University of Berlin and the Eötvös Loránd University Budapest.

Ernst Hirsch Ballin is a Professor at Tilburg University and Professor of Human Rights at the University of Amsterdam. He is also a member of the Dutch Advisory Council on International Affairs and the Scientific Council for Government Policy. From 1989 to 1994 and from 2006 to 2010 he was the Minister of Justice. He has also served as a member of the House of Representatives and the Senate of the States General, and of the Council of State.

Arne Muis is an analyst at Strategic Studies, an initiative of Amnesty International Netherlands. He holds an MA from Leiden University, and an MSc from the London School of Economics, both in colonial and global history. Before joining Amnesty he worked for the Strategy Advisory Unit of the Dutch Ministry of Foreign Affairs.

Takis S. Pappas (PhD Yale) is an author, Recurrent Visiting Professor at the Central European University, Budapest, Hungary, and Docent at the University of Helsinki, Finland. His most recent work focuses on the comparative study of populism and features *Populism and Crisis Politics in Greece* (Palgrave 2014) and *European Populism in the Shadow of the Great Recession* (co-edited with H. Kriesi, ECPR Press, 2015), among many other articles in academic journals. He is currently finishing a new book under the title: *Democratic Illiberalism: How Populism Grows to Menace Democracy*.

Sasha Polakow-Suransky, an Open Society Foundations Fellow and former editor at the *New York Times* and *Foreign Affairs*, holds a DPhil in Modern History from Oxford University and is the author of *Go Back to Where You Came From: The Backlash Against Immigration and the Fate of Western Democracy*.

Arch Puddington is Distinguished Scholar for Democracy Studies at Freedom House, where he edits *Freedom in the World*, an annual report on global democracy. A former analyst at Radio Free Europe-Radio Liberty, he has written widely on democracy, American foreign policy, the cold war, and the rise of authoritarianism. His report, *Breaking Down Democracy: The Goals, Strategies, and Methods of Modern Authoritarianism*, was published in June 2017.

Sabrina de Regt is an Assistant Professor of Sociology at Utrecht University. Having earned Master degrees in Sociology (Tilburg University) and Quantitative Analysis in Social Science (*magna cum laude*, Catholic University of Brussels), she obtained her PhD from the University of Antwerp. Her research interests include democratic values, cohesion and cross-national research.

Otto Spijkers is Lecturer of International Law at Utrecht University, and guest lecturer for Amnesty International The Hague. He was visiting lecturer *inter alia* at Xiamen and Wuhan University (China), and at the Université Catholique d'Afrique Centrale (Cameroon). His doctoral dissertation, *The United Nations, the Evolution of Global Values and International Law*, was published in 2011. He worked as consultant for the United Nations International Law Fellowship Programme.

Lars van Troost is senior policy and strategy adviser at Amnesty International Netherlands (AINL), where he leads its Strategic Studies. He worked before at AINL as International Criminal Law project officer, coordinator for Political Affairs, head of the Refugee Department and head of Political Affairs and Press Office. He was chair of the Advisory Council of the Netherlands Institute for Human Rights.

Eszter Zalan is currently a reporter for the Brussels-based independent online news portal, EUobserver. She previously worked for Agence France-Presse in Budapest, Hungary. She reported extensively from conflict zones while working for the Hungarian daily *Nepszabadsag*, including Afghanistan, Yemen, Pakistan, Israel and the Palestinian territories, before becoming the newspaper's Brussels correspondent at the height of the clashes between Orban's government and the EU.

Introduction

In 1997 Fareed Zakaria published an article in *Foreign Affairs* which continues to be the starting point of most debates on illiberal democracy. Zakaria wrote that democratically elected regimes, often backed by referenda, “are routinely ignoring constitutional limits on their power and depriving their citizens of basic rights and freedoms” (Zakaria 1997: 22). This phenomenon, which Zakaria labelled a “growth industry” back in 1997, is not only still with us, but once again gaining traction. The recent Freedom House report titled *Breaking down democracy* signals a similar development in how modern authoritarians are managing to succeed where previous totalitarian systems failed: through “nuanced strategies of repression, the exploitation of open societies, and the spread of illiberal policies in democratic countries” (Puddington 2017: 1).

Zakaria’s analysis of creeping illiberalism is still valid, although the concept of illiberal democracy is frequently used interchangeably with autocracy. Several authors in the present volume argue that illiberalism and autocracy are not the same. Today’s illiberal democrats are generally a different breed than the pseudo-autocrats described by Zakaria in 1997. Intelligent methods of repression in Russia and China constitute a different sort of threat to human rights than the creeping withdrawal of civil liberties in states like Hungary, Poland and, more harshly and repressively, Turkey. Few would label either China or Russia a democracy, but the point at which an illiberal

democracy – or ill democracy, as a recent report¹ quipped flawed democracies in Europe – becomes an authoritarian state remains ill-defined. Some might say we will know the difference when we see it. The problem with this, though, is that at a time when one is able to make such a distinction it would already be too late. A reinterpreted version of Zakaria’s typology may therefore be even more relevant today than the original was when the essay was first published. The current essay volume hopes to provide a forum for the debate on this, by discussing the current threat posed to human rights by illiberal democracy, perhaps a form of government gloomily befitting the current *zeitgeist*.

It is often argued that democracy, the rule of law and human rights are necessarily intertwined and interdependent, since it is difficult for one of them to fully function without the presence of either other. A state in which decisions are made solely on the basis of majoritarianism, without the protection of fundamental freedoms or access to the courts in order to enforce these, can hardly be an effective guarantor of human rights for its citizens. This interdependence means that the existence of healthy democracies and a robust rule of law is essential for the survival and success of the global human rights movement.

1 *Resisting ill democracies in Europe. Understanding the playbook of illiberal governments to better resist them: A case-study of Croatia, Hungary, Poland and Serbia.* Produced by the Centre for Peace Studies, Helsinki Foundation for Human Rights, Hungarian Civil Liberties Union, and the Hungarian Helsinki Committee (January 2018)

Worryingly, however, electorates in established democracies are increasingly turning away from establishment parties, opting instead for single-issue movements, populist candidates or antisystem parties. As political scientists Roberto Foa and Yascha Mounk noted in 2016, “in some of the richest and most politically stable regions of the world, it seems as though democracy is in a state of serious disrepair” (Foa & Mounk 2016: 6). They found a disconcerting trend in the Western World: whereas older generations value democracy highly, younger generations frequently no longer find it quite so important.

When asked by the World Values Survey to rate on a scale of one to ten how essential it was to live in a democracy, 72 per cent of Americans born before World War II gave the highest score. This commitment to democracy is wavering. Only one in three American millennials give democracy the same rating. Worryingly, 24 per cent of American millennials even think democracy is a “bad” or “very bad” way to run their country (Foa & Mounk 2016: 7-8). The proportion of citizens who believe that army rule would be a “good” or “very good” thing has also risen steadily in most mature democracies, with one in six Americans holding this opinion today (Foa & Mounk 2016: 12).² These trends are also discernible in European states. Foa and Mounk warn that a widespread “democratic deconsolidation” might be under way. If the importance attached to democratic values continues to decline this could lead to an easier acceptance of authoritarian alternatives. When democracy ceases to be “the only game in town” for legitimate government, the door is set ajar for the “meteoric rise of antisystem parties” which threaten the very democratic institutions through which they operate (Foa & Mounk 2016: 15).

² Measurement was established in the 2010-2014 (wave 6) poll of the World Values Survey. The Spring 2017 Global Attitudes Survey of the Pew Research Centre put the figure at 17 per cent, suggesting there has been no significant change in this figure since.

Arch Puddington’s essay outlines an equally worrying international development contributing to the growing prevalence of illiberal and autocratic forms of governance. We are witnessing, he writes, an “informal, loose-knit Authoritarian International [...] [a] collection of strongman regimes and dictatorships work[ing] to undermine democratic norms, smother civil society [...] and sow dissension and confusion among the democracies”.³ Puddington argues that autocratic states like China, Russia and Venezuela provide diplomatic cover for fellow authoritarians and seek to cripple institutions which monitor and enforce democratic norms. Such informal grouping of like-minded states, tacitly supporting one another in international forums, has contributed to the growing popularity of illiberal governance. Ample opportunities for cross-pollination between authoritarian states exist in the ready-made templates for strongman takeovers of democratic states. Once a political party, usually led by a charismatic leader, gains power by the ballot it embarks on a process of capturing or sidelining key institutions of democratic government, media, and civil society. Through electoral and judicial reform it becomes increasingly difficult to oppose or replace the newly entrenched government. The regime burrows itself deeper into the private, judicial, and economic life of the nation, until it can decisively influence “how the media interpret the news; which religious faiths are [...] to be tolerated, and which are to be harassed and banned; which businessmen will be allowed to prosper and which will be persecuted by the tax authorities [...] which judges will be permitted to hear politically sensitive cases; which political crimes will be investigated, and which will be ignored”.⁴ Crucial to this process is the neutering of civil society, which might otherwise act as an incubator of alternative political ideas that could eventually manifest as (democratic) opposition. Civil society organizations from Azerbaijan to Venezuela are increasingly accused of tax irregularities, acting as foreign agents, or even supporting terrorism.

³ Arch Puddington in this volume, page 15.

⁴ Arch Puddington in this volume, page 17.

This last charge has proven to be an especially effective tool for restricting the free functioning of civil society. By invoking terrorism, or the exaggerated threat thereof, electorates are willing to allow far-reaching restrictions of civil liberties and extending the power of security services. If regimes prioritize an exaggerated threat to security over all other norms and values, civil liberties automatically take a back seat. The subsequent shrinking space for civil society is well documented, but no clear strategy for countering it has yet materialized. Puddington suggests a number of steps that liberal democracies could take in order to strengthen their support for fragile democracies. These include issuing early warnings to states at risk of illiberalization, standing up for freedom of thought and open enquiry – particularly in the face of Chinese funding – cautioning private business, and urging human rights organizations to develop strategies which better address the “varied and sophisticated methods of repression used by modern authoritarians”.⁵

Due to the diffuse nature of the terminology, the concepts of populism, illiberalism, nativism and authoritarianism are often used interchangeably or left undefined. Several authors in the present volume point out that such diffusion does not contribute to a clearer understanding of these phenomena, nor to appreciating the current challenges to liberal democracy. In his essay, **Takis Pappas** takes issue with both Zakaria’s approach to illiberal democracy, as well as with pundits who believe it offers a response for dealing with the currently ongoing transnational populist attack on the rule of law. Pappas argues that Zakaria’s definition of illiberal democracy is vague, overly broad, and bears little resemblance to current conceptions of populism. A primary concern of the Zakaria-school was about converting “regimes standing undecidedly between autocracy and democracy into full democracies”, for which Zakaria fielded an understanding of illiberal democracy which was “characterized by vintage autocracy but intent on experimenting with electoral politics”.⁶

5 Arch Puddington in this volume, page 22.

6 Takis Pappas in this volume, page 25.

Pappas contends that today’s meaning of democratic illiberalism differs significantly, in that “*our* democratic illiberalism is no other than populism itself [...] it bespeaks a conception of democracy that is openly hostile to liberal principles”.⁷ A liberal politician accepts that the diversity of modern society – ideological or otherwise – should be protected through the rule of law. An illiberal politician considers society to be divided between ordinary people and an establishment, a division they often seek to play up for electoral reasons. Populists claim that only they truly represent the people, and that their political competitors are all part of an immoral and corrupt elite. Whoever does not support the populist agenda therefore does not belong to the real people to begin with (Müller 2016: 19). Since illiberal-populist politicians claim to exclusively represent the people, they often “dismiss minorities and disregard institutional legality, while favouring majoritarianism”.⁸ Pappas argues that such illiberal instincts are not restricted to Hungary’s Fidesz or Poland’s PiS parties, but reside within all Europe’s populist movements.

This populist democratic illiberalism is frequently confused with nativism, a seemingly comparable but in fact quite distinct political phenomenon. Unlike populism, which can be found on the left and right, nativism is more closely aligned to the right-wing conservative “law and order” agenda, as well as the nativist platform which has been termed “welfare chauvinism”, in which a classically left wing agenda – generous social security benefits – is tied to a nativist theme by severely restricting access to these on the basis of (ethnic) nationality. Although both offer their particular challenges to liberal democracy, nativist politicians are generally more committed to parliamentary democracy and constitutional legality than their populist counterparts. Because of this Pappas is more concerned about the “contagious quality” of populism than about the rhetoric of nativism. Populism attacks the very legitimacy of the institutions from which

7 Takis Pappas in this volume, page 27.

8 Takis Pappas in this volume, page 27.

democracy operates and tempts other political parties to adopt populist positions of their own.

Although no study at present conclusively demonstrates that the growing number of states in which the electorate is partial to illiberal democracy is causally related to the declining importance attached to democratic values as sketched by Foa and Mounk, it is a tempting argument to make. Illiberal democracy is a form of government which combines elements of direct participation (voting) with the deconstruction of the liberal elements which make democracy so cumbersome and inefficient: the separation of powers, protection of individuals and minorities under the rule of law, effective opposition, and checks on the government's power. One can understand why such powerful executive-driven governance seems appealing to electorates fed up with the perceived gridlock, partisanship, and chaos frequently associated with parliamentary rule.

Sabrina de Regt suggests that such a correlation does exist. In her essay on citizens' views of democracy she analyses data from the World Values Survey and Freedom House, and concludes that the manner in which citizens view democracy is related to how well their country 'performs' democratically. Citizens of countries that score well on democratic indicators, such as the protection of civil liberties and free and fair elections, attach greater importance to liberal values. In illiberal democracies and autocracies, citizens rate such values less highly. More extensive studies would be required to better understand the direction of this correlation. Do citizens attach less value to liberal democracy if they do not live in one, or can liberal democracies only survive in states where citizens attach greater meaning to liberal values? How citizens define and value democracy differs throughout the world, and De Regt urges proponents of liberal democracy to pay more attention to such variances in political culture in order to better understand local challenges to liberal values.

Eszter Zalan's essay describes the process of constructing an illiberal democracy. Using the example of Hungary she details how a relatively healthy democracy retreats into a vacated zombie-type, where "voting and elections remain the basis for electing and forming a government, but almost all other aspects of the liberal democracy [...] are stifled or devoid of any substance or effective power to intervene".⁹ Such a process does not occur in a vacuum. A certain level of frustration with democracy is required before illiberal alternatives become attractive. The deconstruction of a liberal democracy is usually the effort of a strongman politician controlling a centralized political machine. If such leaders manage to centralize their parties, silence dissent, maximize political control and start winning elections, they can shift the national discourse and political tide in their favour. Liberal values, an effective media and independent civil society can then increasingly be framed as an outside threat to the nation, against which only the regime can be an effective guardian. Simple majorities won in elections are turned into parliamentary supermajorities through legislative changes and gerrymandering, while the economy and state are increasingly appropriated by the ruling elites and used to keep political allies happy. Critical voices are increasingly demonized, sidelined or repressed as the ruling elite consolidates its hold on power. Hungary's transformation demonstrates that such a process can occur even if a country is a member of the EU, which raises the question if it is an effective guarantor of the rule of law.

Ela Goksun and **Sasha Polakow-Suransky** share Pappas' observation that the illiberal instinct is not exclusive to the repressive regimes of Eastern Europe. They warn that, although the clearest examples of illiberal democracy are to be found in Hungary, Poland and the Czech Republic, the "emergence of parties with a distinctly illiberal worldview" also threatens core EU states such as the Netherlands, France, and Germany. These authors hold that xenophobic, nativist and populist tendencies

⁹ Eszter Zalan in this volume, page 40.

are increasingly coming to dominate national political discourses, as a growing number of mainstream political parties adopt these out of fear for losing votes. Although they argue that the EU cannot ignore this worrying trend, they also think that it cannot be rectified through EU judicial or policy tools. Whereas some put their hope in EU mechanisms like the Rule of Law Framework, Goksun and Polakow-Suransky think such optimism is largely misplaced. They feel that too many observers ignore the extent to which EU leverage depends on national politics, which is often driven by anger towards Eurocrats. Since Brussels cannot address the underlying grievances which have fed the support of populist parties throughout the continent, these must be addressed on a national level. In their compelling essay they chart the recent development of populist influences throughout Western Europe. In the end, they argue, it is the centrist national political parties which must push back against populism, and address the issues underlying its rise. By fighting back “against illiberal and xenophobic attitudes at home, bridg[ing] social cleavages and demonstrat[ing] the ineffectiveness of the simplifying of complex issues into ‘us’ versus ‘them’ categories”, mainstream political parties can effectively break the populist wave, while efforts from Brussels may only exacerbate the problem.

An opposing position is taken by **Daniel Hegedüs**, who writes that although the European institutions failed to effectively counter the democratic backsliding of Hungary and Poland, they could still take action. If the EU intends to continue functioning as a community of values, its approach towards illiberal members must be revisited. Hegedüs does not believe that Hungary can still be considered an illiberal democracy, since the constitutional court has been neutered and elections may still be free, but are no longer fair. Instead, he describes Hungary as a “hybrid regime sharing characteristics of both democratic and authoritarian systems”.¹⁰ Politics continue to be competitive, but no longer democratic. Despite this, the citizens of both Hungary and Poland

10 Daniel Hegedüs in this volume, page 60.

continue to enjoy individual human rights and freedoms relatively unimpeded. This is an irony which Hegedüs attributes to the longstanding and effective European protection mechanisms for individual human rights, whereas the EU is poorly equipped to safeguard institutions of constitutional liberalism. Paradoxically, the EU may actually play a regime supporting role for the illiberal democracies in its midst, since its cohesion funds contribute to a “plenitude of public goods, which can be misappropriated by the incumbent political elites [...] through corruption and public procurement fraud”.¹¹

Hegedüs deems restoring liberal democracy through grassroots movements to be “hardly imaginable”, since dissatisfied people can “vote with their feet” and simply leave to other EU member states.¹² Therefore, the EU should up the ante by decreasing the transfer of cohesion funds and demand greater transparency. Although this approach would offer an incentive to re-democratize, a careful balance would have to be struck between carrot and stick, since it could also result in a Hungarian or Polish departure from the EU. Yet, if Commission and Parliament work together to ratchet up the political and legal pressure on illiberal member states, the size of the stick could be considerable.

Robert Dekker, Tineke Cleiren and Ernst Hirsch Ballin share the sentiment that “anyone who believes in democracy under the rule of law may feel disheartened looking at Europe today”.¹³ Their essay charts how in a number of European countries both of these have come under threat. They hold three root causes to be responsible: social disengagement, socio-economic inequality, and the socio-cultural pressures surrounding national identity that come from globalization and migration. If a growing number of citizens believe that rights apply mainly to “other people” rather than to themselves, restricting these rights and undermining

11 Hegedüs in this volume, page 62.

12 Hegedüs in this volume, page 62.

13 Dekker et al. in this volume, page 67.

the (international) legal order that safeguards them becomes an act of perceived self-preservation. Dekker *et al.* argue that the countries of Eastern and Central Europe may be particularly vulnerable to this trend, due to their communist past and the rapid liberalizations pursued after its fall. They hold that two major crises – the Great Recession of 2008 and the refugee crisis – acting as catalysts, created a “perfect storm” in which electoral opportunities arose for anti-establishment movements seeking to translate societal tensions into political power. The subsequent undermining of the electoral and constitutional dimensions of democracy will make it more difficult for opposition parties to regain power, and for critical voices to reclaim the civic space. Ultimately such repressive measures may end as Turkey’s did: with sweeping government purges of dissenting voices and civil society organizations.

Although these authors do not claim to offer ready-made solutions with which to reverse democratic erosion, they do believe that countries like Poland, Hungary, Russia and Turkey should not be written off. Instead, they argue for the carrot rather than the stick by proposing deeper investments in democracy by the liberal democracies of the EU. Such countries could engage in more active social diplomacy – sharing knowledge and experience through dialogue and exchange between professionals from a variety of fields – a more proactive approach by European institutions, and a European dialogue on the rule of law in which the “award of EU subsidies should be linked to criteria concerning democracy and the rule of law”.¹⁴

Otto Spijkers charts the ways still open for critical citizens to have their voices heard in illiberal democracies, and how regimes can use (or abuse) such public participation for their own advantage. Generally governments have three options, he writes. They can choose to suppress and persecute, use democratic institutions to their advantage by allowing them to somewhat influence public policy, or have critical citizens

participate directly in policy making through referenda or public consultations. The latter two options will allow dissent to be aired, while effectively neutering organized opposition by giving voice without power directly to citizens in a way that undercuts the perceived need for opposition, while the regime itself is not threatened. If citizens want to oppose such government manipulation their most effective choices are between non-violent resistance, and trying to use the limited opportunities for democratic consultation to maximum effect. Participants in cynically employed forms of public participation should be aware, and critical, of their role in the process.

Steve Crawshaw, in his essay on tyrants and democracies, reminds us that the “sickening sense of impotence” which many feel at injustices around the world is precisely what inspired Peter Benenson to launch an appeal for amnesty, the initiative from which Amnesty International was born. Benenson believed that if people around the world “united into common action”, global public opinion could sometimes succeed in making a repressive government relent. While the sense of impotence still feels familiar, Crawshaw notes that today’s human rights advocates are faced by a paradox: it may be simpler to achieve change in the context of a repressive dictatorship than in a repressive country which enjoys the formal trappings of democracy. There is an uncomfortable reality here. If dictatorships crumble in the face of mass protests, shouldn’t democratically elected leaders retreat even more quickly under less pressure? After all, it is easier for activists to be heard by elected leaders than by dictators. Yet, the reverse may be true. Since unelected governments lack a democratic mandate, they rely on a mixture of fear, force and propaganda to stay in power. This means that they are vulnerable when their people “begin to be a little less afraid” and realize that perhaps it is the rulers “who are afraid the most”.¹⁵ Governments that possess at least some measure of democratic legitimacy may paradoxically be less

14 Dekker et al. in this volume, page 74.

15 Stanisław Barańczak as cited by Crawshaw in this volume, page 82.

vulnerable to public pressure so long as their (limited) popular base holds. Such support can go a long way. From the United States to the Philippines political leaders feel increasingly comfortable in creating a parallel reality, trampling basic civil rights, and demonizing others. The challenges of today sometimes contrast uncomfortably with the achievements of the past. Whereas in 1986 the Philippine people came out in their millions to protest President Ferdinand Marcos – ultimately succeeding in removing him from power – the current, murderous and repressive President Rodrigo Duterte handily won the 2016 elections. In Poland, Hungary and Russia, populations who threw out communist and hard line militaristic governments now elect illiberal strongmen.

Crawshaw wonders how government critics and human rights defenders can best frame their message of resistance so as not to alienate those who might contribute to a successful countermovement. Reaching across the political aisle is critical for this, as are a strong independent media, confidence, and humour. Since repressive regimes despise few things more than being laughed at, “laughtivism” may yet be a surprisingly effective part of the protesters’ toolbox. Studies have demonstrated that change can be created in repressive contexts if 3.5 per cent of the population becomes involved. Crawshaw wonders if the same is true for contexts in which the leaders have been elected. Yet he remains hopeful, arguing that the prospect of victory has always been uncertain for human rights movements, but that “[i]t is up to all of us to try”.¹⁶

In these contributions the authors reach beyond the academic, and also include practical suggestions for policy makers and activists on how to respond to the growing prevalence of illiberal politics. The best guarantee for safeguarding human rights in illiberal democracies may lie in re-energizing centrist political forces on a national level, as argued by Goksun & Polakow-Suransky, or in putting greater faith in the

political acumen of critical citizens, as advocated by Spijkers. Within the EU, the carrot and stick approach – argued for by Dekker, Cleiren and Hirsch Ballin and by Hegedüs – might yet turn around the rapid decomposition of liberal democracy in Hungary and Poland. Puddington’s rousing call for a stand against authoritarian influences could function as a clarion call for liberal governments around the world, whereas Crawshaw’s wily optimism serves as a reminder to civil society organizations that effecting positive human rights change has always been an uncertain endeavour at best. Although the international retreat of liberal democracy and the accompanying shrinking space for civil society should certainly worry the global human rights movement, Crawshaw also reminds us of the importance of hope. If current trends continue, human rights defenders may sometimes find themselves in short supply of just this quality. Besides hope, therefore, strategies and concrete programmes to counter the illiberal backlash against human rights are necessary. Suggestions made in this volume may function as useful contributions to the ongoing debate on the shape such initiatives might take.

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¹⁶ Vaclav Havel as cited by Crawshaw in this volume, page 86.

Authoritarian Internationalism for the 21st Century

An informal, loose-knit Authoritarian International has emerged to wage political war against democracy. With Russia as the nerve centre, this collection of strongman regimes and dictatorships works to undermine democratic norms, smother civil society, prevent the outbreak of colour revolutions, and sow dissension and confusion among the democracies.

During the 1930s, the European order that had been set in place after World War I fell apart, ushering in what was described as the Decade of the Dictators. In *To hell and back*, his splendid history of the first half of the 20th century, Ian Kershaw notes that the regimes that emerged from the ruins of the Versailles settlement shared a number of common features:

“...the elimination (or severe restriction) of pluralist forms of political representation, restrictions on (or elimination of) personal freedoms, control over the mass media, the termination (or strict elimination) of any judicial independence, and heavy-handed repression of political dissidents through extended police powers...” (Kershaw 2015).

The authoritarian systems that have gained momentum during recent years have generally avoided the harsh methods of 20th century repression – executions, torture, death squads, gulags. But contemporary dictators and strongmen have followed a roadmap to one-party, or even one-man, domination that is notably similar to the 1930s

version described by Kershaw. From Vladimir Putin’s Russia to Viktor Orbán’s Hungary to *chavista* Venezuela, the path to power has featured a drive against pluralism, the liquidation of the rule of law, the transformation of the press into an instrument of propaganda, and, in some cases (Russia, Venezuela, Turkey, China) the selective use of political terror.

Another common feature is mutual cooperation between dictatorships and authoritarian regimes with an eye towards the fine-tuning of the internal system of control, preventing the eruption of civil society driven colour revolutions, and challenging political or diplomatic initiatives from the democracies. To be sure, the mechanisms of collaboration developed by dictatorships today differ substantially from the treaties and multi-layered systems of cooperation that bound Germany, Italy, and Japan to one another during the period before World War II. Nor does authoritarian cooperation today have anything in common with the Communist International, the entity that for decades enabled the Soviet Union to dictate a united political front to communist parties across the globe.

But while there is no formal structure that qualifies as a 21st century Authoritarian International, the leading autocracies have shown an impressive ability to work in unison to forge resistance against the United States, the European Union, the spread of democratic norms, and democracy promotion in Eurasia, the Middle East, and elsewhere.

The informal authoritarian alliance of the 21st century has proved effective precisely because its methods and goals are suited to the contemporary political environment. This means above all else that authoritarian powers avoid formal alliances or structures of cooperation. Putin, Xi Jinping, Erdogan, Al-Sisi – all pursue objectives that are specific to their personal and political ambitions. While their short-term goals usually dovetail, their long-term objectives may well clash. Likewise, their attitudes towards the United States vary. Furthermore, those autocrats who are the most resolutely hostile to the values of liberal democracy – Putin front-and-centre – understand that a resurrection of structures like the Warsaw Pact or Comintern would likely trigger more unified and assertive opposition from the leading democratic powers. Putin's strategy to enhance Moscow's global influence relies on confusing, dividing, and demoralizing the West. His purposes and those of other autocrats are best served by ad hoc coalitions to prevent the imposition of sanctions, rescue a floundering despot, or challenge the injection of democratic values in global governance.

Thus even as Russia and China pour resources into military modernization and menace neighbouring countries with troop manoeuvres, naval exercises, and calibrated acts of aggression, they have eschewed military alliances. With the exception of Russia's annexation of Crimea and its instigation of frozen conflicts in Ukraine and Georgia, modern authoritarians have set aside revanchist objectives, at least for the moment. Nor do they share a similar ideological model. Authoritarian regimes range from socialist (Venezuela) to strongman rule (Russia, Azerbaijan) to clerical autocracy (Iran), to a Leninist one-party system (China). China has ambitions to global superpower status. Russia and Iran aspire to regional hegemony, as did Venezuela during the early years of the Chavez revolution.

Cooperation is thus usually directed at certain limited objectives. Autocrats seek to provide diplomatic cover for fellow authoritarians. China and Russia have long sought to overcome the dominance of democratic norms and

standards in the international system. As members of the UN Security Council, these two powers have made liberal use of their vetoes to quash resolutions of condemnation or sanctions' regimes. In other UN bodies, such as the Human Rights Council, regimes have cobbled together coalitions with members of the Organization of Islamic Cooperation to ward off votes to condemn human rights violations or breaches of democratic standards. In cases where authoritarian states are in a clear minority, they have attempted with some success to cripple institutions whose mission includes the monitoring and enforcement of democratic norms. Thus Venezuela has worked assiduously to both undermine and create alternatives to the Organization of American States in which democracy and human rights standards were omitted as goals and the United States excluded from membership. Likewise, Russia and other Eurasian autocracies have severely weakened the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe after the ODIHR issued sharply-phrased reports that condemned elections in Russia and other Eurasia autocracies.

A global model

Modern authoritarianism offers a ready-made template for strongman takeover of the state. A sufficient number of countries have shifted from the democratic camp to autocratic rule to enable us to identify a pattern that is notably similar from example to example, from Russia and Turkey to Venezuela, Bolivia, and Ecuador, to Hungary and Poland. A political party, often led by a charismatic leader, gains power through the ballot box, usually in honest elections. The ruling party then begins a steady drive to consolidate domination over the key institutions of democratic government, information, and civil society. These include changes in election procedure to boost the ruling party's majority and greatly diminish the prospect of defeat through the ballot; the elimination of judicial independence; a campaign, sometimes carried out over years, to capture control of the media; domination over the various checks-and-balances and regulatory bodies; and restrictions on non-governmental organizations.

New authoritarians can generally be depended on to hold elections according to constitutionally established cycles while simultaneously marginalizing the mainstream party-based opposition as legitimate contenders for power. They deploy the regime-controlled press to weaken the opposition by making its key personalities appear foolish and unpatriotic or simply weak and unequipped for leadership. Their parliamentary majorities pass laws that make it difficult for opposition parties to form and gain legislative representation. The leadership makes liberal use of state resources to subsidize party activists and win the loyalty of the poor. When authoritarians win by unfair tactics they then condemn the mobilization of the opposition through social media or public protest as undemocratic and destabilizing – a cynical ploy to undo what the people decided – and then pass laws to stifle new media and punish demonstrators.

Beyond their borders, autocrats are focused, laser-like, on intimidating the West into abandoning the whole enterprise of democracy promotion and a foreign policy predicated on the idea of liberal values as superior to those that predominate under repressive rule. The concept of sovereignty, often invoked as holy writ to justify the modern authoritarian idea, in practice means that the regime or the leader controls nearly all aspects of political life: what version of history is to be taught in the schools; how the media interpret the news; which religious faiths are to be given privileged status, which are to be tolerated, and which are to be harassed or banned; which businessmen will be allowed to prosper and which will be persecuted by the tax authorities or subjected to anti-corruption investigations; which judges will be permitted to hear politically sensitive cases; which political crimes will be investigated, and which will be ignored.

A critical key to the transformation from democracy to autocracy or illiberal state is the judiciary. Once the courts are neutralized through regime control of the selection process for judges and prosecutors, the gates are thrown open to measures that tilt the electoral playing field, enable the state to compel media owners

to sell their holdings to cronies of the leader, and gain control of large swathes of the economy. It is no accident that among the first goals of Poland's Law and Justice government after its election in 2015 was the elimination of an independent judiciary.

The anti-colour revolution alliance

Among the most impressive examples of modern authoritarians mimicking one another's successes is the ongoing war against civil society. During the 1990s many commentators regarded civil society as a more potent source of democratic renewal than traditional political parties. In a far-sighted 1997 article, Jessica T. Mathews predicted that in the future global civil society would be the triggering force behind liberal change (Mathews 1997). Her words seemed prescient in light of later events in Serbia, where student activists organized a campaign that brought about the downfall of President Slobodan Milošević in 2000, and in Ukraine, where young reformers aligned with the opposition Orange Revolution played a pivotal role in ensuring that the 2004 elections were not stolen through fraud.

But instead of signalling a new trend whereby political change would be driven by civil society, the Orange Revolution provoked sharp retaliation from global authoritarianism. In a pattern that has been often repeated over the past decade or so, Russia declared all-out political war against the colour revolution phenomenon – civil society-driven protest movements whose ultimate objective was the overthrow of autocratic leaders. Vladimir Putin condemned colour revolutions as an American-inspired technique towards the toppling of governments across the globe, including in Russia. In a mark of political paranoia, Russia added the colour revolution threat to its list of strategic priorities and adopted laws that reined in its own civil society, initially by making it more difficult for non-governmental organizations, think tanks, and human rights organizations to raise funds from foreign sources (McDermott 2014: 206).

Russia adopted a second and more extreme round of civil society restrictions in 2012. Angered by protest demonstrations in the wake of parliamentary elections in which the United Russia party engaged in ballot-stuffing and other illegitimate tactics, Putin pushed through a new law, known as the foreign agents' act. The law requires NGOs that receive foreign funding to register as foreign agents – a phrase which denotes “spy” in Russian – if they receive funding from foreign sources (McGill 2015).

These laws – and others that were periodically added – have effectively removed civil society as a source of democratic opposition or as an incubator of alternative political ideas in Russia. But Putin's action also served as templates and, if you will, inspiration to other regimes concerned about the prospect of colour revolutions. Autocracies everywhere developed a keen interest in the Russian experience after the Arab Spring erupted in 2011, bringing down long-serving and seemingly impregnable strongmen in Egypt, Tunisia, and Yemen, and sending shock waves through dictatorships everywhere.

The Russian model has thus spread throughout the authoritarian world. At least fifty countries have adopted laws restricting NGO funding and a growing number have adopted, or are in the process of adopting, laws patterned on the foreign agents' measure. Some regimes have gone further. They engage in naming and shaming organizations devoted to political change or human rights protection in much the same way that human rights groups name and shame autocracies. Autocrats and strongman leaders like Viktor Orbán accuse NGOs of doing the bidding of foreign powers or controversial figures like George Soros, label them as foreign agents, and accuse them of treason (Byrne 2017).

The result is that in country-after-country, civil society has been eliminated as a force for political change, honest government, or democracy. To be sure, civil society organizations continue to thrive practically everywhere save the few states with totalitarian-like systems. But in Russia, China, Egypt, and other repressive settings,

civil society consists of church-affiliated organizations, humanitarian projects, conservation organizations which refrain from challenging development favoured by the state, and the growing cohort of NGOs that have the blessing of, or are directly controlled by, the state or ruling party.

The campaign to defund, delegitimize, and neutralize civil society has been achieved without any central vehicle to organize or mobilize the world's authoritarian and illiberal governments. Russia did host a few conferences to discuss the threat of colour revolutions and to share experiences and “lessons learned” (CSIS 2014). But the movement to thwart civil society has relied more on authoritarian powers mimicking one another's policies and laws, with Russia as the model.

While autocracies have been aggressive, strategic, and collaborative in their crusade against civil society, the democratic world has come across as passive and resigned. This is conspicuously true of the United States. The Obama administration was almost mute when the Putin regime expelled the American development agency, USAID, from Russia. The administration behaved with a similar absence of forcefulness when governments in Bolivia, Ecuador, and elsewhere told USAID to leave or limit its activities. As the global campaign against civil society has intensified, the American government, under both Barack Obama and Donald Trump, has failed to defend civil society or even remind the world of civil society's critical role in the spread of democratic values. Indeed, the Trump administration seems to regard public protest with the jaundiced eye of Putin and the Venezuelan leadership.

Authoritarian solidarity

Authoritarians have also mobilized an impressive degree of solidarity in the face of the impending collapse of a fellow despot. The example of Syria is particularly illuminating. Because the overthrow of President Bashar al-Assad would represent a gain for the United States and a clear setback for authoritarianism, a loose coalition

spearheaded by Russia and including Iran, China, and Venezuela emerged even before Putin made the decision to inject the Russian military into the civil conflict. This example of authoritarian internationalism provided Assad with diplomatic support, loans, fuel, and military aid at a time when its collapse seemed likely.

By contrast, the American strategy to encourage the restoration of democracy in Venezuela has proved a notable failure. Under Obama, the United States believed that adopting a low-profile, *laissez-faire* approach to the Chavez and later Maduro governments would lead to a more assertive response by the leading democracies in South America. Instead, there has been a lack of serious pressure from regional democracies, leading the Maduro regime to conclude that there would be no real consequences to the escalation of repression, the prosecution of leading oppositionists, and the adoption of measures that have placed Venezuela on the road to military dictatorship.

Autocrats for the 21st century

Modern authoritarians are better educated and more energetic than Soviet commissars or Latin American strongmen of the 1970s. They have studied the lessons of past authoritarian collapse and are determined to avoid the mistakes that opened the floodgates to the wave of democracy that marked the late 20th century. They have thus far refrained from attempting to impose ideological systems beyond their borders, thus avoiding charges of imperialist design.

At the same time, the successes that Russia and China have recorded over the past decade have increased their hunger for global influence – a case of the appetite growing with the eating. Both countries have joined together with other authoritarian states to wage a campaign against the norm-based international order that emerged after 1991 under the leadership of the United States and the EU. Russia has scored some notable success in its campaign to neutralize the human rights capacity of the OSCE. More recently, an alliance

of authoritarian powers has launched a campaign to transform the rules that regulate the Internet. Quite clearly, the authoritarian objective is to restructure Internet regulation to replace the current model of a global, open Internet to something more akin to an intranet, where each government sets the rules and imposes restrictions on citizens' access to information (Walker 2017).

Modern authoritarians today are challenged with a major balancing act. On the one hand, with the exception of China, most autocrats and strongmen attained power through the ballot. In some cases – Putin, Azerbaijan's Ilham Aliyev – the election system was fixed to ensure the strongman's victory. But more often the initial election was conducted under conditions that passed the test for free and honest balloting. Such was the case for Hugo Chavez, Recep Tayyip Erdogan, and Viktor Orbán. Having won through the ballot box, modern authoritarians feel compelled to change the rules so as to make their defeat at the hands of a legitimate opposition either impossible or nearly so.

Thus modern authoritarians are presented with a more complicated challenge than their authoritarian predecessors, most of whom rose to power through military coups or the politics of a totalitarian movement, and were not encumbered by the need to engage in genuine electoral politics. Autocrats today suppress the institutions of political pluralism within their own society through methods that have a superficial veneer of legality.

The information war

For the modern authoritarian state, the most important weapon, both sword and shield in the hybrid war against global democracy, is information. While much attention has been paid to Russia's efforts at propaganda and political sabotage, China, Iran, and Venezuela have all launched ambitious, and costly, global information projects. To be sure, propaganda has been a bedrock institution of dictatorships since the time of Hitler and Mussolini. And like these earlier dictatorships, the new authoritarians have made clever use of the most

advanced information technology. For Hitler, the key instruments were radio, then in its infancy, and cinema, both for documentaries and cinematic spectacles which depicted German triumphs or the perfidy of the Jews. For Russia and China, the key vehicles are cable television channels and the Internet. And where Hitler and later the Soviets used propaganda to extol the virtues of their political systems, RT, Sputnik, and other Russian instruments strike the theme of the decadence, incoherence, inequalities, and general erosion of standards in the democratic world. Thus RT, Putin's principal international vehicle, initially concentrated on promoting Russian success stories. When it became clear that few foreign viewers were interested in stories about Russian achievement, the focus was reversed to concentrate on American militarism, high rates of crime, racial tensions, political gridlock, and other problems, along with a dollop of attention to conspiracy theories like 9/11 as an inside job.

By contrast, China's CGTN network stresses the virtues of China's one-party system and lauds the benefits of global cooperation in which China plays the major role. In Kenya, Peru, and Argentina, CGTN embeds its programming into local media schedules, so that the viewers of those countries are getting a kind of soft propaganda as part of what they believe is their own media coverage. Sputnik spins its propaganda in thirty languages while the Iranian broadcasting entity, Pars Today, operates in 32 languages (Walker 2017). China has media cooperation conferences in Africa and elsewhere and has conferences to bring together its think tanks with think tanks in weak democracies. Meanwhile, countries like the United States and the United Kingdom have been cutting back on their global media and democracy promotion.

Countering authoritarian internationalism

The informal and highly flexible nature of authoritarian cooperation greatly complicates the challenge for a pushback strategy from the world's leading democracies. On a superficial level, Russia, China, and Iran do not pose a threat to civil liberties in Europe or the United States.

Nor are they inspired by hostility to market economics; indeed, Russia and China are well integrated into the global trading system (and Iran is working to enhance its role in the world economy), even as the commanding heights of their economies are strongly tied to their respective political leaderships, and corruption and cronyism are rampant.

This suggests that there is no one-size-fits-all strategy to counter the rise of authoritarian cooperation. Instead, the world's leading democracies should regard the increasing collaboration between Russia, China, and other repressive states in the same way that they respond to the growing influence of Russia or China as threats to freedom in and of themselves.

The authoritarian states have been especially effective in invoking terrorism as a justification for measures to restrict civil society or extend the power of the security forces. By stressing security above all other factors, authoritarian-minded leaders reshape the debate over norm-setting from civil liberties to the fight against Islamic extremism. Even countries that have no serious security threats and few Muslim citizens, like Poland and Hungary, invoke a terrorism threat to justify the extension of police powers and a beefing up of surveillance capacity. To the degree that political leaders in the United States and Europe exaggerate the terrorism threat, they contribute to a crucial authoritarian argument.

Meanwhile, the United States should significantly strengthen support for fragile democracies. With Russia and China growing more assertive and given developments in seemingly stable democracies like Hungary and Poland, America can no longer act on the assumption that countries that joined the democratic camp will forever remain committed to honest elections and civil liberties. Even before President Trump, the Obama administration had presided over a 28 per cent decline in funding for democracy promotion. This was not simply due to a general shrinkage in foreign assistance, but a deliberate policy choice based on a preference for

stability over political change. In fact, it was the absence of stability that triggered upheavals in the Middle East and Ukraine (Carothers 2014).

Another obvious step would be to issue an early warning when a democracy is threatened by a political leader who harbours a disdain for pluralism, is hostile to freedom of speech, believes that election to office confers an absolute right to govern without the messiness of parliamentary involvement, the courts, or other agencies that have a checks-and-balances function, and who has a positive attitude towards Vladimir Putin. Modern authoritarians follow a clear roadmap to power and have shown an iron determination to gain domination over the state. To thwart their designs, democracies must recognize their vulnerabilities early on and develop strategies for a counteroffensive.

Democracies should appreciate the role that education is playing in weakening the immune system of the pluralist state. A generation is being raised to believe that the values on which contemporary democracies are founded are based on hypocrisy, that elections are fraudulent, that the press reflects the biases of a distant corporate elite, that democracy is rigged to favour the powerful, that history is a chronicle of the strong overpowering the weak, of racism and the oppression of women. Schools that present a numbingly gloomy version of the West's history serve as inadvertent accomplices to RT and similar propaganda forums.

There is a need to monitor the flow of foreign money into universities in the United States and other democracies from authoritarian sources. The role of China is especially important, as Beijing has established Confucius Institutes, ostensibly for the study of Chinese language and culture, in universities across the globe. China is not alone in trying to exert influence through contributions to higher learning. Despots from the Middle East have spent lavishly to establish Middle East studies programmes or programmes on Central Asia in which the teaching of history is often slanted.

Academic associations, individual scholars, and university administrations need to stand up for freedom of thought and open inquiry at a time when those values are under relentless pressure from dictatorships. We urge statements of protest against the persecution of fellow scholars or the politicized rewriting of history, especially in countries, like Russia and China, that are integrated into the international university system.

Special attention should be paid to the mushrooming list of lawyers, public relations specialists, and influence peddlers who are signing on to represent some of the world's most repressive, and often anti-American, regimes. China alone has hired a battalion of representatives in the United States, and other regimes have hired former members of Congress, cabinet officials, and prominent lobbyists. The media should provide aggressive coverage to the lobbyists and public-relations specialists who make money by representing dictators and kleptocrats. Those who flack for the leaders of China, Azerbaijan, Egypt, and their ilk should be made to answer for each political prisoner, murdered opposition figure, shuttered newspaper, and offshore account full of stolen funds that can be tied to their authoritarian clients.

The mainstream press in the United States has shown increased interest in reporting on Russian methods of information warfare, some of which have been embraced by far-right media outlets that seek to undermine popular support for the core institutions of American democracy. The media should look beyond Russia's anti-American propaganda and intensify coverage of authoritarian collaboration towards the goal of weakening global democratic norms, especially in Internet governance.

Private businesses should avoid commercial relationships with authoritarian governments that force them to violate fundamental democratic principles. Private companies and investors have a clear interest in democratic public goods like the rule of law, which guarantees their property rights, and the transparency provided by free media and corruption watchdogs, which ensures the accuracy of

economic data and the fair allocation of state contracts. They should therefore do what they can to prevent any further deterioration in the condition of global democracy.

The film industry should reject involvement in joint ventures with companies that have close ties to authoritarian regimes and reputations for demanding politicized censorship of artistic content. The technology industry should refuse business arrangements that require active complicity in or passive acceptance of political censorship or information control.

Responsible political figures should issue clear denunciations of colleagues or rivals when they show contempt for basic democratic ideas. Until now, politicians in the democracies have been unimpressive in their responses to opponents who embrace authoritarian figures like Putin. If they choose to shower Putin, Xi Jinping, or the Venezuelan leadership with praise, political leaders like Marine Le Pen, Geert Wilders, Jeremy Corbyn, and Donald Trump should be forced to account for the atrocities and crimes of authoritarians.

Human rights organizations need to develop strategies that address the varied and sophisticated methods of repression used by modern authoritarians. There should be better efforts to identify individual perpetrators of abuse, document their culpability, and expose their actions. Among other benefits, such work would feed into governmental mechanisms for imposing sanctions, like the United States' Global Magnitsky Human Rights Accountability Act, which allows visa bans and asset freezes for foreign officials who are personally involved in egregious human rights violations. Likewise, democratic governments should make support for civil society in authoritarian and illiberal environments a bigger priority.

Democracies should also resist Chinese censorship. The sheer size of China's economy gives Beijing the clout to insist on unreasonable, nonreciprocal, and often antidemocratic concessions from trading partners, the most prominent of which is the state's right to

determine what its people can read, watch, or circulate via social media. The Chinese leadership expects the rest of the world to accept its brand of censorship as the normal state of affairs in China, and it is increasingly extending its demands beyond its borders, affecting the information available to global audiences. The acceptance by democracies of Chinese censorship serves as an inspiration for other autocracies, who are working towards the day when the Chinese model is accepted as the new global normal.

Democracies should aggressively challenge China's Teflon-like ability to avoid global criticism for its acts of internal persecution. A key example is its relentless persecution of the Uyghur population, a Muslim group from Xinjiang province. In an aggressive campaign to enforce a brutal form of political control, the state determines the length of beards, the content of imams' sermons, whether children can have access to religious education, and who can attend the hajj. They try to prevent fasting during Ramadan and compel businesses to remain open during holy days. Were similar restrictions imposed in the United States or Europe, the international Muslim community would rise up in a massive campaign of protest and condemnation. China's repressive regime, however, has been greeted with silence, by Muslims along with the rest of the world.

Finally, the free world must keep faith with states whose democratic goals are under threat from large and aggressive authoritarian powers. A prime example is Ukraine. That country represents the absolute front line in the global struggle for freedom. Building democracy in an inhospitable neighbourhood is always difficult, particularly when your most powerful neighbour is determined to steal your land and wreck your home. Kyiv has made impressive strides; indeed, it has gone much further along the democratic path than it did after the Orange Revolution in 2005. But it still has hard work ahead, and it remains in serious danger.

A wake-up call

There are, of course, downsides to the suppression of democratic institutions. By rejecting economic modernization, Russia has ensured that its economy will never rise above second-class status and its standard-of-living will lag behind Europe. Chinese obsessive censorship has alienated a younger generation in nearby Asian societies, not to mention in China itself. Venezuela's economy is in tatters and many of its citizens in exile. Educated young people are leaving Hungary for European countries where the government is not obsessed with traitors and enemies of the state.

But authoritarian powers are willing to tolerate poverty, alienated university graduates, even mass hunger as long as reforms are seen as jeopardizing their political supremacy. Indeed, today's autocrats understand that pluralism and dissenting ideas pose as serious a threat to their rule as they did to the one-party dictatorship of the previous century. They are also convinced that global politics is a zero-sum game, whereby the collapse of any member of the international authoritarian fraternity hands liberal democracy a victory and poses a threat to authoritarians everywhere. No matter how incompetent and unpopular a regime may be – take Venezuela, for example – or how brutal – Assad's Syria junta – the loose-knit authoritarian international will take whatever steps are required, including direct intervention in some cases, to shore up a faltering and despised leadership. Today's authoritarians see the world as hostile and are determined to prevail over the West.

Despite their considerable strengths, the world's leading democracies remain on the defensive in the face of the relentless pressure from their global adversaries. Indeed, only now, with the overpowering evidence of Russian meddling in their internal political affairs, have the democracies come to recognize that there really are hostile forces out there who pose a threat to their interests and values. To actually reverse the current authoritarian surge, the world's democracies must demonstrate that they are as committed to the triumph of

their ideals as Russia, China, and other autocracies are to thwarting them.

Dealing with modern illiberal democracies: From vintage electoral autocracy to today's jumble of populism with nativism

"In the beginning was the Word," proclaims the Gospel of John, and we should probably take that statement more seriously than we often do. Especially when the talk is about nothing less than the future of contemporary liberal democracy. For, if you really agree with me that liberal democratic politics is currently at risk, and must be rescued, we have first to agree on the nature of the threat to our democracies before we are in a position to propose solutions. As is often the case, then, we must begin by revisiting some of the wisdom received at more politically innocent times.

'The rise of illiberal democracy'

Today, when various pundits talk about the perils of contemporary liberal democracy, a reference is often made to the 'The rise of illiberal democracy', a long, richly-textured essay written by liberal author and journalist Fareed Zakaria and published in *Foreign Affairs* in 1997. That piece has resurfaced with a new force in our own days when another muddy term, *populism*, also became in vogue. Although the latter word never appears in Zakaria's essay, many today believe that that author foresaw the rise of populism, and even suggested best practices for dealing with it. This is a mistaken belief for the simple reason that neither Zakaria's apprehensive approach to illiberalism, nor the real-world cases he used to exemplify his concerns, bear any resemblance with our own concern with modern-day populism.

In fact, Zakaria provides no definition in his essay of what he means by "illiberal democracy". He takes issue with

"democratically elected regimes [which] are routinely ignoring constitutional limits on their power and depriving their citizens of basic rights and freedoms" (Zakaria 1997: 22). To illustrate his point, he refers to a vast array of such regimes in many corners of the globe. He writes: "Naturally there is a spectrum of illiberal democracy, ranging from modest offenders like Argentina to near-tyrannies like Kazakhstan and Belarus, with countries like Romania and Bangladesh in between" (Zakaria 1997: 23). And what are the criteria Zakaria uses for case selection? He simply uses the rankings for political and civil liberties in the Freedom House annual surveys, which he considers to "correspond roughly with democracy and constitutional liberalism" (Zakaria 1997: 23). Then, he concludes: "Of the countries that lie between confirmed dictatorship and consolidated democracy, 50 percent do better on political liberties than on civil ones. In other words, half of the 'democratizing' countries in the world today are illiberal democracies" (Zakaria 1997: 23-4).

What lay between democracy and dictatorship around the time (1997) that Zakaria wrote about *his* illiberal democracies? Well, by and large, there lay countries with political systems characterized by vintage autocracy but intent on experimenting with electoral politics.¹ Let us have a somewhat closer look at them, beginning with

1 Like Zakaria, but in far more sophisticated ways, several authors have tried to capture and explain the bewildering variety of those regimes under such encompassing labels as "competitive authoritarianism" (Levitsky & Way 2010a) or "electoral authoritarianism" (Schedler 2013).

nominally democratic Sierra Leone, a small Western African state torn for many years by civil war and which, right in 1997, experienced an army coup led by general Johnny Paul Koroma, who promptly suspended the Constitution and established a military junta. Or take Ethiopia, another African state, which had its first multiparty election in 1995 but, only three years later, was led into war with Eritrea over border disputes. Or, now moving to Asia, the Islamic Republic of Pakistan, at a time when new Prime Minister Nawaz Sharif amended the Constitution to eliminate several checks and balances before problems with India escalated in 1998 with both countries conducting nuclear tests. Or think of Iran, a state dominated by a clerical oligarchy in which the ultimate state and juridical authority rests with a supreme leader (who, since 1989, is Ali Khamenei). In 1997, reformist Mohammad Khatami was elected new President of Iran only to soon be faced with the reaction of the conservative clergy. Or the Palestinian Authority government in the West Bank, established in 1994 as a five-year interim body before further negotiations took place between Israel and the Palestine Liberation Organization (PLO) for a final settlement. There was only one single election for President and the legislature that took place in 1996; all other planned future elections were deferred following civil violence. Or the Philippines, which, under the presidency of Fidel Valdez Ramos, still tried to achieve national reconciliation after the civil war and political tumult of the previous administration led by Corazon Aquino. Although Ramos was successful in ending the long civil war in 1996, his administration also introduced the death penalty and in addition to many other violations of liberal principles. Or Haiti, an island nation in the Caribbean with a recent history of military coups, state corruption, and violent crime, where, in the presidential elections of 1995, René Préval won the presidency with 88 per cent of the popular vote but with voter turnout just 27.8 per cent. Or post-Soviet Russia, where Boris Yeltsin was elected President in 1991. That was a decade marked by corruption, a major constitutional crisis, and economic collapse due to the fall in commodity prices. In 1998, the government

defaulted on its debts and was rescued by the IMF and other international lenders.

The case of Hungary

As it should be clear by now, the major concern for Zakaria and other pundits, academics and policy-makers in last two decades, was about how to convert regimes standing undecidedly between autocracy and democracy into full democracies. But this is not necessarily today's concern, especially in current European politics which the rest of this essay is going to focus on. Instead, what we find unsettling is how our well-established contemporary democracies may turn from liberal into illiberal ones. To understand the difference by example, just fast-forward from the late 20th century and the cases mentioned in Zakaria's essay to our own days and contemporary Hungary, which suggests a quite different understanding of the term "illiberal democracy".

Here's a country that, after the collapse of communism in 1989, became fully democratic and, under successive governments, initially followed a liberal political course at a pace similar to other Western European nations. How things change. Today Viktor Orbán, Hungary's Prime Minister and leader of the Fidesz party, currently into his second consecutive term in office, has decided to further distance his country from the liberal values shared by most EU nations. He first swept into power with an electoral victory in April 2010, which, thanks to the peculiarities of Hungary's electoral system, gave him a two-thirds supermajority in parliament (Fidesz, together with the smaller Christian Democratic People's Party serving as minor coalition partner, secured 52.7 per cent of the national vote and 263 of the 386 seats in parliament). Since then, Orbán has rewritten the Constitution and curtailed old checks and balances with no concern for the opposition's objections; purged the bureaucracy of non-loyalists and staffed independent institutions with his party supporters; lowered the retirement age of judges in order to facilitate the entry of his own appointees; nationalized private pensions; boosted nationalism by granting citizenship, together

with voting rights, to ethnic Hungarians in neighbouring states; restricted media freedoms; and attacked civil society organizations, often denouncing them as foreign agents. In early 2014, his government raided NGOs that received funds from Norway, accusing one group, Okotars, of channelling money to members of an opposition party. Even more recently, Orbán's government turned against refugees and even passed a law that threatens to close an internationally-reputed university founded by George Soros, a Hungarian-American liberal philanthropist.

In contemporary European politics, Hungary is perhaps the foremost experiment of democratic illiberalism from above, currently unfolding by intent and design. Think of Orbán's much-noted speech in July 2014 in Transylvania, in which, after having first disparaged the "failed liberal western system", he announced his intention to organize Hungary as "a work-based society that [...] undertakes the odium of stating that it is not liberal in character".² Citing Russia, China, and Turkey as examples of successful states, he said that he planned to replace welfare society with a "workfare" system, by this meaning a centrally controlled state able to confront multinational companies, such as banks and energy firms, and thus escape from "debt slavery" and the possibility that Hungary becomes a "colony" of the EU. To achieve such a goal, he explained further, "we must break with liberal principles and methods of social organization, and in general with the liberal understanding of society." And, in even more detail, "the Hungarian nation is not simply a group of individuals but a community that must be organized, 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 organization, but instead includes a different, special, national approach."

2 Prime Minister Viktor Orbán's Speech at the 25th Bálványos Summer Free University and Student Camp

The principles of a political liberal

Evidently, then, the meaning and political significance of "democratic illiberalism" today is quite different than it used to be twenty years ago for Zakaria and his intellectual cohort. For, quite simply, *our* democratic illiberalism is no other than populism itself – *so that the two terms can be used synonymously while also serving as antonyms to liberal democracy*. The chief implication under this view is that, while populism is democratic by definitional fiat, it bespeaks a conception of democracy that is openly hostile to liberal principles. Populism, in other words, is the idea of a certain democracy in which illiberalism trumps liberalism.

What does "liberalism" involve and what "illiberalism?" In nutshell form, a political liberal is someone (or some political party) who abides by each and all of the following three principles: first, the acknowledgement that modern society is divided by many, and most often crosscutting, cleavages; second, the need to strive to bridge those cleavages by promoting political moderation, consensus, and negotiated agreements; and, third, a commitment to the rule of law and the protection of minority rights as the best means to attain political liberalism. In sharp contrast, illiberal politicians, or parties, consider society to be divided by one single cleavage ostensibly dividing the ordinary people from some "establishment"; hence, such leaders encourage polarization and political adversity while rejecting compromise; and, finally, based on the belief that they represent the greater and best part of "the people", illiberal leaders dismiss minorities and disregard institutional legality, while favouring majoritarianism.

Other European populist forces

With this, almost intuitively simple, distinction in mind, it is easy to see that Hungary has not been alone in Europe in promoting an illiberal version of democracy. Who has forgotten Silvio Berlusconi, a media magnate who, in the aftermath of Italy's old party system collapse in 1994, founded *Forza Italia* (later renamed the *The People of Freedom*, PdL), a populist party that dominated Italian

politics for many years on a largely illiberal agenda. The 2000s, too, became marked by several instances of populist emergence in Central and Eastern Europe, besides Hungary. The most important case was Slovakia, where Robert Fico, founder in 1999 of the populist *Direction-Social Democracy* (Smer-SD), won the national elections of 2006 and formed a coalition government with Vladimír Mečiar's also populist *People's Party – Movement for a Democratic Slovakia* (HZDS) and the ultra-nationalist *Slovak National Party* (SNS). In 2012, Fico's party won 44.4 per cent of the votes and, with an absolute majority of seats, formed the first single-party government in Slovakia since 1993.

The 2010s saw the rise of both left-wing and right-wing populisms in Europe. In Greece, first, the fiscal and economic crisis that began in 2010 and the subsequent collapse in the 2012 elections of that country's old party system, eventually led in January 2015 to the electoral victory of the populist *Coalition of Radical Left* (Syriza), which promptly formed a coalition government with nationalist populist *Independent Greeks* (ANEL). Similarly, in Spain, left populist *Podemos* (We Can), emerged early in 2014 and grew into the third largest party in Spanish politics. Meanwhile in Eastern Europe, the Polish *Law and Justice* (PiS), founded in 2001 by the Kaczyński brothers and having already enjoyed a brief spell in power (2005-2007) swept back into power in 2015 with a majority of seats and formed a government that is currently trying to steer Poland into an illiberal direction. The new government has already weakened the Constitutional Tribunal by invalidating the choice of five judges by the previous parliament. It also tries to bring the public media under its direct control, has proposed constitutional reforms allowing the President the rights to pass laws by decree, and rallies against immigrants and other social minorities.

There are at least three conclusions to be drawn at this point from the foregoing concise analysis of populist forces in modern Europe. Firstly, populist parties have emerged most prominently in the southern and eastern

countries of the continent. Those countries are relatively recent recruits to representative parliamentary democracy, present lower rates of political institutionalization than their western and northern counterparts, and have party systems that are prone to collapse (as it happened in Italy in 1994 and Greece in 2012) or to major realignments (as in Spain, Hungary and Poland). Secondly, most of those populist parties have waged impressive electoral victories that, in several cases, not only brought them to power, but also enabled them to stay in office for long terms. In some cases (most notably, Greece and Hungary), populism has contaminated the major opposition parties as well, thus transforming those polities into what I have previously referred to as "populist democracies" (Pappas 2014). Thirdly, populism grows strong on both the right (Hungary, Poland, Italy) and the left (Greece, Spain, Slovakia). Even more interestingly, as the recent Greek experience has shown, there is a peculiar ideological and political osmosis between left-wing and right-wing populisms, which may facilitate intimate strategic alliances and, occasionally, government coalitions.

European nativism

But populism-*qua*-democratic illiberalism should not be confused, as so often happens, with another distinct contemporary phenomenon, *nativism*. Unlike populist parties, which, as already said, display two characteristics, democracy and illiberalism, nativist parties represent right-wing conservative ideas – the defence of law and order, as well as what has been termed "welfare chauvinism" – while being fully committed to parliamentary democracy and constitutional legality. Such parties are concentrated in the most politically liberal, economically affluent, and, at least until recently, socio-culturally homogenous states – Austria, Finland, France, the Netherlands, the Scandinavian countries, Switzerland, the United Kingdom and, of late, Germany. The point I want to drive home is this: since nativist parties represent quite different dangers for liberal democracy than populist parties, politicians and policy-makers must understand their difference and treat each set of parties differently.

Let me explain what I mean by using the recent examples of three important nativist parties, the British UK Independence Party (UKIP), the French National Front (*Front National*, FN) and the German Alternative for Germany (*Alternative für Deutschland*, AfD).

The UKIP was founded in 1993, but remained in relative political obscurity until, under the flamboyant leadership of Nigel Farage, it became the most vocal advocate of anti-immigration and anti-EU policies, calling for both a ban on immigration (which, according to Farage, was “the biggest single issue” in the country) and an exit from the EU (which became the really big single issue during the 2016 referendum). A classical right-wing conservative party intended to restore “Britishness” against the dual threats of Islamization and “EU supra-nationalism”, it became the champion of monocultural British nationalism. In the 2014 European Parliament elections, UKIP received 27.5 per cent of the votes, the largest percentage of any British party. In the general election of 2015, UKIP won 12.6 per cent of the total and replaced the Liberal Democrats as the third most popular party. And then came the 2016 referendum of the UK’s continued membership in the EU, in which UKIP led successfully the “Leave EU” campaign emphasizing the negative impact of immigration on local communities and public services. After winning the referendum, and achieving Brexit, Farage, stating that his political ambitions “had been achieved”, promptly resigned as UKIP leader, upon which party factionalism broke loose. In the 2017 UK general elections, UKIP’s vote fell below 2 per cent, also failing to gain any parliamentary seats.

The French National Front thrived for many years on its opposition to both France’s membership in the EU and free migration, especially from Muslim countries. Since the election of Marine Le Pen as party leader in 2011, the popularity of the FN grew fast. In the French municipal elections of 2014, the party won mayoralties in several towns and cities, while in the 2015 elections for the European Parliament it created a political sensation by winning 25 per cent of the total vote, thus sending shock

waves to both the French and the broader European public opinion. Le Pen’s electoral successes were however halted in the 2017 French presidential elections in which the FN was resoundingly defeated in the second round of voting by rival Emmanuel Macron. In the more recent parliamentary elections, the FN, now also suffering the demobilization of its voting base, was just able to garner 13 per cent of the general vote. How were the FN’s political and electoral fortunes so swiftly and so dramatically reversed? To be sure, the answer is to be found in the equally dramatic emergence of Macron as a national leader who is both pro-EU and pro-immigration – in short, the perfect anti-Le Pen. Often described in the press as a “Europhile” and “federalist”, he convincingly embraced the EU project and advocated further European integration. Like Germany’s Chancellor Angela Merkel, he also supported an open-door policy towards refugees from the Middle East and stood firm on his advocacy for a multicultural society, tolerance towards immigrants, and respect for the rights of minorities.

The German AfD was founded in 2013 upon a right-wing conservative platform, which was meant to halt immigration in Germany, oppose Islam as un-German, set against further European unification and promote the dissolution of the Eurozone. The new party won 4.7 per cent in the 2013 federal elections and, in 2014, made a stronger showing with 7.1 per cent in the elections for the European Parliament. In the wake of the 2015 migrant crisis, during which the number of people coming to Germany from the Middle East increased by the hundreds of thousands, the AfD morphed into a typical anti-immigration nativist party. Since then, and against a backdrop of continuous power struggles within it, the party’s ups and downs in public opinion are closely connected with the refugee issue in Germany. Indeed, during 2016, as the migrant debate had become the dominant national issue, the AfD saw its electoral strength rise to nearly 20 per cent in several key states, including Baden-Württemberg, Rhineland-Palatinate and Saxony-Anhalt. Yet, at the time of its party’s conference in April 2017, the immigration issue was no longer

making many headlines, and AfD's support dipped into the single digits (7 per cent). It remained at low levels even when campaigning began in the summer of 2017. Support picked up again after the only televised debate between Ms. Merkel and Mr. Schulz focused heavily on the immigration issue, revealing the similarities in both parties' position – after which the AfD became able to win a handsome 12.6 per cent in the September 2017 federal elections. Only one day after that, Frauke Petry, one of AfD's co-founders and high-profile party leader, announced her decision not to participate in the party's parliamentary group in the Bundestag for, as she stated, the AfD “could not offer a credible [political] platform”. It remains to be seen, therefore, what the future holds for this nativist party, whose survival depends on one single policy issue – anti-immigration – while it also suffers from inadequate leadership and incessant infighting.

Nativist and populist challenges to liberal democracy

The foregoing examples of nativist parties and their recent histories have important lessons to teach us. Since these are issue-based parties, they depend on how other political forces in their respective political system face up to their challenge. There are two possible outcomes, neither of which is really advantageous for the nativists. If they win an electoral outcome which is favourable to their issue platform, as happened in the case of the UKIP, they automatically lose their *raison d'être* and undergo rapid decline. More often, though, as shown by the cases of both the French FN and the German AfD, nativist parties come up against massive domestic opposition by liberal forces with opposing political agendas on the key issues of immigration and European integration. In such instances, the nativists, some occasional successes aside, are defeated in elections and enter a situation of soul-searching, internal infighting and, most likely, eventual dissolution.

Things however are not so facile with populism. As the flipside and negation of political liberalism, modern populism is by far a most menacing challenger for liberal

democracy. As empirical research shows, it thrives where political institutions – especially the rule of law and safeguards for minority rights – are weak and where polarization and majoritarian tendencies are strong. In such environments, populist parties can be expected to win power via the ballot box and even to win re-election. Populism is so threatening because it has a contagious quality – the appearance and rise of a populist party will predictably push a country's other parties in a populist direction – and because populism can lead to the decay of liberal institutions and the consolidation of illiberal polities. Liberal politicians and policymakers, beware.

Don't ignore citizens' view on democracy when trying to understand illiberal democracy

The existence of illiberal democracy is a fact. Although in many countries people choose their leaders in free elections, this is not always accompanied by constitutional liberalism. In this essay I argue that in order to understand the existence of illiberal democracy citizens' views on democracy need to be taken into account.

Illiberal democracies

For a long time it was assumed in Western countries that choosing leaders in a democratic way goes hand in hand with civil liberties. Or as Fareed Zakaria (1997: 22) put it: "For almost a century in the West, democracy has meant liberal democracy – a political system marked not only by free and fair elections, but also by the rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion, and prosperity." In his seminal essay Fareed Zakaria (1997) clearly outlined that constitutional liberalism and democracy do not necessarily go hand in hand and that illiberal democracy can exist in many parts of the world. He argued that while it is relatively easy to impose elections on a country, it is more difficult to push constitutional liberalism on a society.

Current developments again, or still, point to the existence of illiberal democracies. One world famous example in this regard is Turkey. Recep Tayyip Erdogan, the *elected* president of Turkey, has always been accused of not fully respecting human rights, but especially after the failed coup attempt of July 2016, he clearly embraced

aspects of authoritarianism. The government imposed an emergency rule that resulted in massive violations of human rights. Amongst others thousands of civilians were arrested, thousands of academics and civil servants were dismissed, journalists and activists (amongst them the Director of Amnesty International Turkey) were imprisoned, there was evidence of torture of detainees and media outlets and nongovernmental organizations were closed down. This clearly shows that choosing leaders in elections does not automatically result in a liberal democracy in which liberties and human rights are respected.

In several European countries too, a decline in civil liberties was reported.¹ Leaders in Bosnia and Herzegovina, Serbia, Montenegro, and Macedonia harassed critics from civil society, obstructed investigations of government wrongdoing and ignored constitutional procedures. Other examples are Poland and Hungary, where governments have repudiated liberal values, attacked the institutions of pluralism, and sought to use the economic power of the state for partisan political ends. Maybe even more remarkable is that established democracies recently suffered setbacks regarding civil rights and liberties. Concerns regarding a turn to illiberal democracy are for example expressed in the United States since the election of Donald Trump as

¹ For a full report, see Freedom House's Freedom in the World 2017

president.² Critics fear a policy divorced from America's traditional strategic commitments to democracy and human rights.

How can we explain the existence of and turn to illiberal democracy? Why are some countries democratic (in the sense of having free elections), but simultaneously not liberal (in the sense of having constitutional liberalism that guarantees human rights)? In this essay I argue that citizen's views on democracy need to be taken into account in order to understand the existence of illiberal democracy. Firstly, I argue that people do not necessarily define democracy in a liberal way. Secondly, I demonstrate that people's perceptions of democracy are related to countries' actual performance on democracy.

How citizens around the globe define democracy

What is democracy? Scholars have theorized a long time about this question. What exactly defines a democratic system? Zakaria (1997) clearly advanced a purely electoral definition of democracy. He argued that free and fair elections distinguish a democratic political system from a non-democratic political system. Such a minimalist definition of democracy is in line with how scholars such as Schumpeter (1942) define democracy. Schumpeter argued that a democratic method requires granting individuals the power to decide by means of a competitive struggle for the people's vote. Other authors adopt a broader definition of democracy. Diamond (1999) for example stated that competitive, multiparty elections are not sufficient for democracy. Other necessary components of democracy, he argued, include political equality of citizens under the law, an independent judiciary, independent media, and civil liberties. In other words, his definition refers to a liberal democracy.³

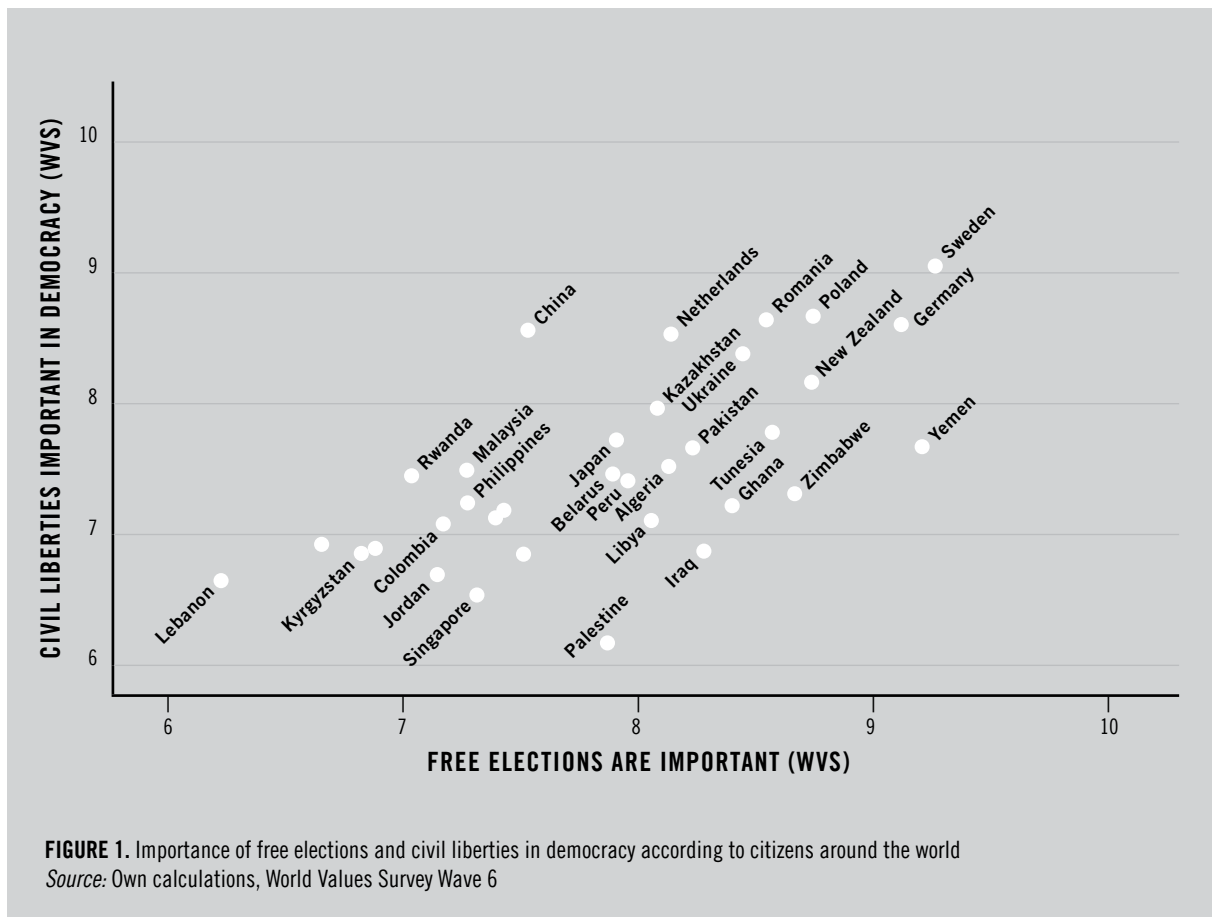
2 See also e.g. Zakaria (2016), who speculated on the rise of illiberal democracy in the United States

3 See e.g. Dahl, Shapiro, & Cheibub (2003) for a more scholarly discussion on defining democracy

The fact that scholars differ in their definitions of democracy highlights the perils of adopting one-size-fits-all conceptualizations to denote mass views of democracy (Canache 2006). Nevertheless, remarkably few studies have been conducted on how citizens exactly understand democracy (De Regt 2013). In this essay I argue that in order to understand illiberal democracy it is important to first know how citizens define democracy. Do they define democracy in a minimalist way, believing that free elections are the only real requirement for democracy? Or do they define democracy in a liberal way, believing that a country can only be labelled "democratic" when civil liberties and human rights are respected?

To study how citizens around the world view democracy I use the most recent available wave of the *World Values Survey* (WVS). This data covers over fifty countries around the world. More than 75.000 respondents answered a question on what they perceive as essential characteristics of democracy. More specifically they answered the following question: *Many things are desirable, but not all of them are essential characteristics of democracy. Please tell me for each of the following things how essential you think it is as a characteristic of democracy. Use this scale where 1 means "not at all an essential characteristic of democracy" and 10 means it definitely is "an essential characteristic of democracy"*. So a higher score indicates a stronger belief that a certain aspect is essential in democracy.

A procedural/minimalist view of democracy is measured by means of the extent to which people believe that *"People choose their leaders in free elections"* is a defining characteristic of democracy. Defining democracy in a liberal way is measured by agreement that *"Civil rights protect people from state oppression"* and *"Women have the same rights as men"* are essential characteristics of democracy. The interested reader who wants to know more on popular views of democracy is referred to Norris (2011) and Welzel (2011).



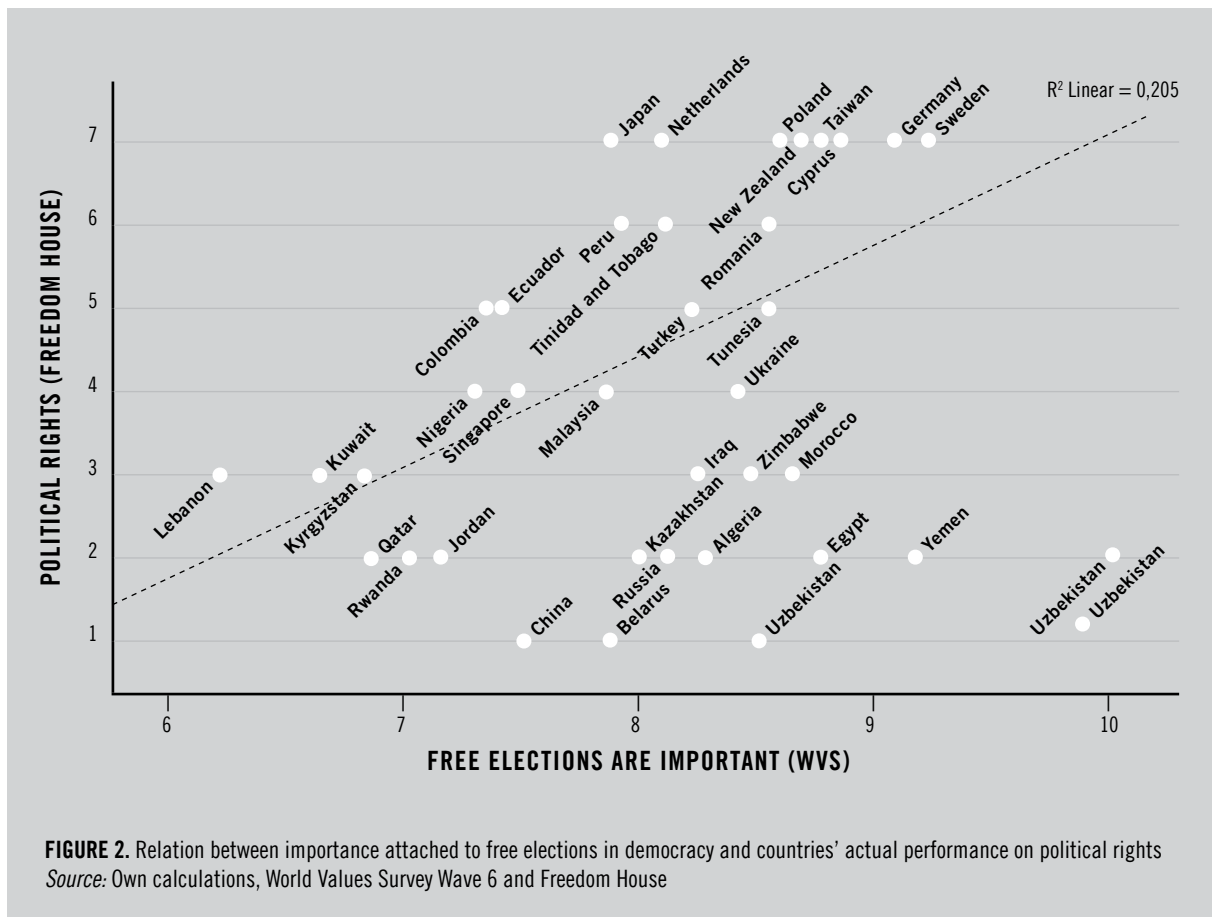
In Figure 1 it is displayed how citizens around the globe define democracy. In total, data from 52 countries were used (with 30 countries labelled). As we can see in the figure there is quite some variation in how important people believe free elections and civil liberties are in a democracy. In other words, people around the world do not necessarily share one common universal definition of democracy. Democracy means different things to different people in different countries.

In countries like Sweden, Germany and the Netherlands citizens believe that civil rights are essential in democracy while in countries/territories like Palestine, Jordan, Lebanon and Singapore citizens less strongly believe that democracy is defined by civil liberties. Furthermore, in countries like Sweden a procedural and civil rights view of democracy go hand in hand. Here citizens support liberal democracy as discussed

by Zakaria. Believing that free elections are important in a democracy does not always go hand in hand, however, with believing that civil rights are important. In countries like Iraq, for example, even though citizens score moderately high on the procedural aspect of democracy, they simultaneously score relatively low on the idea that civil rights are essential in a democracy. This is in line with the conclusion of Fareed Zakaria (1997) that democracy and liberalism are interwoven in the Western political fabric, but that those strands of liberal democracy can stand apart in the rest of the world. “Western liberal democracy” might not be the final destination on the democratic road, but just one of many possible journeys’ ends.

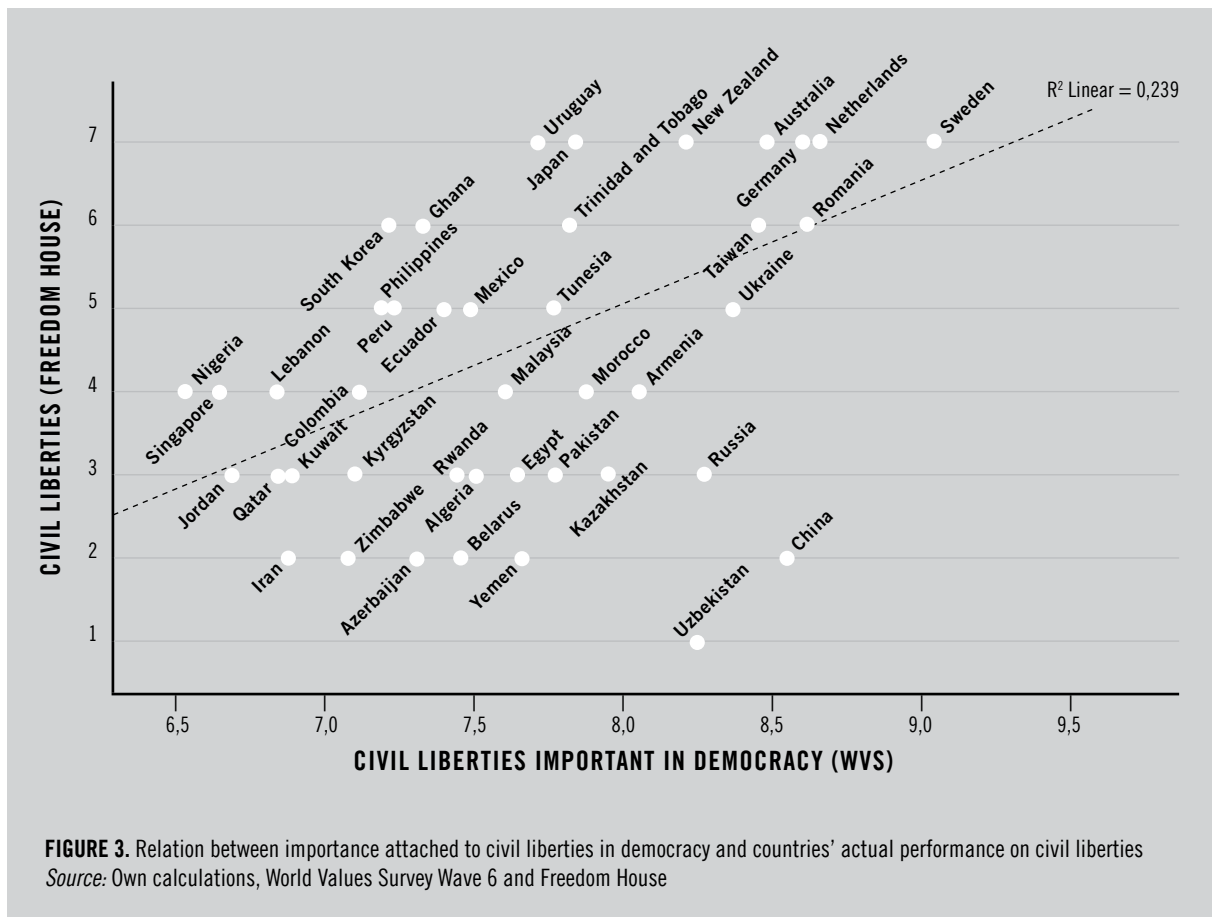
Relation citizens’ views of democracy and their countries performance on democracy

I argue in this essay that how citizens view democracy



is related to their country's actual performance on democracy. To make this argument, I use the data from Freedom House's annual reports on countries around the world regarding freedom and democracy. Freedom House assesses both political rights and civil liberties, which corresponds roughly with democracy and constitutional liberalism (Zakaria 1997). Firstly, I examine political rights in countries. More specifically Freedom House evaluates the electoral process, political pluralism and participation and functioning of government. I recoded the original scores on political rights in a way that a high score indicates that a country performs well. I will relate citizen's view on democracy (obtained from the World Values Survey) to countries' actual performance on democracy (derived from Freedom House). I use the Freedom House data from the same year as the World Values Survey was collected. The same 52 countries as in Figure 1 are studied.

As Figure 2 shows, the importance citizens attach to elections is clearly related to the countries' performance on political rights. Citizens in Germany and Sweden, for example, highly value the importance of free elections, and these countries also obtain the highest score on political rights. On the other hand, in countries like Kuwait, Kyrgyzstan, Lebanon and Qatar citizens less often believe that free elections are a defining characteristic of democracy and those countries also perform badly regarding political rights. In other words, citizens' perception of democracy (as measured by means of the World Values Survey) is related to countries' real performance on democracy (as measured by means of Freedom House). The correlation between citizens' perception of democracy and countries' performance on democracy is .45. One often used guide to interpret such a correlation coefficient is Evans (1996). He argued that values up to .40 are very weak/weak, values between .40



and .59 suggest a moderate correlation and values above .60 suggest a (very) strong correlations. The correlation between citizens' view of democracy and countries' performances on democracy can therefore be labeled as moderately positive. When squaring the correlation coefficient, the percentage explained variance can be calculated. This means that over 20 per cent of the variation in countries' performances on political rights can be explained by how their citizens view democracy.

Besides evaluating countries' performances on political rights, Freedom House also rates countries on civil liberties (*i.e.* freedom of expression and belief, associational and organizational rights, rule of law, and personal autonomy and individual rights). Again the data, from the same 52 countries, are recoded in a way that a higher score on civil liberties indicates that societies are freer. As demonstrated below (Figure 3), citizens' views are

again substantially related to countries' performances. In countries like Germany, the Netherlands and Sweden we see that citizens believe that civil rights are essential in democracies and these countries also perform well regarding civil liberties. On the other hand in countries like Iraq, Jordan, Kuwait, Kyrgyzstan and Qatar citizens less often believe that civil rights define democracy and those countries also perform (relatively) badly on civil rights. In other words, again people's perception of liberal democracy (derived from the World Values Survey) is related to how liberal and free their countries really are (as rated by Freedom House). More specifically, the correlation between civil liberties in countries and how important citizens feel such liberties are in democracy is .49, and about 24 per cent of the variation in countries' civil rights can be explained by how important their citizens feel that civil liberties are in a democracy. This is again a moderately positive correlation.

It is important to note that this correlation is not perfect (then the correlation coefficient would have been 1). In other words, countries' performances regarding civil rights do not always go hand in hand with citizens' perception on the importance of civil liberties in democracy. Notable exceptions do exist. As we can see in Figure 3, Chinese citizens for example attach a lot of value to civil liberties in a democracy. They actually score more or less the same as Dutch citizens regarding importance attached to civil liberties. At the same time China scores very badly regarding civil liberties according to the ratings of Freedom House. Previous studies have pointed to the "exceptionalism" of Asian countries regarding liberal values in democracy (the interested reader is referred to for example Welzel (2011) for a discussion on illiberal democracy in Asian countries). Notwithstanding such exceptions, it is clear that in general a moderately positive relation exists between how citizens define democracy and how countries perform on democracy.

Food for thought

First things first?

As demonstrated above, not everybody defines democracy in a liberal way. Variation exists in the extent to which citizens around the world believe that civil liberties and human rights are important in democracy. This raises the question why some people do not attach a lot of value to civil liberties and human rights in democracies. One explanation might be that citizens in many countries might simply be too occupied with achieving physical and financial security. Maslow's (1943) famous *Hierarchy of Needs* predicts that people would need enough physical security, food, water, clothes, employment, and housing before they could value abstract elements of democracy such as freedom, equality, and human rights. In other words: first things first.

This would explain why in many countries mentioned above, Iraq for example, citizens attach less value to abstract liberties in democracy. Iraqis, especially when living in areas which were controlled by Daesh,

are simply too worried about their physical safety to be able to worry about other things. Living conditions are therefore important to take into account when trying to understand citizens' view on democracy. During the Arab Spring, Arabs showed the world that they wanted more democracy. Deeper analyses showed, however, that most Arabs mainly had an instrumental view of democracy (De Regt 2013). They considered having a prosperous economy to be more important in democracy than realizing civil rights. Democracy was mainly seen as an instrument for realizing other ends (a safe and flourishing country) and not valued as an ideal.

Although to a lesser extent, recent developments in European democracies are also in line with the argument that safety and security are a prerequisite for support for civil liberties. In those countries, fears over the upsurge in terrorist attacks stoked public hostility toward Muslim minorities and immigrants, deepening existing social rifts and threatening civil liberties (Freedom House 2017). Therefore, when trying to understand the existence of illiberal democracy and why citizens might not view democracy in a liberal way, it is important to realize that people might have other, even more urgent, things on their mind. Put more strongly, you could argue that worrying about civil liberties in a democracy is a luxury that especially (or only?) people living in safe and secure countries can afford.

Who follows whom?

I furthermore demonstrated in this essay that countries whose citizens are more inclined to believe that human rights are essential characteristics of democracy also score better with respect to civil liberties. This raises the question of the direction of this relationship. Do political leaders follow their public or is it the other way around? Does the public adjust its attitudes towards democracy to what its leaders think? In other words: who follows whom?

A long time ago Joseph de Maistre famously stated: "In a democracy people get the leaders they deserve." This statement was recently repeated by the influential

and popular former president Barack Obama (Abramson 2017). This is in line with the idea that leaders mainly do what their voters want. If citizens don't believe that realizing civil liberties is important, why would political leaders even bother to realize them? If leaders don't do what their voters want, if they don't deliver what voters expect and consider important, then they risk being sent away in the next election. Therefore it could be argued that it is the citizens' own fault when they live in an illiberal democracy: apparently they do not attach enough value to civil liberties to force their leaders to realize these. We recently saw for example that in Turkey, citizens voted in a referendum to give president Erdogan more power even though he previously clearly adopted policies limiting basic civil liberties.

On the other hand it could be argued that it is the other way around. Maybe the public adjusts its attitudes towards democracy to what its leaders think, and public opinion is determined by the country's context. So citizens in an illiberal democracy define democracy in an illiberal way, because that is the way they experience democracy in everyday life. They just don't know better. Given the processes of globalization and the widespread mass media it might be hard to believe, however that citizens don't value civil liberties simply because they don't know them. The fact that also citizens who don't live in a democratic system are able to define democracy (De Regt 2013) contradicts this idea.

Naturally, longitudinal studies (studies over time) are needed in order to find out more about the exact direction of this relation. It is beyond the scope of this essay to discuss in detail how and why citizens' view of democracy is related to the state of democracy of their country. It clearly is a chicken-and-egg situation. Most likely, I would argue, it is a vicious circle. Citizens might for example attach less value to civil liberties because they fear certain (external) threats. Their political leaders might subsequently adopt policies limiting civil liberties. Doing this they emphasize with, and maybe even feed, this fear, which might result in less support for civil liberties

and so on. Regardless of the exact direction of the relation, we know for sure that the public opinion on (il) liberal democracy is significantly related to the country's actual performance on political rights and civil liberties. Therefore when trying to understand the existence of illiberal democracies, citizens' views on democracy need to be taken into account.

Conclusion: it takes two to tango

Democratic leaders and institutions are necessary for a liberal democracy, but a public supporting the idea of liberal democracy is, in my opinion, necessary as well. Without a democratic public, a liberal democratic system is unlikely to be established and/or to survive. A little thought experiment might help to illustrate this point. Imagine a non-democratic society. Suppose that tomorrow we will implement a democratic system, derived from a Western country, in this society. The country now has a democratic institution. Is a stable and well-functioning liberal democracy subsequently likely to emerge in this country? My best guess would be "no". Not as long as these democratic changes are not accompanied by citizens supporting the democratic transition and believing in the merits and importance of a liberal democratic system. Unfortunately, real-world examples illustrate this point as well. Recall the attempts of the West, mainly the United States, to impose a democratic system in Afghanistan and Iraq. Previously Inglehart (1988), amongst others, also argued that societies need a strong democratic civic culture in order to have a stable democratic system. In plain English: it takes two to tango.

To sum up, there is no question that democratic leaders, democratic institutions and favourable macro conditions are important for liberal democracy, but they are only part of the story. I strongly believe that in order to really understand the antecedents and consequences of illiberal democracy, it is essential to take citizens' perception of democracy into account. Citizens differ in their definition and expectations of democracy and such attitudes are related to countries' actual performance on democracy. The bad news for advocates of liberal democracy is that

political cultures in societies are path dependent and generally change slowly (Inglehart 1988). This is not to say of course that political cultures can't change at all. As outlined above, more favourable living conditions for example might positively influence value attached to civil liberties. Political cultures are complex and forceful at the same time. Therefore proponents of liberal democracy should, in my opinion, increase their efforts to monitor and understand how citizens around the world define and value democracy.

A warning from Hungary: Building an illiberal zombie in the EU threatens political rights and democratic freedoms

Hungary's Prime Minister Viktor Orbán, once a staunch anti-communist student leader and darling of the Western liberal elite, has for the last seven years systematically curbed rights and institutions that could check his grip on power. The European Union has so far proved to be toothless in its criticism of his controversial measures. With Poland following the illiberal path, and Balkan states taking note, Orbán's experiment has become a dangerous model as frustration with democracy and globalization leads to populism across Europe.

Introduction

It is almost as if the story of illiberalism in Hungary has been taken out of a novel. A young student leader in the late 1980s fiercely questions the communist party's authority, while promoting pluralism, freedom, democracy, and political rights. He mocks communist leaders who have betrayed the country by enslaving it to the Soviet Union, while the country's economy is in ruins. His fiery speeches are fearless, and it is clear he prefers action to contemplation. Although he is not inclined to compromise, he seems like a rebel with a good, liberal cause. Fast-forward twenty years. The former student leader starts his second term as Prime Minister. By then he has broken with his liberal roots, and has embraced a conservative centre-right ideology, and, more worryingly, the politics of cynicism. His party wins a two-thirds majority in parliament, and with a weak and divided opposition, Hungary can be turned into anything. Instead of trying to bridge decades-old divisions and reach across the aisle,

he is busy stifling the institutions that were put into place to ensure checks and balances. He cozies up to Russia's and Turkey's autocratic leaders, provokes his allies regularly, and stuffs his cronies with money diverted from EU funds (Petho & Vorak 2015). He likens Brussels to Moscow, accusing European partners of being intruders.

Viktor Orbán is one of the latest leaders following Turkey's Recep Tayyip Erdogan and Russia's Vladimir Putin in embracing illiberal democracy. But in a sense he is more dangerous for European values, because he has burst the European Union's bubble, and proved that an illiberal state can be established in the EU. Poland's new leaders have followed his lead since, and his tactic is regarded as offering a political model throughout the Balkans (Solana 2017). For Orbán, illiberal democracy is a question of survival in an unpredictable and globalized world. Orbán has argued openly in a 2014 speech that "liberal democratic states cannot remain globally competitive". He argued that systems which are not Western, not liberal, and maybe not even democracies, are still successful – citing Singapore, China, India, Russia and Turkey as examples. Orbán said that while the new state will not deny liberal values, such as freedom, society will not be organized around them.¹ This means that for a state to be successful today, it needs to focus on the nation

1 <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-Orbán-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp>

itself, not on the liberal values, Orbán argues. Freedom of expression and freedom of assembly are no longer untouchable values guiding the state's organization. They are something that is allowed when convenient, but will no longer be indispensable. Orbán's crackdown on the media and the NGOs demonstrates how he curbs these freedoms in the name of advancing the nation's successful development, while simultaneously getting rid of "foreign" influences and dissent.

Just like in Turkey and Russia, Orbán has been busy dismantling the liberal part of democracy, the rule of law and its checks and balances. Hungary's is a vacated democracy, a zombie-type, if you like, where voting and elections remain the basis for electing and forming a government, but almost all other aspects of the liberal democracy – independent judiciary, independent media, meaningful institutions or authorities that are supposed to keep the rulers in check – are stifled or devoid of any substance or effective power to intervene.

The EU's inability to exert strong enough political pressure on Orbán to change course, or to effectively sanction Hungary for breaking EU law, has risked undermining the European Union's credibility. In a recent paper by the Carnegie Europe think tank, Heather Grabbe and Stefan Lehne argue that "authoritarian trends in Hungary and Poland threaten the EU more than Brexit does because they undermine the union's legal foundations" (Grabbe & Lehne 2017).

Ripe conditions

All this does not happen in a vacuum. For illiberal leaders to be successful, there needs to be a certain level of frustration with democracy within the society. Firstly, in countries that now cast themselves as illiberal, democratic traditions or practice in the democratic process were somewhat or almost entirely lacking in the recent past. The immune system of democratic institutions is weak or non-existent, either because democracy is new, as in Central and Eastern Europe, or because of repeated military coups, as in Turkey.

Furthermore, the countries of the former Soviet bloc are relatively weak economically, as well as politically fragmented. The latter was also true of Turkey before Erdogan consolidated his power.

Popular expectations within the newly free former Soviet bloc were also disappointed, and added to the general disillusionment with democracy. After the fall of communism in 1989, high expectations were projected in Hungary, and indeed across Eastern and Central Europe, on a future where freedom and prosperity would be available for all. Corruption, the sometimes painstakingly slow democratic process, a weak judicial system that failed to instill a sense of legal certainty for citizens and businesses, no accountability for the past and current crimes, and the inability or unwillingness of the elite to move beyond the ideological divide, led to the widely shared notion that democracy has failed to deliver. Economic hardship remained, and marginal groups did not feel like they were more empowered than before. Citizens did not trust political parties, leaving a potential opposition discredited by default.

A weak economy, and a fragmented political scene verging on political chaos, also add to the right conditions for illiberalism to take hold. In Russia, a decade of economic and political upheaval prevailed before Putin came to power. In Turkey, Erdogan inherited a messy economy just as it began to recover in 2002. In Hungary, the former socialist government, mired in corruption scandals, abandoned by its coalition partner, lost all credibility. It is worth to note that Putin, Erdogan and Orbán all are in full control of their own parties. Illiberalism started in their backyard: first they centralized their party structures, silenced criticism, pushed out dissenting views, and then made sure their leadership positions were not challenged. At the same time, at least in Hungary, liberal values and political correctness were increasingly seen as political constraints and something imposed on these societies. The mood was ripe for a strong leader who would not hold back because of the niceties of the liberal democratic system. It gives way to

relativism, when the political foundations of a nation can be called into question or twisted. Such behaviour is not foreign to the current US President either.

Claiming to hold the absolute truth also means silencing everyone who might challenge that notion. The French philosopher Montesquieu noted that the three powers of government – executive, judicial, and legislative – should be separate and dependent on each other, so that none of them can take full control. A fourth pillar is equally indispensable to the functioning of democracy, and to keep the other pillars in check. Illiberal leaders' prime target is the media, so they can set the political agenda uncontested, stifle a vibrant political discourse, which might pave the way for a strong opposition force, and further radicalize their voter base.

Repressing the fourth pillar

Orbán has long held grudges against the media, which he regards as liberal and biased towards to left-wing parties. He strove to rebalance the media scene and moved to turn the state's public broadcasters into propaganda outlets. His government pressured private media by depriving critical media of crucial state advertisement contracts. Self-censorship also worked in Orbán's favour, as more and more businesses were squeezed not to advertise in critical or independent media (Zalan 2017). No journalist has been arrested, but scores have been banned from the parliament, making it difficult for them to report and ask questions.

Following his 2014 re-election, Orbán's clampdown became more aggressive. His closest aides, propped up with state funds (Dunai & Nasralla 2016), bought media outlets and created new publications (Reuters 2017b). Small pockets of independent media remain, but their funding is uncertain and their reach is not wide enough to significantly alter an otherwise apathetic public opinion. Pro-government media outlets regularly attack independent publications, even journalists, trying to discredit them. Again, the political, historical and cultural background plays a role. Journalistic traditions

are less entrenched in Hungary and Eastern Europe in general, and people have less faith in the media, which served the communist party-state before. With hollowed-out institutions and a weak and fragmented political opposition, Orbán's ruling Fidesz party focuses on keeping its approximately 2 million loyal voters in line every election cycle. As long as their voter segment continues to support their narrative, they are successful.

Naturally all political leaders want to have media that support them and they also try to exert influence over public and private media. But in the illiberal version of taking over the press, the goal is to repress the role of the media as the "fourth pillar" of democracy. While the current Hungarian constitution says that "Hungary shall recognize and protect the freedom and diversity of the press, and shall ensure the conditions for free dissemination of information necessary for the formation of democratic public opinion",² the government does not adhere to that.

Redrawing the constitutional rules

Another essential step in setting up an illiberal state is rewriting constitutional rules. That way, taking advantage of the usually strong mandate of the ruling party, constitutional checks and balances can be tweaked in a way that suits the new illiberal rulers. The new Hungarian constitution was easily rubber-stamped by a two-thirds majority in parliament in 2011. To circumvent any meaningful discussion and opposition, the proposed basic law was introduced to the parliament only one month before it was passed. The constitutions and attached provisions curtailed the power of the constitutional court, and reduced the number of ombudsmen from four to one.³

2 The Fundamental Law of Hungary (English translation of the consolidated version of the Fundamental Law as on 1 October 2013) <http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf>

3 European Commission launches accelerated infringement proceedings against Hungary over the independence of its central bank and data protection authorities, as well as over measures affecting the judiciary. http://europa.eu/rapid/press-release_IP-12-24_en.htm

The offices of the ombudsman on citizens' rights, data protection, protection of minorities and future generations were merged into one office on fundamental rights. There was no substantial consultation or referendum on the constitution that was created to replace the old one inherited from communist times, which was heavily changed at the time of the transition in 1989-1990. Orbán's government later also got rid of senior judges and prosecutors (European Commission 2012b).⁴ Importantly, Orbán installed an Attorney General loyal to him, to make sure there would be no investigations into the dubious businesses of his family or allies. Hungary's judicial system has been under political pressure ever since, and the sense of legal certainty has not improved. On the contrary, not long after the constitution was passed, amendments were introduced in parliament further curbing the rule of law (Krugman 2013), such as limiting the power of the Constitutional Court (BBC News 2013) on examining the constitution, and banning individuals from challenging the constitutionality of laws (Krugman 2011), usually as private members' bills so that no consultation was necessary.⁵ The private member's bill – originally designed to give voice to the opposition – was abused by Fidesz to streamline the procedure: no committee review, multiple readings or bargaining with the opposition are necessary if an individual MP proposes a bill. Adopting constitutional amendments took only a week or so, adopting the constitution itself only took a month.

Orbán's party has also entrenched its own worldview into the constitution. Despite only getting 52 per cent of the popular vote in 2010, which translated to two-thirds majority in parliament, Fidesz politicians felt they had a mandate to state in the constitution that family

“constitutes the principle framework of coexistence” in Hungary, that the Holy Crown embodies constitutional continuity, and to recognize Christianity's role in preserving the nationhood.

Building your oligarchy

An illiberal state needs to put the economy at the service of the ruling party and its bosses, to control the economy and keep political allies happy. To achieve this the ruling party often speaks of redistributing the nation's wealth. Russia's Putin was hailed in the beginning of his rule as someone who wanted to crack down on oligarchs who grew fat on state assets during the chaotic Yeltsin years. It seemed Putin wanted transparency and accountability. But what he really was after is taking the economic power from the oligarchs, to make sure they never gain enough political clout to challenge him, and build a network of cronies. The script is similar to what has happened in Hungary.

Fidesz has argued that foreign companies had taken advantage of Hungary's weak economy and open policies after the transition, and exploited the country's workforce and resources. Orbán has argued that in this context, the EU funds sent to Hungary to help the country converge to Western European economies is not aid, but due compensation for exploitation by the West in the early years of the post-communist era. During its first term, Orbán's government introduced special taxes that were designed to hit foreign companies and banks most, and other measures to squeeze foreign investors. Criticism by foreign investors and banks on such measures as special taxes imposed by the government, and the forced conversion of Swiss franc-based loans into forint loans (the Hungarian currency), were met with harsh rhetorical backlash from the government. Eventually, the government's tactic worked. After all, foreign investors are in Hungary to make profit, not pick a political fight (Than 2016).

Orbán argued that he wanted to support “national capital”, but often his friends reaped the benefits (Puhl

4 Court of Justice rules Hungarian forced early retirement of judges incompatible with EU law. http://europa.eu/rapid/press-release_MEMO-12-832_en.htm

5 Kim Lane Scheppele analyzes the present situation in Hungary (during a testimony at the US Commission On Security And Cooperation In Europe hearing on “The Trajectory Of Democracy – Why Hungary Matters”): <https://www.csce.gov/sites/helsinkicommission.house.gov/files/Testimony%20Scheppele.pdf>

2017). In addition, his cronies receive ample EU funding, although originally meant to help Hungary to close the economic gap between it and Western economies (Petho & Vorak 2015). One of the biggest winners is Lorinc Meszaros, a Fidesz mayor of the village Orbán was born in, who managed to become a billionaire since Orbán was elected Prime Minister. He now owns a considerable media empire too, loyal to Fidesz (Simon 2017a). Orbán has also installed his “right-hand-man”, Gyorgy Matolcsy, to govern the National Bank of Hungary (Dunai 2016), making sure nobody will object to the government’s economic policies (Simon 2016).

Discredit opposition and critics

Attacks on the media freedom, and twisting the constitution to serve a one-party system have inevitably drawn criticism, especially since these happened in a country which belongs to both the EU and NATO. Despite criticism, the occasional probes from the EU, and statements from the US under the leadership of President Barack Obama, Orbán’s ruling Fidesz managed to dismiss the concerns as misunderstandings or malicious attempts to influence Hungarian politics.

Once the illiberal ruler dominates the public discourse and alters the legal tools in his favour, it is easy to portray any attempt to persuade the government to roll back some of its controversial reforms as interference in the country’s affairs. Any opposition party which supports foreign criticism of the government, or shares such analysis, can be portrayed as traitors.

Pointing to hypocrisies and double standards of the critics can also be used to dissuade from criticism. Undermining their credibility by shifting attention away from the concerns at hand to other issues or other countries, where critics have stepped up or have not stepped up, could also prove useful for the illiberal ruler. Orbán and other leading politicians from his Fidesz party accused the EU of using double standards to “colonize Hungary”, of treating Hungarians as “second-class citizens”. They pointed to murders by immigrants in Sweden and Germany, saying

it raises similar issues as murders by Roma in Hungary (Schöpflin 2012), or claimed that the 2012 Leveson report on British media – which contained recommendations on ethical media behaviour after a phone hacking scandal – is more of an intrusion into media freedom than the planned Hungarian legislations. They pointed to Italy, where media are also concentrated, and to Britain, which has no written constitution, accusing the EU of wanting to use standards on it that don’t exist in the Union. This again undermines the consensus around democratic fundamentals and principles. It could also upset the working relationship with traditional allies, while the illiberal state searches for new ones, in this case for instance, Russia.

Creating an enemy, preferably an enemy within, is key to keep the illiberal ruler in power and expand his or her hold on power. After the failed coup attempt in Turkey last year, President Erdogan used the opportunity to launch a massive crackdown on the media and opponents. Prime minister Orbán used the influx of migrants in 2015 and onwards to push through legislation that gives bigger surveillance powers to the government, making it easier to introduce a “terrorism state of emergency” and expand the domestic role of the army.

The Orbán government has also used the Russian and Israeli templates to curb the freedoms civil society organizations and NGOs enjoy (Simon 2017b). When these organizations receive foreign donations, they will have to declare themselves “foreign funded” organizations, which creates the illusion in society that these groups work for foreign interests. Deconstructing and stigmatizing civil society constitutes stifling the last remaining circles of democracy. Orbán’s government has also launched a campaign against US billionaire and philanthropist George Soros, accusing him of wanting to bring a million migrants into Europe, threatening the Christian heritage and social traditions of the continent. Disseminating conspiracy theories not only serves direct political purposes, it also undermines facts and independent reporting, which are essential attributes of democracy.

The questions arises: with Fidesz being in full control of institutions, such as the parliament, the Attorney General's office, the media and local government, are free and fair elections still possible in Hungary? General elections are due in spring 2018, giving a chance for Orbán to be re-elected for the third time in a row.

Is being an EU member not a guarantee for rule of law?

The significant lesson offered to Europe by Orbán's Hungary, is that even if a country is a member of the EU, there are no guarantees that it will stay democratic. When Hungary joined the bloc, as any other new member, it needed to align itself with the so-called Copenhagen criteria of democracy and rule of law. Once in, however, there are no guarantees or viable sanctions which could force countries to continue abiding by those criteria.

EU leaders did not take the threat Orbán had posed seriously enough in early 2011-2012. Only when it became clear that Orbán would not reverse his course because of European scolding, and was in fact mocking the EU's inability to act, painting it as an intrusive, elitist, out-of-touch group of unelected bureaucrats, did the EU amplify its rhetoric and undertook some action. The EU launched several probes into specific pieces of legislation, but only managed to achieve cosmetic changes. The rollback of democratic values has not been halted. Much internal debate followed in the EU about what to do if a member state detaches from the democratic traditions, and how to tackle systematic threats to the rule of law (Zalan 2016a).

Finally, the EU came up with the so-called "rule of law framework" that does little more than give structure to the political dialogue between Brussels and the member state concerned, and it has been launched against Poland. However, in the case of Hungary, the European Commission does not see a systematic threat to the rule of law. Legally the EU has the option to sanction a member state if it breaks EU rules, but Article 7 of the Lisbon Treaty (European Parliament 2017), which requires unanimity in the end, is politically impossible to use. EU

member states are reluctant to single out a country and sanction a democratically elected government, fearing they could be next. Now, with Hungary off the hook, no serious sanction against Poland is possible: Budapest has already signalled that it would veto any retribution against the Polish government. Hungary's government, which promotes a union of nation states, has already started to undermine the EU from within.

Moreover, the European migration crisis has vindicated Orbán, at least according to the government in Budapest. The Hungarian Premier has long linked terrorism and migration. He has called German Chancellor Angela Merkel's welcoming policy a mistake, while himself building a fence on Hungary's southern borders to keep migrants out. At the time, in 2015, Orbán was heavily criticized. But gradually the European public opinion swung in favour of his stance. The Czech Republic, Slovakia and Poland do not take in refugees under the EU quota scheme, Austria is contemplating sending troops to its border with Italy to stop migrants if they come, and Italy gathered European support to set a "code of conduct" for NGOs saving lives in the Mediterranean Sea. Leaders in the Balkans are also paying attention to what Orbán has got away with in the EU, which could have a detrimental effect on democracy and rule of law there.

The leader of the conservative Slovenian Democratic Party, former Prime Minister Janez Jansa often praises Orbán's policies and has welcomed him at the party's 11th congress as a guest of honour. "I could be your lucky talisman," Orbán started off his speech. Reporters Without Borders, an NGO promoting free press, recently warned of the purchase of a Slovenian broadcaster by one Orbán's closest allies (Reporters Without Borders 2017). Nova24TV has been seen as the propaganda mouthpiece of the Slovenian Democratic Party. In Serbia, Aleksandar Vučić, the leader of the Serbian Progressive Party (SNS), which dominates the media landscape, has attacked judges, NGOs and journalists. Vučić has been dubbed Serbia's Orbán (Petsinis 2017), and is promoting Eurosceptic rhetoric (Cvijić 2017).

Orbán's model is appealing, not only in Poland

Orbán has been using the EU as a punching bag to rally his core voters. Orbán has appeared numerous times in the European Parliament's debates on Hungary and managed to exploit the unfamiliarity with Hungary's political intricacies to portray himself at home as defender of Hungary. The EU's repeated criticism that failed to be followed up by effective sanctions has eroded the credibility of the EU. But Hungarians want to remain part of the EU, and have not lost faith in the European project (European Commission 2017).

But Orbán's anti-Brussels campaign had its effect. According to the latest Eurobarometer figures, Hungarians now have a more negative image of the EU by 3 percentage points compared to last fall, and fewer people claimed to have a positive image of the EU. Still, more Hungarians trust the EU than trust Orbán's government.

Orbán's efforts to cripple the rule of law have had a detrimental effect on human rights. As media plurality disappears, fewer Hungarians have the opportunity to develop a balanced view on foreign and domestic developments, such as how treatment of migrants and asylum seekers may have breached international law.

The EU's inability to roll back some of the restrictions on fundamental freedoms which Orbán has spearheaded over the years, could serve as an encouragement to other EU member states to go ahead with illiberal policies.

No sanctions have been taken against the Orbán government for possibly infringing the Copenhagen criteria on rule of law that served as a precondition for accession. This undermines the EU's credibility as a community of law and encourages Orbán to push further.

Unless NGOs and citizens raise awareness about how the erosion of democracy in one member state, where the government no longer can be held accountable, might have a dangerous effect in their own countries, there will not be a critical mass among EU countries to tackle the situation.

The issue goes to the heart of the dilemma facing the European project: whether to move toward a full-fledged political union, where common standards of governance are upheld by possible and effective sanctions, or remain an elite club for commerce.

Beyond Brussels: Why the EU can't reverse the populist wave alone

Many observers assume that EU sanctions can stem Europe's populist tide, ignoring the fact that most important decisions are still made locally. This paper argues that the battle to reverse the rise of illiberal leaders in EU states must be fought primarily in national elections and legislatures, not in Brussels.

Introduction

The prevailing model of governance that exists today in Western Europe was never inevitable and its long-term survival is by no means guaranteed (Gat 2017; Foa & Mounk 2016). The reflexive assumption that democracies are necessarily liberal is incorrect. "Democracy is flourishing; constitutional liberalism is not," Fareed Zakaria warned two decades ago (Zakaria 1997). The recent rise of far-right populist parties across Europe has confirmed this fear. While the clearest examples of illiberal politicians coming to power through democratic elections have occurred in the eastern European nations of Hungary, Poland, and the Czech Republic, the emergence of parties with a distinctly illiberal worldview is now threatening democratic norms in the EU's core states like the Netherlands, France, and Germany.

As Mudde and Kaltwasser (2012) have argued, populist parties can act as either a corrective or a threat to liberal democratic polities. If mainstream parties fail to represent the grievances of certain groups, the emergence of populist parties can have a beneficial effect by representing the voices of previously marginalized voters. Such forms of populism can enhance rather than erode

democratic systems. Majoritarian populists, by contrast, are a threat to liberal democratic polities because their conception of democracy is inherently illiberal.

Modern liberal democracies have two crucial characteristics: they seek to reflect the will of the majority through elections, and to protect the rights of minorities by enshrining them in constitutions and establishing independent judiciaries to check the power of popularly elected leaders. As anti-immigrant parties become more prominent, they are privileging the former and try to argue that the latter is irrelevant or, worse, antidemocratic. They are democrats only insofar as they believe in majoritarianism. They have no time for constitutional niceties that contradict the supposed will of the people. Courts and constitutions are dismissed as undemocratic for not reflecting the political zeitgeist and the current whims of the masses.

The emergence of such populist parties with an illiberal and crudely majoritarian conception of democracy in core EU states poses a direct threat to liberal democratic norms in countries where those norms have long been taken for granted. According to Foa and Mounk (2016), the commitment to liberal democratic norms and institutions is especially in decline among millennials. More alarmingly, the number of Americans who believe that military rule would be a good thing has risen from 6 to 16 per cent since 1995; 35 per cent of those born after 1970 with a high income regard army rule as a "good thing".

A growing body of literature assumes that existing EU mechanisms can reverse this trend (Iusmen 2014; Muller 2015; Kelemen & Blauberger 2016; Schlipphak & Treib 2016). However, the Treaty on European Union's vague legal principles and cautious political mechanisms are an obstacle to enforcement (Kelemen & Blauberger 2016; Wilms 2017). Given the procedural obstacles, the EU's other proposed tools, such as the Rule of Law Framework, the EU Justice Scoreboard, and the Rule of Law Dialogue, are soft policy responses which simply lack real substance. This means that democratic backsliding cannot necessarily be stopped exclusively through judicial or political safeguards.

In the case of Austria, Mouffe (2005) argues that the sanctions imposed on the country in 2000 as a reaction to the ÖVP and FPÖ coalition had the adverse effect of showing the EU's inconsistent application (the equally troubling Italian Lega Norte and Alianza Nacional coalition was not targeted). It antagonized smaller nations that felt this treatment would not have been used in the case of a more important country, and it "did not have the intended effect of arresting the growth of right-wing populist parties" (Mouffe 2005: 67). Today, sanctions against populist leaders such as Hungary's Viktor Orbán and Poland's Jarosław Kaczyński can backfire by "not only strengthening [the populist party] at home, but also right-wing populists throughout the EU" (Junge 2016).

What the academic literature overlooks by focusing on judicial and policy tools and what our article examines is the degree to which EU leverage depends on national-level politics – a space where political debate is increasingly driven by animosity towards EU bureaucrats and resentment of supranational institutions. An exhaustive analysis of the growth of far-right populist parties in member states is beyond the scope of this article. Additionally, much has already been written about anti-democratic and populist trends in Central and Eastern Europe. Such analyses generally focus on the question of whether the Europeanization process is sufficient to truly entrench democratic practices among newer member

states, and the legal tools the EU has at its disposal to rectify growing illiberal practices. Whilst the rise of populists in these countries is significant, such countries have less influence on European decision-making because they "intervene less than older member states" (Cross 2011).

The rise of the populist right within the EU's pivotal countries is therefore of greater concern because they have a longer history of entrenched democratic institutions than the newer member states, and because decisions made within these countries have a larger impact. Therefore, this paper examines populist developments in the very center of the Europeanization project: the Netherlands, France and Germany. These three founding nations of the European project provide a good comparative case study, since they have all held national elections in 2017 in which there was a strong populist influence.

Too many European liberals scoff at this resurgent nationalism, dismissing it as *passé* (Gat 2017). But populists cannot simply be ignored or dismissed as a nuisance (Hampshire 1991). The battle against illiberal leaders will ultimately be won by demonstrating that their grievances are real but their solutions are fake. If liberal democrats fail in that regard, illiberal populists will eventually hijack the public debate. Our case studies show that the mainstreaming of xenophobic views and policies could undermine liberal democracies, strengthen nativist parties, and further diminish the EU's leverage over member states.

The rise of right-wing populism

There is no uniform definition of right-wing populism in the academic literature. Cas Mudde's (2007) typology of three core features captures its main tenets, namely: anti-establishmentism, authoritarianism and nativism. First, populists emphasize the will of ordinary people over a corrupt establishment and share a sense of Euroscepticism. Second, populists tend to have authoritarian leanings that favour the "personal power

of strong and charismatic leaders” and majoritarian forms of democracy “rather than the institutional checks and balances and protection of minority rights built into institutions of representative democracy” (Inglehart & Norris 2016: 5). Finally, populism favours monoculturalism and national self-interest, and promotes anti-immigration, xenophobic attitudes, making an overt distinction between “us” and “them”.

A major motivating factor is the idea of a democracy deficit. Populist parties are presenting themselves as defenders of the nation state against a federalist European utopia. They argue that bureaucrats in Brussels operate without adequate democratic oversight and control, which makes them indifferent to the people's needs. The EU's complex bureaucracy, as well as opaque appointment processes and low voter participation, have made it an easy target for angry voters “particularly when the body itself is endowed with the power of supranational law” (Sullivan 2017). At the member state level, the democracy deficit has been equally dangerous. Voters' fears of eroding national sovereignty and the absence of robust democratic debates have led to what Chantal Mouffe (2002: 6) has called the “impasse of moralism” – when certain member states “claim the moral high ground [against populist right-wing ideology which] is always very tempting but does not provide a political strategy and it is unlikely to decrease the appeal of right-wing populist movements”.

The motivations of voters who abandon establishment parties for the far right are complex. Some are racist xenophobes who resent all immigrants, or are nostalgic for an imagined past. Others are “reluctant radicals” who have grown increasingly angry at state institutions that they see as elitist and undemocratic (Fieschi, Morris & Caballero 2012). These voters resent establishment parties because these haven't adequately addressed high housing costs, declining public services, rising unemployment, and cuts to welfare benefits. When the perception is that only politicians who show any interest in their grievances are on the far right, the consequence is the rise of anti-immigrant populism.

These parties' political preferences run counter to the liberal founding values of the EU, which envisioned an open and tolerant society rooted in the protection and promotion of human rights, democracy and the rule of law with a focus on integration as a cornerstone of the union. According to Grabbe and Lehne (2016), the EU is a “transnational project built on the principles that populists most oppose: shared sovereignty, supranational authority, compromises between different interests, and mutual tolerance”. Historically, right-wing populism has not been a major problem for the EU because such parties were seen as marginal with little electoral clout. In recent years, however, they have grown both in number and influence in multiple member states, including those at the heart of the EU project.

According to Grzegorz Ekiert (2017), “in every country, you had people who worried about traditional values, who worried about national sovereignty... But they were lying low for years because, for them, the impetus of the EU enlargement and this liberal vision for the entire continent seemed invincible,” (as cited in Pazzanese 2017). This sense of invincibility appears to be shaken. Bart Bonikowski argues that the damage posed by right-wing parties is vast because “it really changes what's acceptable ... you don't need every single country to be controlled by a nationalist-populist politician for us to be in some serious trouble ... it is enough to have a couple, and especially the powerful ones” to pose a threat to the core liberal values of the EU (as cited in Pazzanese 2017).

This is because most populist far-right parties in the EU are critical of EU human rights legislation and of constitutional protections of minority rights and minorities' religious freedoms. They argue it encroaches on the “people's will” or the nation's sovereign prerogative. This is consistent with their majoritarian approach to democracy. In their view, if the majority of the electorate wants to ban burkinis, halal meat, and mosque construction and if they support such measures in a referendum or by electing candidates like Geert Wilders or Marine Le Pen, then banning modest swimwear

or mosques is an expression of the popular will. Because they do not believe in constitutional democracy, they argue that such laws are perfectly democratic. At the extreme, illiberal majoritarians would argue that ethnic cleansing has democratic legitimacy if a majority of voters supported violent removal of unpopular minorities. If these parties gain a greater share of the vote, their illiberal conception of democracy will present a major threat to human rights norms and legislation at the EU and member state level.

The greater risk of rising right-wing populist influence in pivotal member states is the way that mainstream parties have adopted populist rhetoric. The broad-based public support these parties have gained has forced mainstream parties to tilt to the right as well, "often retreating from their core principles of tolerance, openness and diversity" (Shuster 2016). As the appeal of populist parties has grown, mainstream parties have in many cases opted to parrot their nativist, xenophobic ideas.

Benjamin Ward (2017) argues that instead of "courageously confronting the flawed arguments of insurgent populist parties and defending policies based on rights, mainstream parties have aped their agenda for fear of losing votes". The anti-immigration approach of mainstream political leaders may pose a greater threat to human rights values than populism itself. Indeed, as Rosa Balfour (2016) argues, "if mainstream politics does not recapture the debate with alternative proposals and a vocabulary that reflects its principles (those that have held Europe together), it will put itself at the mercy of a populist minority". The EU cannot ignore the spread of this populist movement in both the periphery and core of the union, nor can it hope to rectify it through judicial and policy tools alone.

The EU's judicial and policy tools

The Treaty on European Union (TEU) is at the heart of existing EU mechanisms; Article 2 stipulates the fundamental values of the EU: human dignity, freedom, democracy, equality, the rule of law and respect for

human rights, including the rights of persons belonging to minorities. A growing body of normative and empirical literature focuses on legal and political mechanisms that can be used against member states that violate these values. Article 7 details potential measures if there is such a serious breach, including a preventive mechanism that allows the European Council to issue a warning, and a sanctioning mechanism that allows the Council to suspend certain rights such as voting (EUR-Lex, 2015). Another option is pursuing infringement cases under the European Court of Justice.

Kochenov and Pech (2015) claim that because all member states have voluntarily bound themselves to the principles enshrined in the treaty, the EU is obliged to ensure that member states adhere to these broadly laid out principles. Yet, the nuclear option of triggering Article 7 of the TEU has been of limited appeal or use. The lack of political will and practical measures in cases of violations of the fundamental principles of the EU, such as in the case of Poland and Hungary, demonstrates why.

Poland's increasingly illiberal practices led the European Commission to launch the Rule of Law Framework in 2016, but this "yielded no results and [saw] Warsaw [try] to push through new laws" (Grabbe & Lehne 2017). In December 2017, Brussels went further and formally recommended triggering Article 7 proceedings against Poland. In the case of Hungary, an "authoritarian drifting of a moderate government abusing its majority to restrict democratic checks and balances" transpired under the Viktor Orbán administration (EHF 2013). The Commission decided to take the Hungarian government to court and has taken legal action against Poland and the Czech Republic as well for their harsh treatment of asylum seekers.

Rather than comply, the Hungarian government has funded a massive anti-EU campaign. Grabbe and Lehne (2016) claim that "neither in Budapest nor in Warsaw does the government show any sign of changing course [...] the problem is not just about the damage to the

rule of law, but also about the open defiance of legally binding decisions". The authors argue that this has caused a loss of cohesion because member states don't trust their peers to implement and enforce what they have collectively agreed on. Consequently, whilst conceding on its principles would make the union lose legitimacy and clout both domestically and abroad, the union's judicial measures alone cannot work when "its legitimacy is under attack from its own members" (Grabbe & Lehne, 2016).

Other authors have proposed the Rule of Law Framework, the EU Justice Scoreboard, and the Rule of Law Dialogue as alternative tools to hold member states accountable (Bard et al. 2016; Sedelmeir 2017). In comparison to the more rigid legal approach, these political mechanisms provide for softer handling of violations. However, their effect is limited due to their voluntary nature, which means that they are currently not binding. Others advocate relying on social pressure and public opinion, assuming that the EU retains enough political influence and legitimacy to halt illiberal practices.

What is often overlooked in this literature is the degree to which such EU leverage depends on national-level politics – and how such national-level politics is increasingly being driven by anger towards Eurocrats in Brussels – often fueled by populist anti-establishment media platforms like *GeenStijl* in the Netherlands, *FrançaisdeSouche* in France and *Breitbart* internationally. Peter Hall (2017) argues that "scorn for experts and a penchant for 'fake news' drains all political discourse of its credibility, feeding distrust in politics [and] in more recent democracies, populist leaders dismantle the checks and balances on which liberal democracy depends".

Widespread public support for populist views and their mass dissemination through social media is strengthening nativist sentiments and further diminishing the EU's legitimacy to punish its members for illiberal practices. It is clear that the EU does not have the necessary tools and procedures to deal with rising illiberalism, nor the necessary political leverage to do

so. Brussels is incapable of addressing the underlying grievances that have allowed populist parties to gain widespread support across so many member states.

Populist influence in pivotal member states

The rise of populist parties and their influence on mainstream politics has been at the center of three major European political campaigns this year: in the Netherlands, France, and Germany. Anti-European sentiment drove the strong election performances of the Party for Freedom (PVV) in the Netherlands, the Front National (FN) in France, and the Alternative for Germany (AfD) in Germany.

The March 2017 Dutch elections were the EU's first test of populists' ability to convert voter anger into parliamentary seats since the 2015 refugee crisis. By the end of 2016, the right-wing populist PVV was firmly leading in the polls. Led by controversial politician Geert Wilders, a man who in 2015 declared the arrival of Syrian refugees "an Islamic invasion" and warned of "masses of young men in their twenties with beards singing Allahu Akbar across Europe". He labeled their presence "an invasion that threatens our prosperity, our security, our culture and identity" (Bahceli 2015). The party's election programme, consisting of a single A4 sheet, rallied on halting the flow of migrants and claiming back sovereignty from a failed EU. Yet the elections for the lower house of parliament did not result in the expected plurality for the PVV. Of the 150 seats, the party won 20, five more than in the 2012 election but not nearly enough to make them the largest party.

Whilst the PVV did not attain the expected results in the end, the populist threat has not necessarily been curtailed. A new right-wing, pro-Russian, anti-immigration party named the Forum for Democracy emerged and took two seats in parliament while the center-left Labour Party was decimated, dropping from 28 seats to just nine. And the ideas Wilders has promoted have not gone away; indeed, there is evidence that the center-right was able to win only because it absorbed

some of the far right's rhetoric (Kooze 2017). After the election results, Prime Minister Mark Rutte, the leader of the People's Party for Freedom and Democracy (VVD) stated that it was "an evening in which the Netherlands, after Brexit, after the American elections, said 'stop' to the wrong kind of populism". According to his election campaign, the right kind of populism entails telling immigrants to be like the Dutch: "Those people who refuse to adapt, and criticize our values should act normally or leave", Rutte wrote early in the campaign (Deloy 2017; Dempsey 2017; Henley 2017; Reuters 2017a).

In France, Marine Le Pen's Front National has recalibrated its message since 2010 to downplay its overtly xenophobic and racist past and appeal directly to new constituencies including gays, Jews and feminists. On December 10, 2010, Le Pen declared in a speech to the party faithful, "I hear more and more firsthand accounts of how, in certain neighborhoods, it's not good to be a woman, or a homosexual, or a Jew – or even French or white" (AFP 2010). She was saying directly to gay and Jewish voters that immigrants and Muslims were the cause of their problems. When she took the reins of the Front National in 2011, putting an end to the charges of anti-Semitism that had been levelled against the party for decades was at the center of her de-demonization campaign. Having discarded the image of fascists and skinheads, she tacked to the left.

The FN has since focused on a programme that defends the supremacy of the nation state over the EU and blames foreigners for the root cause of EU crises. Although Le Pen prefers to avoid the phrase "welfare state", she has appealed directly to this yearning for a large, nurturing state. "I defend fraternity – the idea that a developed country should be able to provide the poorest with the minimum needed to live with dignity as a human being. The French state no longer does that," she argued. "We're in a world today in which you either defend the interests of the people or the interests of the banks." And she has seen results. She pointed to the 2015 local elections in the northern Pas-de-Calais region. "It was socialist-

communist for eighty years," she recalled. "I won 45 per cent" (Polakow-Suransky 2017). She took over 52 per cent there in 2017.

Although pro-EU candidate Emmanuel Macron won the 2017 election, Le Pen still managed to win 34 per cent of the vote, twice the number her father won in 2002. This indicates that her nativist brand of populism radiates far beyond the core electorate of the Front National and is appealing to voters from the old left who reject Macron's liberalizing agenda. Nicolas Levrat (2013: 17) argues that today it has become clear the "populist rhetoric and its strategies for politicizing issues that divide and the way it plays the card of transgression in the public debate has been appropriated by the moderate parties, especially those whose voters are likely to be seduced by the populist arguments".

Levrat (2013) further claims that in the case of France, populism remains appealing to citizens and leaders of moderate parties because it offers a means to protest the current political system. Populist rhetoric has influenced the broader policy agenda of mainstream governments where, for example, there are political debates over what women should be compelled to wear (or not wear) at the beach, efforts to strip certain citizens of their nationality and to force a moral test – requiring those born to immigrants and seeking naturalization at age 18 to show themselves to be "well assimilated to customs and manners".

In the aftermath of the French elections, the strategy of adopting negative and divisive political discourse around certain issues such as immigration and EU integration has left a population divided. This results in a social and political situation characterized "by a more widespread sense of anxiety and crisis, linked to recent attacks, and economic uncertainty" (Gaston 2017: 40). The FN is also surprisingly popular among young people, which does not bode well for the EU's future.

Whereas young British voters overwhelmingly voted to remain in the EU and the elderly voted to leave, in France, opinion about the EU tends to run in the opposite direction because appeals to nostalgia seem to work better with the young, who dream of an era they never witnessed, than with the old, who lived through the good and the bad of an era Le Pen promised to restore. Le Pen and the far-left anti-establishment candidate Jean-Luc Mélenchon together drew nearly 50 per cent of the youth vote in the first round (Quinault-Maupoil 2017). Unlike in Britain's Brexit referendum, the young did not support the status quo; they voted for extremists who want to leave the EU. Meanwhile, those in their sixties and seventies who preferred the status quo voted overwhelmingly – over 70 per cent – for Macron.

Germany's populist backlash came much later than most. Given its history, the country has long shunned anything resembling the far right. Looking back fondly to the first half of the twentieth century is simply off limits. Until 2006, when Germany hosted the football World Cup, it was unusual to even see the national flag flown at sporting events. Many Germans thought that they, unlike other European nations, were immune to the far right. For decades, the only party that existed to the right of Merkel's CDU was the neo-Nazi National Democratic Party (NPD). Some smaller new parties had made it into regional parliaments only to collapse and disappear. Then came the AfD.

Much as the French establishment has for decades tried to place the Front National behind a *cordon sanitaire*, Germany has long sought to sideline the far right. It has not succeeded with the AfD. As its impressive 13 per cent showing in the September 2017 election confirmed, the party is here to stay.

The AfD began as an anti-EU movement and nothing more. As Christian Schmidt, one of the founders in those early days explains, "at this point, immigration was not an issue at all" (Polakow-Suransky 2017: 259). The party was pro-sovereignty and focused on law and order.

It argued that Germany shouldn't be providing social security for the rest of Europe by bailing out countries like Greece. The message resonated at a time when the Greek crisis was very much in the headlines. But no sooner had the AfD won its first victories than it began to change. All the voters for the failed right-wing parties of years past – and some who supported even more extreme movements – "were still around," says Schmidt. "Those who didn't make it in other parties saw it as another chance [...] and they used our structure of the AfD to hijack it from within."

The party has had remarkable success in state elections. It took close to 15 per cent of the vote in all the regional elections in March 2016, before winning over 20 per cent in Mecklenburg-Vorpommern in September 2016, finishing ahead of the Christian Democratic Union in Merkel's home state (Gaston 2017). Finally, Merkel accepted some direct responsibility, telling the press, "If I could, I would turn back time by many, many years to better prepare myself and the whole German government for the situation that reached us unprepared in late summer 2015" (Smale & Eddy 2016).

As an anti-EU, anti-immigration party, AfD appeals to both right-wing extremists and to those dissatisfied with the status quo. It is attracting voters from all of the established parties, including some from Merkel's Christian Democratic Union (CDU), who feel that the party has abandoned its more traditional conservative base, as well as from the Social Democratic Party (SPD), where voters feel that the traditional worker's party has abandoned their interests. As Alexander Gauland, the co-leader of the AfD, argued a year before his party won 13 per cent of the national vote, these are people who feel that the CDU's move to the center has left them without a voice in parliament. As the *Willkommenskultur* (culture of welcome) of late 2015 reached its pinnacle, there was, he says, a large group of people who wanted nothing to do with it. "We took up the refugee crisis [...] because all other parties said refugees welcome, and let's say half of the German people said, 'No, we don't welcome

refugees” (Polakow-Suransky 2017: 262). According to Gaston (2017: 40), “There is a significant gap between the views of the public and those of German politicians, who tend not to recognize these concrete concerns and instead speak of a generalized sense of fear among their citizens”. As Gauland readily admits, parties like the AfD have deliberately tapped into that fear, pulling voters in their direction.

The appeal of populism lies in the false premise of appealing to such concerns and exploiting the cultural and social anxieties of voters who “feel that globalization threatens their way of life, even their very identity” (Huneke 2017). Therefore, even when these populist movements have not won elections, the issues they campaigned for have remained central to political debates. In ‘Europe’s Populist Surge’, Mudde (2017) writes that the “threat of terrorism and anxiety about a massive wave of immigrants from the Muslim world, coupled with the widespread belief that the EU hinders rather than helps when it comes to such problems, have created a perfect storm for populists”. These parties have managed to rally large and durable levels of support from the public in “some of the most economically secure and highly educated regions of Europe”.

Mudde (2010) had earlier explained this trend as the product of highly secularized societies clashing with a more traditional religious immigrant group. “After decades of secularization, Islam is a (rapidly) growing religion that threatens the secular consensus by bringing religious issues back onto the public agenda,” he argues. “Islam – and vocal Muslims – openly challenge local beliefs on gender equality and gay rights, which are regarded as fundamental aspects of liberal democracy in these countries. Hence, it is the tolerant liberal democrats who oppose the intolerant Muslims.” The result is the paradoxical “outpouring of the intolerance of the tolerant, long (self-)censored by a political culture of anti-nationalism and conformity” who are happy to discover that “Muslims can be opposed with a liberal-democratic discourse – rather than an ethnic-nationalist one – mak[ing] it at last

politically acceptable (and increasingly politically correct) to express ethnic prejudice in these countries”.

Widespread anti-EU sentiment has also played a role. This negativity is clear in the 2016 European Parliamentary survey. When asked about the future situation both in the EU and in their own country, Europeans expressed increased pessimism. 58 per cent think things are going in the wrong direction at the national level, and 54 per cent at the EU level. On average, “just over one European in two thinks that belonging to the EU is a good thing, but with growing differences between member states” (European Parliament 2016: 7). On immigration, Pew Research Center found a median of 59 per cent across the EU, and 61 per cent of Germans and Dutch and 46 per cent of French participants believed that refugees will increase the likelihood of terrorism and impose a burden on their countries by taking jobs and social benefits, a view that has been aggressively promoted by Marine Le Pen, Geert Wilders, Alexander Gauland and other far-right leaders seeking to capitalize on social and economic anxiety (Poushter 2016). Europeans overwhelmingly believe that the EU is doing a poor job of handling the refugee crisis – with 70 per cent of French, 67 per cent of Germans and 63 per cent of Dutch disapproving of the EU’s response.

As with the far-right in France and the Netherlands, winning power is not necessarily the prime objective or the major threat. The far right doesn’t necessarily want to take the reins of government, lest it be blamed for failure. In Denmark, the DPP has intentionally remained outside of formal governing coalitions while providing parliamentary support for center-right Prime Ministers. The immediate goal is to influence and drive debate. The AfD’s Gauland clearly derives great satisfaction from the way that his party has changed the national discourse about refugees. “It has totally changed,” he argued in a 2016 interview, “the discussion has totally changed. This is what we have done” (Polakow-Suransky 2017: 264).

Conclusion

The long-term risk facing Europe is that liberal democracies will fail to deal with the inevitable conflicts that arise in diverse societies, including the threat of terrorist violence, and instead allow xenophobic populists (sometimes aided by Russian trolls and hackers) to hijack the public debate. When this happens, as we have seen, the votes of frustrated and disaffected citizens will increasingly go to the anti-immigrant right, making nativist parties more powerful, and legitimizing xenophobic rhetoric that promotes a narrow and exclusionary sense of national identity.

Mainstream political parties across the EU, and especially in pivotal member states, should confront right-wing populists by debunking their claims. If they do not, a political center that is pulled further right will galvanize leaders who “propose simple, fake solutions to complex challenges, who work with fear and intimidation, who blame foreigners for all kinds of ills and evils, and who promise to keep the economy prosperous while erecting walls and fences” (Balfour 2016). It's a form of divisive politics that could plague Europe in the years to come. As the Georgetown terrorism expert Daniel Byman (2015) warns, the problem is not that Syrian refugees arrive in the West as radical extremists but that they could one day be radicalized if host societies fail to accept them. “Despite their current gratitude for sanctuary in Europe, over time the refugees may be disenfranchised and become alienated,” writes Byman. Such an outcome would fulfil the worst fears of far-right Islamophobes, and it would be a direct consequence of their own xenophobic policies. The populist right today is already warning that pluralistic societies are doomed while doing everything to prevent them from succeeding.

The center can hold only if it starts to push back against populism – at the national level – instead of trying to appease the far right by meeting its demands halfway or addressing these political trends from Brussels. Centrist parties must fight back against illiberal and xenophobic attitudes at home, bridge social cleavages

and demonstrate the ineffectiveness of the simplifying of complex issues into “us” versus “them” categories.

In the 2016 Austrian presidential elections Alexander Van der Bellen refused to follow his opponent's xenophobic anti-refugee agenda and managed to win narrowly (Ward 2017). Germany's chancellor Angela Merkel prevailed, too, despite the AfD's gains and has been an exemplar of standing by liberal European values without ignoring citizens' anger. Rather than condemn those who voted for the AfD, Merkel argued after her 24 September election victory that she would address the far right's rise “by taking up their worries, partly also their fears, but above all by good politics” – indicating that she realizes some German radicals are reluctant ones and can be convinced to return to the center (Erlanger & Eddy 2017).

Most prominently, Emmanuel Macron, France's President, forthrightly refused to take the far-right's bait during the campaign, telling Marine Le Pen to her face during the vicious final presidential debate, “Who plays upon people's fears? It's you, the high priestess of fear is sitting in front of me”. He doubled down on this argument in his May 7 victory speech, insisting to the crowds at the Louvre, “we will not succumb to fear, [...] to division” (Guilbert 2017).

Other mainstream parties and candidates across the EU must follow suit.

Responding to illiberal democracies’ shrinking space for human rights in the EU

The European institutions, first and foremost the European Commission, were unable to effectively counter the democratic backsliding of Hungary and Poland due to a lack of political will, clear benchmarks of the EU fundamental values, a comprehensive strategy to address the issue, and the serious misperception of the democratic backsliding phenomenon itself. Contrary to the concept’s common use, neither Hungary nor Poland are stable “illiberal democracies” in an academic sense, but political regimes quickly falling back in the direction of authoritarianism. Even if the European Union was not able to stop the deterioration of democratic standards, it has effectively guaranteed a fair level of individual human rights by its “external constraining function” in Hungary and Poland. Parallel to this, the EU performs a “regime sustaining function” by its cohesion transfers that are effectively misappropriated by the illiberal elites for their own purposes. European institutions should change their strategic approach to the authoritarian tendencies within the EU and alter the cost-benefit calculations of the illiberal regimes.

The illiberal democratic backsliding of European Union (EU) member states and the challenges this presents, have been seriously misunderstood throughout the past seven years. This misperception, combined with a lack of genuine political will to counter the dismantling of liberal democracies in Hungary and Poland, resulted both in a catastrophic misperformance of the European institutions, and in a downward spiral of events. This diminished the chances to ensure the compliance of

these member states with fundamental European values. In spite of the blatant failure of European politics, only the existing legal and policy frameworks of the European Union were able to somewhat constrain the democratic backsliding of Budapest and Warsaw by guaranteeing individual human rights. With the national constitutional checks and balances seriously compromised, the illiberal regimes of Poland and Hungary could well develop into clear-cut non-democracies in the medium-term, unless they are constrained by the EU. Nevertheless, so far the constraining effect of the European legal and policy settings were only able to slow down, not to stop the democratic backsliding. If the European Union intends to maintain its status as a democratic “community of values”, a fundamental revision of its approach toward its own illiberal Member States is urgently needed.

Balance of the EU’s past performance

The European “liberal consensus” (Smilov & Krastev 2008) – the European integration of liberal democracies characterized by liberal constitutionalism, individual human rights, limits on majoritarian power, functioning checks and balances, representative democracy, inclusive pluralistic societies, and free market economies – has been challenged by so-called “illiberal democracies” for seven years.

The symbolic birth of the challenge can be traced back to Hungary’s illiberal turn after April 2010, when the party coalition of Prime Minister Orbán won a constitutional two-third majority with his landslide victory in the

parliamentary elections. Apart from short-term constitutional turmoil like the Romanian constitutional crisis of 2013, Hungary used to be the sole “enfant terrible” of the family of European democracies. Yet neither the European institutions, nor the member states made any serious efforts to bring the conscious and well-planned hollowing of liberal democracy to a definite stop. The reason could be either Prime Minister Orbán’s strategy of “creative compliance” (Batory 2016), often referred to as a “peacock dance”, or the European elite’s and member states’ lack of sense of danger. Whatever their reasons for not using it, they had an effective tool at their disposal: the Article 7 Treaty on European Union (TEU) procedure. This is available to discipline or sanction a member state not complying with the fundamental values of the European Union anchored in Article 2 TEU. Still, these institutions remained rather reluctant and idle.

Nevertheless, the above described situation fundamentally changed in October 2015, when the Polish Law and Justice Party (PiS) won an absolute majority in the Polish elections, and successfully established an illiberal one-party government. According to the already announced guideline “Budapest on the Vistula”, the new Polish government, officially led by Prime Minister Beata Szydlo but practically under the control of PiS Party Chairman Jaroslaw Kaczynski, promptly attacked the country’s Constitutional Tribunal and the media. It introduced illiberal state-building and a deconstruction of constitutional checks and balances second to none in the European Union. With two member states in the EU characterized by illiberal democratic backsliding, the sanctioning of these countries for their democratic and rule of law non-compliance with European standards became nearly impossible, at least according to the literal interpretation of Article 7 TEU. Furthermore, as political developments in other member states from time to time also raise serious concerns about the future of liberal democracies, like currently in the Czech Republic, illiberal democracies are far from being isolated and temporary cases. Just the contrary, with the phenomenon spreading, illiberalism is becoming a fundamental challenge for the

future of European democracies, which is indivisible from the, at least partial, survival of the liberal consensus.

Bearing the patterns and experiences of the past seven years in mind, the alarming conclusion can be drawn that the European institutions hardly learned much in their ongoing struggle with Hungary and Poland. The legal and institutional framework ensuring compliance with the fundamental values of the European Union, as laid down in Article 2 TEU, has barely changed since 2010. The lack of any credible sanctions in the “Rule of Law Framework” established by the European Commission led to a bitter fiasco when it was deployed against an uncooperative Polish government. Credibility of the Framework was also seriously undermined when the Commission refrained from extending the procedure to Hungary in January 2016, allegedly because the Commission’s previous concerns were at that time already effectively addressed by Budapest. The “Rule of Law Opinion” procedure of the European Council performed even worse, the only reason for its existence is to establish a “mock institution” to undermine the legitimacy and question the legality of the Commission’s own Rule of Law Framework.

Of course the existing institutional and procedural setup for ensuring compliance with EU fundamental values – infringement procedures, the Rule of Law Framework and Article 7 procedure¹ – is far from ideal.

1 The procedure based on Article 7 TEU enables the “naming and shaming” and the sanctioning of member states disregarding the European Union’s fundamental values, like democracy, rule of law, individual human rights and others, laid down in Article 2 TEU. The procedure can be initiated by the European Commission, the European Parliament or one-third of the member states. Based on a reasoned proposal of one of these actors, in the first phase of the procedure the European Council (with four-fifths of its members) and the Parliament can determine the “clear risk of a serious breach” of the fundamental values. In the second phase, the European Council, acting unanimously, and the European Parliament can determine “the existence of a serious and persistence breach” of fundamental values in a member state. If doing so, the Council, acting by qualified majority, can sanction the non-complying member state by suspending certain rights deriving from the application of the Treaties, including the voting rights. The nature of the sanctions is subjected to the free deliberation of the Council within the frames of European Law.

Nevertheless, due to the lack of genuine political will not even these instruments have been applied in a conscious and consistent manner following clear benchmarks or a comprehensive strategy. The whole process is dominated by ad hoc tactical decisions, the primacy of European party politics² and inter-institutional tensions among the Commission, the Council and the European Parliament. Not the shortcomings of the legal toolkit, but the issue's low political priority prevented the EU institutions from addressing the challenge posed by the "illiberal" developments in Hungary and Poland properly.

Furthermore, the European decision-makers completely failed to understand the real nature of the Hungarian and Polish developments. First of all, they failed to understand that time does not work in their favour. Instead it helps illiberal governments to entrench their power step by step in the constitutional order, institutional setup, and relevant (media) market positions. They also failed to understand that every window of opportunity missed by the European institutions to confront anti-democratic developments in a genuine way will alter the domestic playing field in favour of the non-complying government. This makes the reconstruction of the former constitutional setup more and more difficult with time.

The past seven years of European "interventionism"

2 It is a common experience of European politics that European party families tend to protect their member parties from facing sanctions for violating fundamental European values. The European People's Party (EPP) safeguarded the Hungarian governing party Fidesz uninterruptedly since 2010 in the European Parliament. The European Socialists (PES) made it impossible to address the issue of the Romanian constitutional crisis in 2013, and – in spite of the temporary suspension of the party's membership in PES – shielded the Slovakian left-nationalist party Smer from harsh international criticism between 2006 and 2010. An important reason why the Commission was ultimately able to deploy the Rule of Law Framework in January 2016, and the first phase of the Article 7 Procedure in December 2017, against Poland, is the fact that PiS is not a member of the two big European party families EPP and PES, so the Commission has not encountered opposition from their rows either in the EP, or in European party diplomacy. See: Kelemen 2017

can best be described as a downward spiral of failed appeasement politics and repeated wrong decisions, decreasing the chance to counter democratic backsliding and restore liberal constitutionalism in Hungary and Poland. To break away from this downward spiral, three key things are necessary: the political will to act; consistent strategic thinking; and a detail-based understanding of the illiberal challenge, covering both the characteristics of the democratic backsliding processes and the political behaviour of illiberal governments.

Illiberalism in the EU – What is it and how does it work?³

The term "illiberal democracy" is used rather vaguely both in the media and the policy world. This paper refers to those regimes in the European Union as "illiberal democracies" that proudly label themselves as such, like Hungary,⁴ or identify themselves with the illiberal model, like Poland. In neither case is the term applied in an academic manner, describing a distinct type of political regime. Just the contrary, based on a thorough empirical analysis, neither Poland nor Hungary comply with the characteristics of an illiberal democracy as described by Fareed Zakaria, who introduced the concept in 1997 (Zakaria 1997), or Wolfgang Merkel, who accurately defined it in comparison to other "defective democracies" (Merkel et al 2003, and Merkel 2004).

In the understanding of both Zakaria and Merkel, an illiberal democracy is a diminished subtype of democracy (Cassani 2012) where the electoral component of democracy is functioning well, but constitutional checks

3 To the constraining, regime supporting and regime legitimating functions of the European Union, as well as to the categorization of Hungary as hybrid regime, see András Bozóki & Daniel Hegedüs, 'An Externally Constrained Hybrid Regime: Hungary in the European Union', forthcoming in *Democratization*.

4 The concepts of "illiberal state" and "illiberal democracy" were practically introduced by Hungarian Prime Minister Viktor Orbán in the European public discussion with his speech on 29 July 2014 at Baile Tusnad. <https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/>

and balances are weak and human rights and individual freedoms are systemically constrained by the executive or by the majority will.⁵ Even though it is hardly disputable that the quality of individual human rights and freedoms in Hungary and Poland experienced a rather moderate decrease in recent years,⁶ the institutional dimension of liberal constitutionalism – the functioning of constitutional checks and balances – has been fundamentally compromised. The Hungarian and Polish governments clash with the Constitutional Courts through legislative acts, the undermining of the Constitutional Courts' independence through court-packing or removing sitting judges, are emblematic examples of the negative developments. Furthermore, as the “free but not fair” elections in 2014 in Hungary,⁷ as well as the related modifications of the campaign rules and the ongoing centralization and homogenization of the media landscape highlight, the electoral dimension of democracy is also affected.

Both in Hungary and Poland, an ongoing and uninterrupted democratic backsliding process can be observed, a diminishing of democratic qualities, and the regimes' downhill slide toward authoritarianism. For those who want to identify them, these regimes are moving targets. Considering the existing flaws in the

electoral dimension of the regime, Hungary is hardly able to fulfil the condition of a “well-functioning electoral democracy” set by Fareed Zakaria for an “illiberal democracy”. Even if the Hungarian regime complied with the characteristics of illiberal democracy, they did so only for a limited period of time, before slipping away toward increasingly authoritarian qualities. Only in the first years of its democratic backsliding after 2010 could Hungary be perceived as an illiberal democracy, but certainly not after April 2013, when the fourth amendment of Hungarian Basic Law rendered the Hungarian Constitutional Court powerless. Since 2014, bearing the distortions in the electoral dimension of democracy in mind, the Hungarian regime is best described by the competitive authoritarianism theory of Steven Levitsky and Lucan A. Way. The political system is competitive but not democratic, as the political playing field is uneven and offers systemic advantages for the incumbents. Thus, the political competition is real, but not fair (Levitsky & Way 2002 and 2010b). With these characteristics, Hungary can no longer be considered as any “labelled” form of a democratic regime, but rather as a “hybrid regime” sharing characteristics of both democratic and authoritarian systems. Currently only one illiberal democracy exists in the EU: Poland. However, considering the ongoing amendment of the municipal electoral system in the country, Poland's “illiberal democracy” status also seems to be questionable in the long term.

Even if an illiberal democracy is considered a temporary stage in the democratic backsliding process, one piece of empirical evidence does not fit into the picture, namely the relatively high level of individual human rights and freedoms. There was gradual decrease in their qualities. The best example could be the subtle limitation of the freedom of religion by the 2011 Church Act in Hungary.⁸ Yet, until 2017 when the Hungarian regime took openly

5 “In intact democracies, legitimate representatives are bound to constitutional principles. In an illiberal democracy, with its incomplete and damaged constitutional state, the executive and legislative control of the state are only weakly limited by the judiciary. Additionally, constitutional norms have little binding impact on government actions and individual civil rights are either partially suspended or not yet established. In illiberal democracies, the principle of the rule of law is damaged, affecting the actual core of liberal self-understanding, namely the equal freedom of all individuals.” (Merkel 2004: 49)

6 The year 2017 might be a turning point in this regard, with authoritarian-style attacks against the civil society and academic freedom by Hungarian law on foreign funded NGOs and the discriminatory amendment of the Higher Education Act rendering the Central European University's functioning in the country nearly impossible.

7 Hungary, Parliamentary Elections, 6 April 2014. OSCE/ODIHR Limited Elections Observation Mission, Final Report. <http://www.osce.org/odihr/elections/hungary/121098?download=true>

8 See: European Court of Human Rights, Case of Hungarian Christian Mennonite Church and Others v. Hungary (Strasbourg: ECHR, April 8, 2014), <http://hudoc.echr.coe.int/eng?i=001-142196>

authoritarian steps to discourage freedom of association with the “Foreign Agent Act”, stigmatizing NGOs receiving financial resources from abroad, and to cut academic freedom by the “lex CEU”, the general quality of human rights in comparison to other hybrid or “illiberal” regimes remained relatively high, both in Hungary and Poland. If this empirical observation is true, it has two theoretical consequences. First, from an academic perspective, Poland and Hungary in the first years of their democratic backsliding should be perceived as “delegative” rather than “illiberal democracies”. According to Merkel, delegative democracies are characterized by the hollowing of the separation of powers;⁹ this definition seems to fit better to the constitutional reality of the Polish and Hungarian regimes than the undermining of human rights and individual freedoms. Second, the reason for the alteration from the general patterns of hybridization and democratic backsliding in the case of Hungary and Poland, must be explicable.

The explanation in this case is offered by the EU membership of Hungary and Poland in comparison to other defective democracies and hybrid regimes. In contrast to the accession conditionality, no procedural framework of democratic conditionality exists in the EU which would bind member states, except the list of fundamental values laid down in Article 2 TEU. Furthermore, no objective benchmarks of the quality of democracy or rule of law were ever considered to be used by the European institutions while investigating whether a member state violated the values of rule of law or democracy laid down in Article 2 TEU. In contrast, the protection of individual human rights has a longstanding tradition in the European legal

order, first of all due to the embracing of the case law of the European Courts of Human Rights (ECtHR) by the EU law, and the Court of Justice of the European Union (CJEU) itself. As such, the European law in its current shape is better equipped to safeguard the individual human rights of citizens in EU member states than to counter the dismantling of the institutional dimension of liberal constitutionalism. This is largely due to the fact that objective European legal standards of individual human rights definitely exist, while objective legal standards of the institutional dimension of liberal constitutionalism don't.

Consequently, the determination of the existence of a “serious and persistent breach” of individual human rights, as formulated in Article 7 TEU, can be traced back to the objective legal consideration of independent courts, at the final instance most likely the ECtHR or the CJEU. Even if the introduction of any sanctions by an Article 7 procedure is a political process per se, in the aforementioned case the political considerations were strictly bound by the legal argumentation of the ECtHR or the CJEU, and could not be left unconsidered by the European Parliament or the European Council. Contrary to this, the determination of a “serious and persistent breach” of the fundamental value of rule of law or democracy is primarily a political consideration, which cannot be traced back to any objective court ruling.

In the hypothetical scenario that if the democratic backsliding process undermined the quality of individual human rights in a member state, the European institutions and other member states could and would stand up to confront, and perhaps even sanction the illiberal policies. However, so long as only the institutional dimension of the liberal constitutionalism is affected, the chance for confrontation with the non-complying member state and its sanctioning is much lower due to the lack of objective legal benchmarks, not least because of the largely different constitutional traditions of the member states.

In spite of the often confrontational anti-EU rhetoric

9 “In a delegative democracy, the legislature and the judiciary have only limited control over the executive branch. Actions of government are seldom committed to constitutional norms. The checks and balances that functioning democracies need in order to maintain a balanced political representation are undermined. Governments, usually led by charismatic presidents, circumvent parliament, influence the judiciary, damage the principle of legality, undermine checks and balances, and shift the equilibrium of the balance of power unilaterally in favour of the [...] executive.” (Merkel 2004: 49-50)

of the Hungarian and Polish administrations, avoiding possible sanctions is the most fundamental political guiding line of both governments. Since both Hungary and Poland are net beneficiaries of the EU's cohesion policy, the EU ironically plays a "regime supporting" or "regime sustaining" function. European cohesion transfers contribute to the plenitude of public goods, which can be misappropriated by the incumbent political elites. As the Hungarian example shows, these public resources, often misappropriated through corruption and public procurement fraud, are frequently used to acquire important positions on the media market and thus are transformed to power resources in the hands of the illiberal elites. As such the EU also indirectly supports democratic backsliding.

At first, this symbiosis between the European Union and the Hungarian and Polish "illiberal" regimes seems to be an unbreakable vicious circle. Budapest and Warsaw are ready to accept and tolerate the EU's constraining function in the field of individual human rights under two conditions. They do so, first, as long as the EU's constraining function, lacking any effective measures against the hollowing of the institutional dimension of liberal constitutionalism, practically does not endanger the entrenching of the governing parties' power position. And second, they tolerate it as long as the EU helps to maintain the regimes financially, and as long as it contributes both to the regimes' economic power resources, and enables a modest economic growth, as well as a subsequent political stability in these countries.

However, as easy as it would be to blame the European Union for the uninterrupted democratic backsliding of Poland and Hungary, it is just as important to underline that the only way to a peaceful restoration of liberal democracy is through the strengthening and extending of the EU's constraining function. Bearing in mind both the nearly unopposed concentration of power resources in the hand of the incumbent elites contributing to the increasingly uneven political playing field, and the consequences of the free movement of persons within

the EU leading to large scale emigration of discontent citizens from these countries,¹⁰ the restoration of liberal democracy by grassroots actors and resources in the short to mid-term is hardly imaginable. The "illiberal states" of the EU still maintain open societies, resulting in the fact that many dissatisfied people vote with their feet, not by casting their ballot.

Still, the vicious cycle is far from being unbreakable. Just the contrary: the cost-benefit calculation of the Orbán or Kaczynski regimes can be easily altered by downtuning the cohesion transfers, meaning the elimination of the EU's regime supporting function. In such a case, lacking the appropriate economic incentive, the respective illiberal elites would be more reluctant to tolerate the EU's regime constraining function in any form. This would probably lead to rising tensions between the concerned member state and the EU, and – irrespective of how unrealistic such a decision would be from the perspective of the real economy – could prompt the exit processes of these countries in the medium or long term.

However, a Hungarian or Polish departure would not mean finally getting rid of the problem for the rest of Europe. Quite the contrary, they should be considered as real worst-case scenarios. Leaving the EU would deeply destabilize these countries domestically, resulting in a serious geopolitical instability in Central Europe. In the case of Hungary it would definitely lead to the increase of Russian influence at the new borders of the EU. Furthermore, an exit process might well give a new, serious impetus to the emigration of Poles or Hungarians targeting the EU, creating further domestic tensions in countries like Germany or Austria.

How to respond to the illiberal challenge?

To respond to the illiberal or authoritarian trends in a proper way and to avoid the worst-case scenario described above, first the EU in general, and the European

¹⁰ Since 2009, approximately half a million Hungarians left the country and moved to other EU member states to work.

Commission in particular, have to honestly reflect on their serious misperformance of the past seven years.

Instead of the hitherto existing pattern of inconsistent ad hoc decisions, a comprehensive strategy is needed for the European Commission to confront the illiberal governments in Warsaw and Budapest, even under the circumstances of inter-institutional conflicts with the Council. This strategy must be based on the objective political and academic knowledge about the nature of the "illiberal" regimes of East-Central-Europe. It must be borne in mind that these regimes have consciously been built to create a concentration of political and economic power irreconcilable with a functioning liberal democracy. These regimes deliberately compromise or dismantle any internal checks and balances constraining their power. Furthermore, the liquidation of the institutional dimension of liberal constitutionalism does not stop at the stage of "illiberal democracy" in an academic sense, as a democratic regime with a substandard rule of law but a functioning electoral democracy. On the contrary, if the democratic and rule of law backsliding remains effectively unopposed, it leads to hybrid regimes, where democratic competition is compromised as well, as the example of Hungary clearly shows. Moreover, further authoritarian developments cannot be excluded either. Therefore the Commission must realize that lacking any genuine reaction, the situation in Poland and Hungary can only worsen, and the chance of any successful political intervention in the future only decrease.

Therefore the European Commission must increase its activity and must forge a political alliance on this subject with the European Parliament, which was the institutional vanguard of countering the illiberal challenge in the EU, and as shown by the case of the Tavares-report from 2013, was often left alone even by the European Commission. In the legal dimension, an informal cooperation with the CJEU must be enforced as well, leading to an institutional triangle of the "coalition of the willing", which cannot be left unconsidered by the Council or the member states.

Lacking the required majority in the Council, and with a European Peoples Party (EPP) safeguarding the Orbán regime, the Commission should increasingly challenge Budapest and Warsaw in a legal way, concluding in CJEU judgements. To ensure this, bundled infringement procedures with systemic relevance, like Kim Lane Scheppele has been proposing for many years, should be repeatedly deployed by the Commission, and these "systemic infringement procedures" should be based on a broader interpretation of EU law. Furthermore, the Commission should prompt the CJEU informally to adopt restorative, rather than compensatory measures in its judgements (Scheppele 2013). Only the restoration of the constitutional situation ex ante can safeguard the respective countries from any further institutional dismantling of liberal constitutionalism and the ongoing democratic backsliding. In this regard, based on the principle of estoppel,¹¹ constitutional institutions which were established or restructured by the violation of their predecessors' institutional independence cannot be protected from restorative measures by the principle of institutional independence.

The European Commission must put its unchallenged legal reputation at stake, base its legal arguments on an extended and instrumentalist interpretation of EU law, and hope that the CJEU, bearing its responsibility in mind, will accommodate the Commission's legal positions. If the majority relations in the Council are not going to change significantly in favour of an open helmet confrontation with Hungary and Poland, which seems to be rather unrealistic today, only a common legal position shared both by the Commission and the CJEU can promise any success.

The triggering of Article 7 TEU by the European Commission against Poland on 20 December 2017 fits into the

¹¹ Estoppel is a principle of international law with common-law origins stating that a party, following its legal act, is not allowed to deny the facts its earlier act was based on to its own benefit.

already existing patterns of the European institutions' political behaviour. It does not give the impression of being a game changer. Considering the dead-certain blocking by Hungary – and probably also by several other EU member states – the procedure is definitely not going to enter its second phase, which would enable imposing sanctions by unanimous vote of the European Council. Therefore it has only a superficial impact on the political cost-benefit calculations of the regime in Warsaw. Although the Commission sent a clear signal that it simply cannot retreat further and must raise its shield at a certain point, its action was again far from being consistent, based on objective benchmarks, or embedded in a well-considered strategy.

The first phase of the current Article 7 procedure, the determination of the “clear risk of serious breach” of the EU fundamental values, is not hopeless at all if the Commission can successfully convince the majority of EU member states. This would include regional allies of Poland, like the Baltic countries, Romania, Slovakia or the Czech Republic, as well as countries being traditionally keen on protecting their national sovereignty, like Denmark. However, without conscious agenda-setting, the politicization of the issue among member states and thus in the Council, as well as inter-institutional alliance with the Parliament, the initiative can easily backfire in its first phase. The likelihood of support from 22 member states for the naming and shaming of Poland is far from evident under the current circumstances. Losing the first round of voting in the Council would be a huge slap for the Commission. But stepping on the breaks and not putting the vote on the Council's agenda – a desperate but not unimaginable face-saving measure by the Commission in political bad weather – would probably be a bigger slap for the protection of the EU fundamental values.

As the current issue of the Article 7 procedure against Poland clearly shows, no breakthrough is possible with regard to the protection of EU fundamental values without organically embedding the issue in the further development of European law. This includes the high-

level strategic politicization of the topic, as well as the elaboration and thorough implementation of a relevant strategy of action. The European Court of Justice (ECJ)¹² has created and enshrined the protection of fundamental rights in the community law with judiciary activism in the seventies. Lacking both the legislative competence in the treaties and the respective majority among the member states, only an activist CJEU can ensure that objective benchmarks of rule of law and liberal constitutionalism – beginning with standards of the independence of justice and Constitutional Courts – will be introduced into the EU law as necessary national-level conditions for a functioning European legal system.

Nevertheless the combined approach of EU institutions should follow the principle of “sticks and carrots”. The level of the EU financial transfers can be decreased via individual sanctions which can be lifted, but not by a general abolition or fundamental reform of the cohesion policy. In an ideal case, both the extent and the administrative procedures of the cohesion transfers should be optimized to a form and level which, by enhancing transparency rules and European investigative competencies, shall render the misappropriation of the funds for the regime's political purposes nearly impossible. However, it should not alter the regime's cost-benefit calculations so fundamentally that it would prefer leaving the EU instead of accepting the gradual re-establishment of liberal constitutionalism, and the compliance with the newly established EU rule of law and horizontal accountability benchmarks.

Such a top-down introduction of EU-wide standards for the independence of constitutional checks and balances, the judiciary, and the separation of powers could level the

12 The former European Court of Justice (ECJ), since the coming into force of the Treaty of Lisbon on 1 December 2009 officially Court of Justice, is the highest judiciary organ of the European Union. The term Court of Justice of the European Union (CJEU) refers to the whole institutional setting of EU judiciary since 2009, comprised of the Court of Justice and the General Court, the former Court of First Instance.

systemically uneven political playing-field being created in the respective “illiberal” regimes. This would allow an acceptable degree of fairness in the political competition for the democratic contenders. Furthermore, it could allow for legal settlements of the constitutional captures, which are difficult to overcome domestically, even in the case of the democratic opposition’s electoral victory. Considering the nature of hybrid regimes, the chance for a genuine grassroots democratic breakthrough cannot be excluded either. Nevertheless, thanks to the increasingly uneven political playing field in both Poland and Hungary, these chances are rather low, and in the short to mid-term, and without the intervention of the European Union, they will remain low as well. The EU does not merely constitute these regimes’ external environment; the regimes live in symbiosis with the EU as part of the EU’s multi-level constitutional and political system. Currently the EU safeguards the human rights of approximately 48 million Polish and Hungarian EU citizens. If the European Union would like to avoid the existence of regimes among its member states backsliding uninterruptedly into authoritarian domains, as well as the geopolitical instability of the region, migration and security concerns caused by a possible future Hung- or Polesit, the EU must also provide the ultimate guarantees of liberal constitutionalism in its member states.

The erosion of democracy under the rule of law in Europe

Anyone who believes in democracy under the rule of law may feel disheartened looking at Europe today. In a number of European countries, both have come under threat due to social alienation, socio-economic inequality, and the socio-cultural pressures surrounding national identity. The Great Recession and the refugee crisis created a perfect storm in which anti-establishment movements could translate these societal tensions into political power. Within the EU this is particularly visible in Hungary, Poland, Turkey and the Russian Federation. The EU, the Council of Europe and its member states should make deeper investments in these countries' democracies in order to counteract democratic deconsolidation.

Introduction

Anyone who believes in democracy and the rule of law may feel disheartened looking at Europe today. In Hungary the Prime Minister is championing the virtues of “illiberal democracy” in his country (Prime Minister Viktor Orbán’s Speech at the 25th Bálványos Summer Free University and Student Camp: 2014). In Poland the government is determined to place political constraints on the judiciary. In the Russian Federation homosexuals in Chechnya are living in fear, and in Turkey the government has seized on the failed coup attempt of July 2016 as a way of muzzling the opposition and the independent media.

Remarkably enough, those in power in these countries can count on widespread public support. They came to power not through a coup d’état but through (more or less) free and fair elections. Large sections of the public

support the arguments these governments use to justify their measures, which usually invoke national culture and identity and resistance against an elite they claim is deaf to the voice of the people.

These countries are also members of the Council of Europe (in fact, Turkey is one of its founding members) and parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The primary aim of both the Council and the Convention is to safeguard democracy, the rule of law and human rights in Europe. What is more, Poland and Hungary have both joined the European Union, which requires “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities” (European Commission, ‘Accession criteria’: adopted 1993). Membership of these organizations has clearly proved to be insufficient to ensure that democracy under the rule of law truly takes root in these countries.

Such developments are not limited to Eastern Europe, although the institutions of democracy under the rule of law are probably more vulnerable to erosion there than elsewhere on the continent. In Western European countries, too, support is growing for parties and movements that claim to express the will of “the people” and that oppose the establishment, multiculturalism and international cooperation. In the United Kingdom a majority of the population chose to withdraw entirely from the European Union, a decision based on dissatisfaction with bureaucratic interference from Brussels and the

large-scale influx of cheap labour from Eastern Europe. It is true that recent elections in France, Austria and the Netherlands did not result in a major breakthrough for anti-European, nationalistic parties, but this was partly because traditional, more moderate political parties themselves adopted positions at odds with the principles of freedom and democracy. Support for such views has undeniably grown.

Naturally, such developments are not clear-cut: in some elections anti-establishment forces gain the upper hand and in others traditional parties manage to maintain their position. But if temporary fluctuations are disregarded, the overall trend seems incontestable: in a number of European countries, democracy under the rule of law is under threat. Formal features of democracy such as elections, political parties, parliament and the courts continue to exist, but democratic freedoms and human rights are being curbed or applied more and more selectively. As a result, freedom is no longer guaranteed for all without distinction.

How is it possible that large numbers of Europeans are placing their trust in parties and movements that regard pluralist democracy under the rule of law as an obstacle to the implementation of their programmes? What makes people wish to curb the rights of others in society? Why has the optimism about freedom and democracy that was widely felt across Europe after the fall of the Berlin Wall, turned into a rejection of European cooperation? What can the Netherlands (and like-minded countries) do to address the erosion of democracy under the rule of law in Europe? This essay seeks to respond to these questions.¹ It is important to note, firstly, that it is too easy to simply

accuse voters of short-sightedness or ignorance. They are legitimate “messengers”, expressing dissatisfaction with existing political and constitutional relations, and they must be taken seriously. Taking note of dissatisfaction and opposition is an integral part of a fully-fledged democracy under the rule of law. The challenge, then, is to search for the underlying causes and for solutions to them.

Democracy and the rule of law

The question of what the precise meaning of democracy is might be a good starting point. Is it simply the will of the majority? Or does democracy require more than just 50 per cent of the vote plus one? Democracy (“rule by the people”) is first and foremost a form of political decision-making. Regularly holding free and fair elections is a way of organizing the public’s say in their own governance. The representatives of a political programme get to share in power to an extent decided by the electorate. They determine the direction of political decision-making in the period until the next election.

In this reading, democracy is above all a procedural or *electoral* matter. The emphasis is on citizens’ voting rights and election procedures. But is this sufficient? Is a decision democratic, for example, if a majority decides that certain groups in society should be disadvantaged or excluded?

Every society consists of a collection of different groups with varying views and interests, which may sometimes coincide with and sometimes contradict one another. Anyone may be at once an entrepreneur, conservative, migrant, gay, highly educated, irreligious and physically disabled. It is therefore an illusion to think that “the people” are a homogeneous entity, or that there is one single “majority”. On the contrary, there is no such thing as “the people”, nor for that matter a single collective will of the people (Habermas 1997: 41). It is therefore incorrect to equate the will of the majority with the will of “the people”. Those who today belong to the majority and endorse curtailment of the rights of others may tomorrow

¹ This essay is based on the advisory report ‘The will of the people? The erosion of democracy under the rule of law in Europe’, which was published by the Advisory Council on International Affairs (AIV) in June 2017. The AIV is an independent body that advises the government and the Dutch parliament (States General) on foreign policy issues. The full report and the government’s response to it can be downloaded from www.aiv-advice.nl

find themselves part of a minority and see their own freedoms threatened.

In order to ensure that everyone in society is treated equally, the rights of every citizen must be protected from violations by third parties, including the state. A fully-fledged democracy therefore requires more than mere majority decision-making. It must also guarantee fundamental freedoms (e.g. freedom of expression and of assembly) and access to independent courts. Viewed in this way, a decision is democratic if it is taken on behalf of the majority and in accordance with constitutional rules. In other words, majority decision-making requires constraints in the form of statutory fundamental rights that are protected by an independent judiciary (Bugarcic 2008). This is the dimension of democracy described as *constitutional* or characterized by the rule of law. Democracy and the rule of law (including human rights) are thus inextricably linked. They cannot be separated.

This is not to deny that there are tensions between majority decision-making and the existence of fundamental rights (civil and political; social, cultural and economic) of individuals and minorities. Democracy under the rule of law may come in for criticism if elected politicians, civil servants and independent judges make decisions that differ from what the majority of society wants or considers necessary. These tensions pose a continual risk of estrangement between the citizens and institutions of a democracy under the rule of law. That is why politicians, civil servants, judges and citizens all shoulder a heavy responsibility for ensuring that, on balance, all groups in society feel they are properly heard. Mutual trust is therefore a crucial imperative in democracy under the rule of law.

Social disengagement

Trust between people who don't know each other is fragile and easily broken. Typically, complaints among citizens that politicians, civil servants and the courts don't serve the interests of the public are not uncommon in democracy under the rule of law. In recent years, however,

there have been signs that something more serious is afoot. According to a survey conducted by the European Commission at the end of 2016, almost two-thirds of the citizens of EU member states have no confidence in their national government (64 per cent) or in their national parliament (62 per cent) (European Commission 2016: 14). Other indicators are low voter turnouts (particularly in Central and Eastern Europe) and the shrinking membership of political parties (Tormey 2014: 105-106).

The American political scientists Roberto Foa and Yascha Mounk actually go so far as to suggest that people in the United States and Europe have become more cynical about the value of democracy as a political system. According to their research, more people are now receptive to non-democratic alternatives such as military rule, and support for "anti-system" parties is growing. They therefore perceive a risk of what they term "democratic deconsolidation", in Europe as well (Foa & Mounk 2016; Foa & Mounk 2017). Although different views also exist,² support for the principles of democracy under the rule of law and the associated institutions does appear to be on the wane among large groups of people in Europe. In other words, citizens have become alienated from the institutions on which democracy and the rule of law are based. This is currently reflected in the electoral success of new anti-establishment movements that oppose elements of democracy under the rule of law.

How did this social estrangement happen? Unfortunately there is no simple answer to this question. Citizens' affinity for their political system does not diminish suddenly. This is a gradual process that has been underway for several decades. A large number of trends and factors have played a role, from technological advances and the IT revolution, the rise of social media,

² For example, in 2015 the Pew Research Center still found widespread support in Europe for such values as freedom of religion, freedom of expression, press freedom, sexual equality and free and fair elections. See: <http://www.pewglobal.org/2015/11/18/global-support-for-principle-of-free-expression-but-opposition-to-some-forms-of-speech/>

and the economic crisis to the decline of the political centre ground in many (particularly Western) democracies, the shifting geopolitical balance of power, migration flows and increased international security threats. These factors are all interconnected. Yet, if we step back and look at the bigger picture, one trend above all becomes clear: increasing insecurity among the public, in both a socioeconomic and a sociocultural sense. Globalization has played a major part in this process.

Socioeconomic root causes

In Western Europe the years after the Second World War were dominated by unprecedented economic growth and the rise of the welfare state. Citizens could call on government to fund the fulfilment of an increasing number of socioeconomic rights. Since the 1980s, however, the role of government in Western societies has changed drastically, and therefore so too has the relationship between the government and citizens.

As global economic malaise, high unemployment and large public sector deficits made clear, proceeding on the same path was no longer viable. Measures such as budgetary austerity, privatization of state enterprises, financial deregulation and trade liberalization were used to create more scope for the operation of market forces in the economy. The public sector and social security programmes were trimmed back by means of structural reforms.

The surging economic growth figures in the 1990s seemed to vindicate this neoliberal policy. Global GDP rose from USD 11 trillion in 1980 to USD 51 trillion in 2006 (World Bank, 'GDP (current US\$)'). At the same time, the shrinking role of government and the cuts to the welfare state meant a decline in social protection. For a long time, this was masked by the benefits of globalization (more growth, employment and innovation) but the negative effects of globalization are now also being felt more keenly.

While in the long term globalization has benefits for national economies as a whole, there are also groups who suffer from the adverse effects.³ Economic sectors in Western countries have disappeared and relocated to countries where production costs are lower. The transition from a manufacturing economy to a services economy requires an ever more highly educated workforce, leaving the low-skilled lagging behind. Competition between countries for foreign investment sometimes leads to a race to the bottom in terms of legislation on matters such as environmental standards, taxes for multinationals and terms and conditions of employment of individual employees.

According to British economist Guy Standing, the flexibilization of the labour market has led to the creation of a "precarariat" (a combination of the words precarious and proletariat), which he defines as a highly diverse group of highly and lowly educated people, young and old, characterized by temporary jobs, low wages, limited social security and little prospect of improving their own socioeconomic position. In such circumstances, a small setback can quickly make it highly difficult to make ends meet. In Standing's view, this fosters both anger among citizens and social disengagement (Standing 2011: 19-20).

Globalisation has led to increasing income inequality and wealth inequality. In 2015 50 per cent of global wealth was owned by just 1 per cent of the global population (Credit Suisse Research Institute 2016). Although increasing income and wealth inequality should not be confused with increased poverty, a considerable section of society is at a permanent disadvantage when it comes to sharing in prosperity. In 2014 the Netherlands Scientific Council for Government Policy (WRR) concluded that increased income inequality is a contributing factor in

³ For a detailed consideration of globalization and its consequences, see for example: OECD, *Moving up the value chain: Staying competitive in the global economy* (OECD Publishing, 2007).

reducing social cohesion in society. Trust in other people and in democratic institutions (including parliament, political parties and the legal system) tends on average to decline as income inequality in a particular country increases. Moreover, the more extreme the inequality, the more likely it is that the public wants government to intervene to prevent excessively unequal distribution of income and to actively provide a safety net. There are also indications that voter turnout in general elections tends on average to decline, particularly among lower income groups, as income inequality increases. The voice of these sections of the population is therefore heard less by politicians. This may put the legitimacy of democracy under the rule of law at risk (Van der Werfhorst 2014).

Sociocultural root causes

There is more to globalization than international trade and increased foreign investment. Thanks to tourism, the Internet, social media and migration, it has become easier for people to come into contact with other cultures, and cultures are becoming less distinct. When it comes to linguistic influences, new culinary trends and clothing fashions, this is generally not a problem. However, when deep-rooted national traditions are called into question, it can lead to serious tensions within society. People may feel that their way of life is being threatened and that they are being forced to adapt to the needs of minority groups.

Researchers Inglehart and Norris argue that national identity and cultural values play an important role in the political choices made by citizens. They believe that post-war (highly educated) generations in the West, who have grown up in stability and economic prosperity, tend to focus on different cultural values than previous generations. These “post-materialist” values include personal development and support for a multicultural society, immigration, secularization, international cooperation, European integration, human rights, sustainability and so forth (Inglehart & Norris 2016; De Vries & Hoffman 2016). According to the authors, these progressive values are now under growing pressure. They assert that a cultural backlash has taken place,

particularly among low-educated white groups who see their traditional, national and sometimes religious standards and values increasingly threatened. They are now more inclined to vote for parties with a socially conservative agenda. Anti-establishment movements are capitalizing on this (Inglehart & Norris 2016; De Vries & Hoffman 2016).

Central and Eastern Europe

The countries of Central and Eastern Europe seem particularly vulnerable to this trend. First, they had scarcely any pre-communist democratic tradition to fall back on. They had also existed in relative isolation for fifty years. This seems to have fostered a mentality and world view marked by fear of the unknown. Finally, these societies are still largely organized along top-down lines. Although fifty years of dictatorship have left the population distrustful of government, they still accept strong central authority.

After the fall of communism, Western policy towards these countries placed the emphasis on rapid liberalization of the economy and privatization of state enterprises. The thinking among politicians and policymakers seemed to be that once the economy was in order, democratic and judicial reforms would follow. As a result, there was too little investment in these countries in enhancing the quality of institutions such as parliament, political parties, public administration and the judiciary, and thus today they still do not adequately serve society as a whole.

It is also questionable to what extent democracy, the rule of law and human rights in Eastern Europe are supported as common European values. Or, as Polish deputy Foreign Minister Konrad Szymański ominously put it, “We share European values, also those that concern the rule of law, but we differ in their interpretation” (Holtland, 2017). In hindsight, it seems reasonable to conclude that these countries’ desire to join the Council of Europe and the European Union was motivated mainly by the economic benefits that membership would bring. EU accession in particular was incentive-driven, providing the prospect

of subsidies from Brussels. Countries accepted as part of the deal that they would be required to pass all kinds of social legislation, for example in relation to the protection of minorities such as Roma and Sinti. Yet once these countries had joined the EU, they quickly lost interest in carrying out reforms. This helps explain the current opposition in Poland and Hungary to multiculturalism and to European solidarity in distributing asylum-seekers across member states.

Many Eastern Europeans are disappointed in what the transition from communism to the EU has brought them. Although national income in Poland has almost doubled since its accession to the EU in 2004, and the vast majority of Poles now enjoy greater prosperity, a wealthy elite has profited disproportionately from the transition to a free market economy. They are doing even better. This has fuelled scepticism about the success of European cooperation.

Two crises as catalyst

Citizens' individual freedom of choice and independence have never been this great. At the same time, their own responsibility and need for self-reliance have increased just as much. While this may be fine for them as consumers and tourists, for example, it can be significantly more threatening in their capacity of employee with a "flexible" contract and a stagnating salary. People with a good education, exceptional talents, financial security and wide network are generally able to cope with these developments. But a growing number of people have the feeling that they are gradually losing grip on their social environment and are being left behind. They are disappointed in the mainstream political parties for failing to find an effective answer to these threats at a national and European level.

Two international crises have acted as a catalyst for this undercurrent of dissatisfaction. The first was the financial and economic crisis of 2007-2008 and the subsequent Great Recession (Ewijk & Teulings 2009). Only through the injection of large quantities of government money in the

US and Europe was it possible to prop up the international financial system. Just as in the 1980s, rising public sector deficits forced governments to make sweeping economic reforms and cuts in spending on the welfare state. The bill for the crisis was thus presented not to those who had caused it but – once again – to those sections of society that had already been hit hard by high levels of unemployment, the collapse of the housing market, pension reductions and wage cuts.

The second catalyst was the refugee crisis, the full extent of which became clear in 2015 when large numbers of refugees entered Europe in a short space of time, mainly from the Middle East. This severely tested public support for the reception of asylum seekers throughout Europe. The protest consists of three elements. First, the reception of refugees makes great demands on scarce public resources, which have to be generated by society as a whole. Many people regard it as unjust that the national welfare state, which has already been severely scaled back, is used to benefit outsiders when many of the country's own nationals have difficulty making ends meet. Second, opponents fear the threat posed by the influx to their national identity and way of life. Finally, there is the fear that potential perpetrators of terrorist attacks may slip into the country along with the refugees.

In this perfect storm, created by two mutually reinforcing crises, electoral opportunities have been created for new movements that combine the left-wing emphasis on social protection with right-wing ideas about national sovereignty and national identity. This is precisely what many anti-establishment movements in Europe are doing. Although their ideas are at odds with the principles of democracy under the rule of law, this does not seem to deter their supporters. More and more members of the public have the sense that rights apply mainly to "other people" and not to themselves. From here it is only a short step to seeking to restrict those rights. That international treaties and institutions stand in the way only fuels public distrust in the international legal order and in global international cooperation (Roth 2017: 2).

The erosion of democracy under the rule of law

In Poland, Hungary, Russia and Turkey, a majority of the population has opted for a more authoritarian form of government. At first glance, these countries can still be classed as democracies. Elections are held regularly, in which multiple political parties take part. Voters are relatively free to elect their representatives. The composition of parliament reflects the outcome of the election and the representative assembly fulfils its task as legislator. However, the functioning of the institutions of democracy under the rule of law is hindered by measures taken by those in power to appropriate the system of government.

First, we can see an undermining of democracy's *electoral* dimension. Electoral legislation is amended in such a way as to benefit the ruling political parties, for example by giving them better access to the media (particularly state media), redrawing boundaries of voter districts ('gerrymandering'), dividing up residual seats or changing parliamentary electoral procedures. As a result, it is becoming increasingly difficult for the opposition to win elections.

In addition, the *constitutional* dimension of democracy is also being eroded. In these countries the ruling parties attempt to shape public opinion and make it harder for critics to air their views. One way in which they do this is by curbing press freedom. Measures are taken to limit the diversity of media channels and restrict open and public debate. Civil society organizations and educational institutions that give voice to opposing views may also face funding restrictions or suffocating red tape. In Russia and Hungary civil society (human rights) organizations are portrayed as "foreign agents" and are required to state in their publications that they receive foreign funding. Russian NGOs can be closed down without warning because their offices are suddenly found to be in breach of draconian health and safety legislation.

Attempts are also being made to get a grip on the judiciary in order to limit its ability to function independently. In

Poland and Hungary this has been done by modifying the appointment procedures or lowering the standard retirement age, thereby effectively forcing potentially critical judges to step down.

Finally, legal and other measures are taken to curb the legal protection afforded to those who hold dissenting views (i.e. different from those of the numerical majority) and immigrants, particularly (cultural) minorities, dissidents, academics and artists. Such measures may take the form of restrictive regulation or intimidation. The government purges currently sweeping Turkish society are the most striking example of this trend. Another is the Russian legislation criminalizing propaganda aimed at minors about "non-traditional sexual relationships" – i.e. homosexuality. Still another is the attempt by the Hungarian government to pass new legislation in order to bring about the closure of the Central European University in Budapest.

What can we do?

It is important to be realistic. There is no ready-made solution with which to reverse the erosion of democracy under the rule of law; the root causes of social alienation are simply too complex. Globalization and technological advances are a given in today's world. A united, international approach is needed in order to ensure that the benefits are felt by the majority of the population.

We should not write off countries like Poland, Hungary, Russia and Turkey. On the contrary. The individuals and organizations there that are working to promote democracy deserve our support. Quite apart from any moral imperative, it is also a matter of enlightened self-interest. Governments that respect their citizens' human rights are less quick to resort to hostile behaviour on the international stage. It is also important for countries to be able to count on the quality of each other's legal systems, not only in the context of police cooperation and counterterrorism, for example, but also when it comes to economic relations. After all, confidence in constitutional stability and in fair and effective courts is a basic condition for a good investment climate.

There are various ways in which the Netherlands (and other EU countries) can invest in democracy under the rule of law.

1. Social diplomacy

Above all, it is up to society itself to realize the values of democracy under the rule of law. This requires a long-term dialogue with civil society organizations, opposition movements and institutions that can translate international human rights to the national level. This can be achieved with the help of what we might call “social diplomacy”. Knowledge and experience can be shared through internships, exchanges and contacts between parliaments, political parties, academics, teachers, police officers, judges, lawyers, ombudsmen, independent media and artists. It could be very useful, for example, for a judge, prosecutor or lawyer from Croatia or Romania to see how a fraud case or employment dispute is dealt with in France or the Netherlands. In addition, educational contacts in the field of citizenship could be encouraged, particularly among young people. In the past the Netherlands has invested in such “people-to-people” and “profession-to-profession” contacts, but these were abandoned too quickly when the countries in question joined the EU. To truly support people in those countries we need to redouble and sustain these efforts.

2. Europe at the service of its citizens

The European institutions must be visibly and tangibly at the service of citizens. Many people have no clear idea of what exactly European cooperation has done for them. What is more, most are unfamiliar with the Council of Europe, while that organization is the preeminent human rights organization in Europe, including in socioeconomic terms. The Legal Affairs Committee of the Parliamentary Assembly of the Council of Europe has noted that Italy, the Russian Federation, Turkey, Ukraine, Romania, Hungary, Greece, Bulgaria, Moldova and Poland “have the highest number of non-implemented judgments and still face serious structural problems” (PACE 2017: 15). This is cause for grave concern. Within the Committee of Ministers, countries must have the courage to call

each other out for these failures. The Netherlands and other like-minded countries should take the initiative in this regard. If necessary, technical assistance can be offered as well, in the framework of the social diplomacy programme, as outlined above.

3. European dialogue on the rule of law

The individual member states must also hold each other to account for the mutual rule of law obligations they accept on acceding to the EU. Too many are still hiding behind the European Commission in its role of enforcer of EU legislation. This only gives fresh ammunition to governments that complain of unlawful interference by unelected Commission bureaucrats. The Polish government’s personal attacks on Commission vice-president Frans Timmermans are a particularly egregious example of this. If members disregard the EU’s common values, the problem is above all a political one, and it requires a political rather than technical solution. A dialogue on this issue is needed at the level of ministers and heads of state and government.

European solidarity includes member states holding each other to account and adopting a firm stance when necessary. Countries cannot be allowed to enjoy the fruits of EU membership while flouting the principles and obligations under the rule of law that membership also entails. In this respect it is highly disturbing to see the Hungarian government launching an anti-EU billboard campaign in spring 2017 with the slogan “Stop Brussels!” when the country receives € 4.5 billion a year in subsidies from the very same “Brussels”. The same goes for Turkey, which is receiving financial support for the reforms required for EU membership while the government is suppressing any form of dissent in society. These EU resources could be better spent on social diplomacy. In the upcoming EU budget negotiations, therefore, the award of EU subsidies should be linked to criteria concerning democracy and the rule of law.

Public participation in an illiberal democracy

What place is left for critical citizens to influence policy making in an illiberal democracy? And how are the authorities likely to respond to such calls for public participation? This essay explores three scenarios: (1) critical citizens can be suppressed and persecuted by the government; (2) they can be encouraged to use whatever is left of existing democratic institutions to influence public policy; or (3) they can be invited by the government to participate directly in public policymaking through such instruments as referenda or public consultations. Leaders in illiberal democracies know this, and will use it to their advantage.

Introduction ¹

When democracies become more illiberal, civil liberties decline and the space for civil society shrinks. What possibilities are left for critical citizens to influence policymaking in an illiberal democracy? This essay examines ways in which the authorities of an illiberal democracy are likely to react to calls from the public to participate in policymaking, and what such citizens can do in response.

¹ This article builds on Otto Spijkers, 'The world's citizens get involved in global policymaking – global resistance, global public participation, and global democracy', in *Inter Genes: McGill Journal of International Law & Legal Pluralism*, 1 (1), pp. 18-29; and Otto Spijkers and Arron Honniball, 'Developing Global Public Participation (1) – Global Public Participation at The United Nations', in *International Community Law Review*, 17 (3), pp. 222-250.

There are essentially three ways for a government to respond, and these will be addressed in turn. First, the government can suppress critical citizens, even label them as enemies of the state, and imprison them or worse. This scenario is analysed briefly in the next section.

The second option for the government is to refer critical citizens to existing democratic institutions as the means to influence public policy, *i.e.* to remind them that they live in a democracy, and that they may establish their own political party, get themselves elected, and become involved in politics in this traditional way.

The third and final option is to welcome the direct participation of active citizens in public policymaking, and look at ways to involve them directly in public policymaking by organizing referenda, public consultations, etc. If means of participation are chosen which are not too intrusive, the government of an illiberal democracy might appear to allow critical citizens to take part in policymaking, without in practice allowing them any meaningful influence over public policymaking.

Of course, the three options can be employed simultaneously, in response to calls for participation of different groups of citizens. Some citizens might have lost all confidence in their government, and seek to overthrow it via public participation. Other citizens might wish to participate only to provide some constructive criticism to the government, in an attempt to improve its policy.

This contribution only deals with illiberal democracies, and thus we first need to properly introduce this term. Michael Walzer once suggested to “never define your terms”, because it can only get you in trouble (Becker 2008). At the same time, some basic descriptions of illiberal democracy and related terms might be helpful.

Illiberal democracies have been described as “democratically elected regimes, often ones that have been re-elected or reaffirmed through referenda [which] are routinely ignoring constitutional limits on their power and depriving their citizens of basic rights and freedoms” (Zakaria 1997: 22).² An illiberal democracy is still a democracy. Elections, which are more or less fair and uncorrupted, do take place in an illiberal democracy, and the elected government does represent the interests of the majority of the population (Zakaria 1997: 22). This makes such a regime democratic, as opposed to authoritarian.³ Illiberal democracies are not liberal, *i.e.* there is no protection of individual freedoms,⁴ or minority rights,⁵ and no system of checks and balances between the government, parliament and courts (Zakaria 1997: 26).

An illiberal democracy thus contains features of a dictatorship, despite the elections, and is often on its way to becoming one.⁶

First option: suppress different forms of non-violent resistance

If a government does not allow any direct participation of critical citizens in public policymaking, and instead tries to silence them through oppression, then all they can do is resist the government from the sidelines. An act of resistance is an act of defiance or opposition to established power structures. Acts of resistance challenge the political system from the outside; such acts are in no way part of the system (Lahey).

Such resistance can involve violence: citizens can take up arms and literally fight the government. Violent resistance can be suppressed by violence, employed either by the police or military. It can even take the shape of a civil war. Such methods to curtail popular unrest are used less and less frequently, although it must be admitted that there still are examples – think of the current President of the Philippines, Rodrigo Duterte. Most modern-day dictators seldom employ them. As Dobson noted in 2012, “today’s dictators understand that in a globalized world the more brutal forms of intimidation – mass arrests, firing squads, and violent crackdowns – are best replaced with more subtle forms of coercion” (Dobson 2012: 5). Brutal oppression might be recorded and put on YouTube, which could lead to global condemnation of a regime. For these reasons, a more sophisticated approach has come into vogue.

2 For a critique, see Jørgen Møller, ‘A Critical Note on “The Rise of Illiberal Democracy”’, in the *Australian Journal of Political Science*, Vol. 43, No. 3, September 2008, pp. 555–561.

3 Juan J. Linz, ‘Authoritarianism’ entry, in Joel Krieger (editor), *The Oxford Companion to Politics of the World* (2 ed.), Oxford University Press, 2001: or: ‘Authoritarianism’ entry, in the *Philip’s World Encyclopedia*, Oxford Reference Online, 2004.

4 ‘Liberalism’ entry, in Joel Krieger (editor), *The Oxford Companion to Politics of the World*. See also Andrew Reeve ‘Liberalism’ entry, in Iain McLean and Alistair McMillan, *The Concise Oxford Dictionary of Politics*.

5 ‘Democracy’ entry, in Iain McLean and Alistair McMillan, *The Concise Oxford Dictionary of Politics* (3 ed.), Oxford University Press, 2009. See also ‘Democracy’ entry, in Joel Krieger (editor), *The Oxford Companion to Politics of the World*.

6 Lincoln Allison, ‘Dictatorship’ entry, in Iain McLean and Alistair McMillan, *The Concise Oxford Dictionary of Politics*. See also the ‘Dictatorship’ entry, in Craig Calhoun (editor), *Dictionary of the Social Sciences*, Oxford University Press, 2002. Many people see Turkey or Hungary as prime examples of an illiberal democracy. See e.g., Ali Hakan Altınay, ‘Will Erdogan’s Victory Mark the Rise of Illiberal Democracy?’, in the *New Perspectives Quarterly*, Volume 31, Issue 4, October 2014, pp. 36–39; and William A. Galston, ‘The Growing Threat of “Illiberal Democracy”’, in the *Wall Street Journal* of 3 January 2017.

There exist many forms of non-violent resistance, of which public protesting – which can take different forms such as marches, gatherings, occupations and hunger strikes – is perhaps the best-known (Sharp 2011).

Protesting is not the only type of non-violent resistance. Hacking of governmental computers is another, more modern type, which has become quite popular in recent times (Ortiz, Burke, Berrada & Cortés 2013: 32).⁷ Another type of non-violent resistance is to go on strike. Strikes can be employed as a means of non-violent resistance by civil servants, but also by employees of corporations. In the latter case, the strike affects the corporation most directly, but is aimed at – and does indirectly affect – the government.

How do the authorities of an illiberal democracy normally respond to such forms of non-violent resistance? Here, the difference between illiberal and liberal democracies clearly manifests itself. In liberal democracies, non-violent resistance is considered, in a way, part of politics. It is an additional check on government. For this reason, liberal democracies recognize, in their legal system, the right to strike. Some also recognize the so-called necessity defence. When the non-violent resistance is done in a proportionate way, and when it is the only means available to protect the citizens from a greater harm, then the act of non-violent resistance can be justified, and will not be punished. Is there an obligation for all states, including illiberal democracies, to recognize such a defence in their legal system? It has been argued that the right to resist can be based on international law, binding on all states, but that is still disputed (Boyle 1987; Lippman 1990: 349).

One way in which an illiberal democracy might respond to non-violent acts of resistance, is by labelling them

⁷ For some recent examples, see Julie Hirschfeld Davis, 'Hacking of Government Computers Exposed 21.5 Million People', in *The New York Times* of 9 July 2015; Aaron Short, 'Hack infects Russian government computers', in *New York Post* of 30 July 2016.

as criminal offenses, and by prosecuting and punishing them. Protests are often carefully planned and prepared by a relatively small group of activists, even when to the outside world they appear as spontaneous public outbursts (Dobson 2012: 229-23). One thus sees that the authorities in an illiberal democracy do their best to quickly identify and arrest these individual masterminds, for example by labelling them as terrorists or a threat to public order. Alternatively, sometimes the authorities persuade them to work constructively with the government ("if you cannot beat them, ask them to join you") (Carothers & Youngs 2015: 15).

Second option: encourage the public to use existing democratic institutions

When Fareed Zakaria was asked what critical citizens should do in an illiberal democracy, his reply was simple: they should establish a political party (Zakaria 2002: 45). In his view, "you cannot achieve sustained reform without political parties"; they are the ideal way to "transform mob rule into institutionalized democratic rule" (Zakaria 1997: 45). In short, his advice was as follows:

"For liberal elements within these countries [*i.e.* within illiberal democracies], it is not enough to be members of university groupings and civil society. You have to come together as a political party." (Zakaria 1997: 46).

Zakaria thus encouraged critical citizens to make use of the democratic means available in an illiberal democracy. The problem with this approach, and Zakaria was very aware of this, is that this strategy is often doomed to fail, especially in democracies where the political parties represent particular religious or ethnic groups, instead of different ideologies, or views on how the state should be governed. If the critical citizens belong to a religious or ethnic minority, they will never be able to get enough votes to influence public policy. On the other hand, depending on the rules of procedure the majority imposes on political minorities, if a political party gets even a handful of votes, it will still have a place in parliament,

and it will have the opportunity to add something to the agenda, propose new legislation, oppose acts proposed by government, and so on.

If the political opposition is marginal, then a political party cannot counterbalance the power of majority rule in an illiberal democracy. The government might allow the minority to campaign, get elected, and speak in parliament, but the overwhelming majority of the ruling party will still be able to dominate, overpower, ridicule, intimidate and isolate the opposition. And if voting is organized along ethnic or religious lines, then the political party of the opposition is in any case unlikely to constitute a serious threat to the majority rule, regardless of the strength of its arguments.

The authorities in an illiberal democracy normally control the media, and this makes effective and meaningful opposition very difficult. It is common knowledge that most people do not watch live coverage of the parliamentary debates – if available – but instead rely on coverage of these debates in the media. In an instructive blogpost on “How to build an illiberal democracy”, Eszter Zalan emphasized the importance of controlling the media. The authorities of an illiberal democracy normally take firm control of the state media, and put as many constraints and obstacles on private media as they can. In this way, the state media are simply turned into a “propaganda machine” (Zalan 2016b), and the private media are intimidated, discredited and ignored, in pretty much the same way as the political opposition itself.

In response, the political opposition can seek the support of the outside world. They can give speeches abroad and mobilize support for their cause. The media is a helpful tool to do so. International media can also be used by the political opposition to influence its own population. Think, for example, of the way in which Chinese artist Ai Weiwei used Twitter to speak also to his Chinese followers.⁸

⁸ When China realized his success, they closed his account. See BBC, “China artist Ai Weiwei “banned from using Twitter””, 24 June 2011.

Third option: seemingly embracing public participation

Direct public participation can be described as the process through which people with an interest in policymaking are provided an opportunity to get involved in some way (Spijkers & Honniball 2015: 223). In liberal democracies, direct public participation is generally seen as inherently valuable: you cannot decide on people’s fate without first providing them an opportunity to get heard. And thus, you allow them to participate directly in the policymaking process. This obligation can be derived from the importance of respect for individual autonomy and dignity.

In an illiberal democracy, respect for individual autonomy is not considered important, and thus there is no inherent value in direct public participation. Having said this, there might be instrumental reasons for the authorities of an illiberal democracy to allow a limited degree of public participation. For one, allowing critical citizens to participate directly can numb them, mollify them, or lull them to sleep. In other words, involving critical citizens in policymaking, under conditions that are controlled by the government, might prevent them from protesting, marching, going on strike, rioting, looting, or taking up arms and igniting a civil war.

It can also improve the image of the government vis-à-vis the outside world, and thereby prevent the state from being subjected to economic sanctions. But the importance of having a good reputation in international affairs should not be overstated. Indeed, not all governments of illiberal democracies are equally interested in having a good reputation abroad. Some such governments might consider “the mere threat of foreign intervention [as] a useful foil for stirring up nationalist passions and encouraging people to rally around the regime” (Dobson 2012: 9). And states do not intervene simply because an illiberal democracy establishes itself. Intervening states must have other interests as well. As Dobson noted, “interest in democratic change – even a change that might remove a reviled strongman [is often]

balanced by competing interests or fears of the unknown” (Dobson 2012: 8).⁹

Direct public participation can be organized in such a way that it makes those participating in it, even when they are in some way tricked into it, feel responsible for the policy that is made (Burton 2009: 267). The policymakers might also become more popular with the public at large, when they are seen to allow ordinary citizens to participate in their work. This is especially true for those citizens that did not make use of the opportunity to participate, and thus have no idea that it is in reality only a mockery, a parody of public participation, a charade.

In my earlier research, I have distinguished four types of public participation that the policymaker can choose from (Spijkers & Honniball 2015). Participants can simply be offered a policy, which they can then approve or disapprove, for example via a referendum. I labelled this the “rubber stamp” type of public participation. If the authorities carefully select the participants invited to vote in such a referendum, they can relatively easily control the outcome of it. The most effective way to retain control over any type of direct public participation, so it seems, is to carefully select the participants.

Participants can also be invited to define the problem to the policymaker through panels or online surveys, so that the latter can more effectively look for the solution.

Participants can also be used as consultants, because of particular expertise they have. This I called the “advisory” type of direct public participation. The policymaker can then ask these participants for specific technical expertise. If the questions are very technical, delineated and specific, there is very little leeway for the participant to use this type of participation to get politically involved.

Participants can also be allowed to take the initiative and take the lead in the making of policy. This is the “co-produce” type of participation. This type of direct public participation leaves much discretion to the participants, and is not very attractive for a government – like a government of an illiberal democracy – whose goal is to retain control over policymaking.

If critical citizens are provided, by the authorities of an illiberal democracy, with opportunities to participate directly in the making of public policy, they should make use of the opportunity. When doing so, however, they should always look critically at their role. Are they simply being used to improve the image and legitimacy of the authorities, or can they exert meaningful influence? In the latter case this means that they can make a difference, even if the influence is marginal. It is still better than no influence at all.

Conclusion

In this contribution, I have identified three different ways in which critical citizens might try to challenge the politics in an illiberal democracy. They can engage in violent or non-violent resistance; they may try to establish their own political party; or they might demand some institutionalized form of direct public participation. For each of these scenarios, I have described ways in which the government of an illiberal democracy is likely to react to such calls for political participation, in an attempt to curtail or co-opt them. Acts of resistance can be suppressed, by violence or otherwise. The establishment of a political party poses little threat if it can be kept under control. Oftentimes, the authorities of an illiberal democracy have the support of a majority of the population, and then an opposition party with minority support can be tolerated as it is always outvoted. And one often sees that requests for direct public participation are granted by the authorities of an illiberal democracy in such a way that they amount to little more than a façade (window dressing), instead of meaningful political influence. This raises the question as to what critical citizens, NGOs and other agencies can do to outsmart this

⁹ Dobson was referring to the United States here, but this applies more generally.

type of manipulation? If illiberal democracies become smarter and subtler, what could then be the response of critical citizens? Above, I have looked at different ways in which critical citizens can act against such manipulation by illiberal regimes. Briefly, the answer is that they must seek support beyond the state's borders. Political opposition, no matter how marginal, can be very influential if it has the popular backing of the outside world. And some of the means the illiberal democracy uses to control its population – think of the media – can also be used by critical citizens to influence world public opinion, and, ultimately, local public opinion as well.

Of tyrants and democracies

Unelected governments lack a democratic mandate, and therefore rely on a mixture of fear, force and propaganda to stay in power. As such they are vulnerable when their people begin to realize that their leaders are more afraid than they are. Paradoxically, governments that possess at least some measure of democratic legitimacy may be less vulnerable to public pressure so long as their popular base holds. How can government critics and human rights defenders best frame their message of resistance?

Fifty-seven years ago, in an article in *The Observer* that became the launchpad for Amnesty International, Peter Benenson described what he called the “sickening sense of impotence” that many feel at injustices around the world.

And yet, Benenson argued, we have more power than we realise. “If these feelings of disgust all over the world could be united into common action, something effective could be done [...] When world opinion is concentrated on one weak spot, it can sometimes succeed in making a government relent.”

That “sickening sense of impotence” is familiar today, as we see the violations and crimes against humanity unfolding around the world, from Syria to Myanmar. Equally familiar, hopefully, is our understanding that something *can* be done when people come together, “united into common action”, as we have seen in countless examples in past years.

One paradox, however, which we must increasingly confront is that it may be simpler to achieve change in the context of a repressive one-party system than in countries where rights are ignored or trampled daily, but which enjoy the formal trappings of democracy.

Benenson’s argument, that large numbers of people coming together could achieve powerful victories, was met by some with deep scepticism when he first promoted the idea. One critic described it as “one of the larger lunacies of our time” (quoted in *Power* 2001).

But Benenson was not alone in making the argument that change is possible, if enough people demand it at the same time. Czech dissident (and later president) Václav Havel wrote his landmark essay, *The Power of the Powerless*, in 1978. Taking the example of a hypothetical greengrocer who decides to “live in truth”, Havel posed the question of what might happen if millions came together to demand change. Might the whole house of cards fall down?

Even framing such a question, in the depths of the Cold War, led to Havel being mocked for being, as he put it later, “a Czech Don Quixote”. And yet: just eleven years after *The Power of the Powerless* was published, millions of Czechs did indeed stand up and demand change. As a journalist at the time, I witnessed how an apparently invincible one-party regime imploded, within the space of a week.

In Poland, too, a mixture of dogged courage and protest brought about remarkable change. In 1985, dissident Adam Michnik wrote from inside his jail cell about the creative energy he had seen when briefly freed as part of an amnesty the previous year. He described the “barren twilight” of the totalitarian world, and argued: “I am sure that we shall win. Sooner or later, but I think sooner, we shall leave the prisons and come out of the underground on to the bright square of freedom.” With optimism like that, Michnik, too, was dismissed as a dreamer. And yet, just four years later, multi-party elections ended the communists’ stranglehold on power in Poland, thus paving the way for the end of the Soviet bloc.

Politicians and analysts have often expressed scepticism about the possibilities of change in an authoritarian context, because a regime is “too tough”. Again and again, that analysis has been proved wrong. Thus, ahead of the Tahrir uprising in 2011, the United States ambassador to Cairo was among those who insisted it was “unrealistic” to imagine that the Egyptian President, Hosni Mubarak, could be peacefully overthrown. And yet, after just eighteen days of courageous protests – with much violence on the government side, and almost none by the protesters – Mubarak was forced to step down. In the words of a popular Egyptian anthem: “We broke all boundaries/Our weapon was our dreams.” The news from Egypt today is bleak. But that does not negate the achievements of that time.

Unelected governments, and governments which stay in power through elections of dubious legitimacy, rely above all on a mixture of fear and propaganda to remain in power. As the Polish poet Stanisław Barańczak noted, in his poem “Those Men, So Powerful”: if or when we “begin to be a little less afraid” we may become convinced that “they are the ones who are afraid the most” (Barańczak 2008). That poem was written in 1978, when the Iron Curtain was expected to remain in place for ever. But Barańczak was right, not just in the Polish context but with respect to other regimes. The men with the guns and tanks are, in the end, the ones who are afraid the most.

Thus, when protests began in East Germany in summer 1989, Erich Mielke, the head of the Stasi secret police, insisted the political calculations were simple: “It’s a question of power, and nothing else.” In other words: if you have all the guns and all the tanks, you win. In the short term, Mielke seemed right. But, as events would soon show, he was gloriously wrong.

Ahead of a planned protest in Leipzig on 9 October 1989, the authorities publicly threatened a rerun of the Tiananmen Square massacre in China, just four months earlier. The idea was that people would be so frightened they would stay at home. But, despite and because of the threats, more Leipzigers came out than ever before. In the face of such courage, the East German leadership caved. The Berlin Wall fell a month later. And the world changed. It might seem logical to suppose: if repressive dictatorships can be seen to crumble in the face of mass protests, then democratically elected leaders will surely retreat even more quickly in the face of pressure from discontented citizens.

There have, of course, been countless examples where significant change has been achieved in democratic contexts – with campaigning, with protests of all kinds, with quiet diplomacy and advocacy, on subjects ranging from the death penalty to LGBT rights, from racial equality to international justice.

These victories have been achieved within the framework of democratic pressures, often against what seemed initially to be insuperable odds. Politicians feel the pressures of the street and of their mailbags, with strong opinions expressed by citizens who (after all) can vote the politicians into oblivion if they choose to do so. In short (to state the blindingly obvious): it is usually easier for activists to gain a hearing with elected leaders than to be listened to by a repressive regime. And yet, the fact that unelected governments lack all democratic mandate (and know that they lack it) is also their Achilles’ heel. For, as the poet rightly observed, “they are afraid the most”.

Meanwhile, from the United States to Hungary, from Poland to the Philippines, a growing number of elected leaders feel comfortable in denying facts, trampling basic rights and demonizing others. For them and their supporters, this is both normal and acceptable – and has too few political repercussions. These leaders feel able to thrive politically, even if their values may seem rotten on many different levels, and pave the way for increased instability.

Viktor Orbán, the Hungarian Prime Minister, publicly praises the appetite for “illiberal democracy”, which in his case includes stoking xenophobia. In Recep Tayyip Erdogan’s Turkey, the elected government has cracked down on independent voices of all kinds. Both Orbán and Erdogan remain under too little pressure at home.

* * *

The achievements of the past sometimes contrast sharply with the challenges of the present.

In 1986, when millions came out on the streets of the Philippines to protest against the apparently immovable Ferdinand Marcos, the president responded: “I have all the power in my hands to eliminate this rebellion at any time we think enough is enough. I am not bluffing [...] Let the blood fall on you.” It soon became clear, however, that Marcos was indeed bluffing. Marcos and his shoe-loving wife Imelda clambered into a helicopter and escaped into exile, in a powerful early example of what became known as “people power”.

Today, the Philippines has as its President Rodrigo Duterte, who likes to boast of the official violence that he has unleashed – 7,000 shot dead by police so far, and rising. Duterte has praised Hitler and (in this most Catholic of countries) has described the Pope himself as “son of a whore”. In short: a thug. And yet, many voters remain impressed by what they see as his “strength”. In elections in 2016, Duterte gained six million more votes than his nearest rival, on a record turnout. Those who are

repelled by his brutal tactics do not always find enough support to create change.

Poland, too, sees contrasts between past and present. Three decades after Polish protests achieved the impossible, helping to end communism throughout the Soviet bloc, the government of Jarosław Kaczyński (neither President nor Prime Minister, but more powerful than both) seems proud to defy the rule of law, including dismissing judges at will. When the government is criticized by Europe’s top legal experts, Kaczyński and his colleagues simply double down, describing criticisms as “legally absurd”.

In Russia, there are similar contrasts. In 1991, peaceful protesters successfully challenged a hardline coup, backed by tanks – which, in turn, led to the collapse of the Soviet Union. Today, by contrast, President Vladimir Putin shows no inclination to back down. Human rights defenders are endangered – described as “foreign agents”, a phrase which harks back to repressive Soviet days. But Putin’s own popularity with millions of Russians remains real.

And, in the world’s most powerful democracy, we see the same forces at play. Since January 2017, millions of Americans have demonstrated against Donald Trump, across the United States. But Trump is comfortable in the knowledge that his electoral legitimacy remains intact, and that his core supporters remain loyal. (Hillary Clinton won a larger slice of the popular vote, of course, and there are questions over the extent to which a foreign power influenced the election outcome – but the bottom line remains: Trump received a majority of the Electoral College votes, which determines the outcome of the election.) President Trump ignores many of the basic tenets that we take for granted in a democracy – respect for truth, basic division of powers between the executive and the judiciary, and more. As we have already seen, he, too, can – so far, at least – refuse to compromise, and still survive. In his own words: “I could stand on Fifth Avenue and shoot somebody and I wouldn’t lose voters. It’s, like, incredible.” On that point at least, few would disagree.

* * *

Even those who have gained almost unlimited power, and who are themselves at the heart of the wealthy and privileged establishment, often like to portray themselves as the “underdog” fighting on behalf of those who have been left behind.

Trump and other populist leaders often echo the confident hypocrisy of President Buzz Windrip, the central character in Sinclair Lewis’s 1935 dystopian novel, *It Can’t Happen Here*, which has re-entered US bestseller lists in the past year.

“I do want power, great, big imperial power,” Windrip tells an adoring rally. But not, of course, for himself: “No – for you!” Windrip praises the “forgotten men”, ignored by the Washington establishment. His supporters, in turn, talk (in language that sounds all too familiar today) of what they see as a putrid elite.

In Poland, Kaczyński and his allies played on similar resentments of what was perceived as a corrupted elite. They successfully created a narrative that the liberal and moderate conservative governments which ruled Poland for the past twenty-five years – rebuilding the economy from its communist ruins, and achieving membership of the European Union, which brought significant benefits to the country – were all part of a grand conspiracy against the nation.

Millions of Americans (and millions more around the world) have protested against Trump and will no doubt continue to do so. As importantly, however, millions continue to see Trump as the True Solution, who will (to quote his own slogan) “make America great again”. The possibility of impeachment is constantly hanging in the air. But so, too, is the possibility that Trump might win again in 2020, especially if his challenger fails to win over those who voted for Trump last time and who believe – even against all the evidence – that Trump is economically and socially “on their side”.

Elsewhere, too, populist leaders enjoy a degree of support, even as they seek to stoke xenophobia, or to justify extrajudicial killings, or tar human rights defenders (otherwise known as those who risk their lives to make their country a better place), with the label of “foreign agent”, “traitor” or “terrorist”.

* * *

In these circumstances, the challenge for the government’s critics becomes how to frame the message of resistance so that it does not alienate those who might, with luck, become part of the solution. Reaching across the political aisles to find surprising allies is key to achieving change.

Erica Chenoweth, co-author with Maria Stephan of a fascinating study called *Why Civil Resistance Works*, notes that, in order to create change in a repressive context, it is not necessary for all or even half the population to take action (Chenoweth & Stephan 2011). According to Chenoweth’s analysis, you need “only” 3.5 per cent of the population to achieve victory. Three and a half per cent is, of course, not nothing. It is equivalent to a million people in Poland, three million in Egypt or the Philippines, eleven million in the United States.

None the less, Chenoweth’s observation (and the statistical analysis it is based on) reflects what Havel had already suggested, forty years ago: that the house of cards can collapse, at any point. It does not need the whole country to demand change, at the same time. Three or four in every hundred can be enough.

One key challenge is that it remains unclear if Chenoweth’s calculation, so powerful in the context of ending a repressive regime, can also work in a context where leaders have been duly elected – and where, unlike in Barańczak’s poem, they are therefore not “afraid the most”.

Even in this dark context, there is a glimmer of good news for those who seek change, in that public protest continues to have impact, even in robustly illiberal

democracies. In 2016, the Polish government backed down from its most radical proposals on banning abortion, in response to protests across the country. In 2017, President Andrzej Duda briefly broke ranks with Kaczyński's government, when he vetoed proposals which sought to neuter the constitutional court. Duda's sudden (if limited) discovery of backbone was influenced by the crowds who had gathered, with their candlelit vigils and banners for freedom and democracy.

We also see that the separated powers of democratic institutions can help keep the authoritarian instincts of elected leaders at bay. In the United States, litigation by the American Civil Liberties Union and others has played an important role in forcing presidential climbdowns, to Donald Trump's own indignation.

Trump likes to vent at "so-called" judges for their "disgraceful" judgements (in other words, judgements which call out his failures, for example the initial roll-out of the travel ban). Judges themselves, however, seem unimpressed by the bluster. In October 2017, the courts dealt Trump's own indignation another blow when judges ruled that the White House ban on transgender people serving in the military was illegal.

The Fourth Estate plays an important role, too. When organizations like *The New York Times* and CNN can be described by the US President as "the enemy of the American people", it is notable that editors feel no inclination to bend the knee towards the White House in response. The "failing *New York Times*" (to quote the presidential refrain) has seen its readership rise significantly, during the past tumultuous year. Digital subscriptions have doubled.

More broadly, some of the same rules which are relevant when protesting against unelected regimes apply when protesting in the context of illiberal democracies, too. In Slobodan Milošević's Serbia in the 1990s (where elections were flawed, at best), the tendency of critics to attack each other with as much ferocity as they attacked

Milošević was striking. Only when opposition leaders put their egos partly to one side, after more than a decade of Milošević's rule, was he finally defeated (and sent to The Hague, to be prosecuted for war crimes and genocide). That lesson about the importance of united opposition is as relevant now as it was twenty years ago.

So, too, is the importance of creativity in helping protest succeed. Srdja Popović is a Serb activist and former leader of Otpor, the student group whose creative imagination played a key role in unseating Milošević. He is also co-founder of the Centre for Applied Non-Violent Action and Strategies (CANVAS), and has coined the word "laughtivism" to describe the often underestimated importance of humour to increase the possibilities of change. The lesson has not been lost on the protesters in the United States, where humour has become a typical part of the protesters' mix. As we have repeatedly seen, in repressive regimes and authoritarian democracies alike, there is nothing a powerful leader loathes more than being laughed at.

Above all, the sense of self-confidence – easy to describe, much harder to achieve – is key.

In Russia, where regular elections take place in the context of an authoritarian state, opposition leader Alexei Navalny told a supporters' rally in 2017: "Our biggest enemy is the belief that we cannot change anything." That partly echoes the words of an Egyptian activist, Asmaa Mahfouz, who in 2011 told her fellow-Egyptians that those who did not wish to go out because they believed there would be too few people were themselves part of the problem. "Whoever says it is not worth it because there will only be a handful of people, I want to tell him, 'You are the reason for this... Sitting at home and just watching us on the news or Facebook leads to our humiliation.'" Her home-made video went viral. Millions of Egyptians went out, and the rest was history.

Politicians in illiberal democracies are skilled at appealing to the lowest common denominator, in stirring

up xenophobia and mistrust of others. Even those who make it their life's work to defend people's rights are in danger of being portrayed as "the enemy". Thus, the director and chair of Amnesty International in Turkey, along with other activists, were all accused in 2017 of being "terrorists", with possible jail sentences of up to fifteen years. The charges, if not so serious, might have seemed almost laughable. And yet, with the encouragement of inaccurate reports in the state media, many Turks found the charges credible.

Helping people understand why intolerance is bad for everybody – not just for the "other" – is something that activists must learn to communicate better. In that sense, the Trumps, Dutertes and Erdogans of this world sometimes have it too easy.

One thing the new era may prove to have in common with the old is that protests can have more impact even than protest leaders themselves dream, in seeking to confront apparently insurmountable challenges.

During the civil rights movement in the United States in the 1960s, the prospect of achieving victory on any of the supporters' core demands was uncertain, at best. But the activists' courage achieved unexpected and extraordinary things, with further impact that has cascaded down the generations.

Diane Nash was a key leader of the inspiring protests which confronted segregation and the entrenched racist attitudes in a range of contexts across the American south. Half a century later, reflecting on a country which had elected a black President just a few years earlier, Nash looked back on those turbulent and historic times. "I sometimes wonder if we in the civil rights movement had left it to elected officials to desegregate restaurants and lunch counters, to desegregate buses... I wonder how long we would have had to wait. And I think, truly, that we might still be waiting." Black Lives Matter, and the many police killings which have catalysed that movement, reminds us that the continuing injustices embedded

in the system are far too many. But the historical achievements of that earlier era are remarkable, too.

None of us can be sure what our individual voice or action can achieve. But, to quote Václav Havel, speaking long after one-party communism collapsed in his own country: "It is up to all of us to try – and those that say individuals are not capable of changing anything are only looking for excuses."

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Cover image: Russian President Vladimir Putin, right, and Hungarian Prime Minister Viktor Orbán attend a joint news conference following their talks in the Novo-Ogaryovo residence outside Moscow, Russia, Wednesday, Feb. 17, 2016.

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In 1997 Fareed Zakaria published a provocative essay in *Foreign Affairs* titled “The rise of illiberal democracy” in which he labelled illiberal democracy a growth industry. Twenty years later illiberal democracy – although not always of the variety described by Zakaria – has become firmly entrenched and seems increasingly legitimate throughout the world. Most clearly in states such as Hungary, Poland, and Turkey, where liberal democracy initially seemed to be on the rise.

It is often argued that democracy, the rule of law and human rights are necessarily intertwined and interdependent, since it is difficult for one of them to fully function without the presence of either other. If democracy is turned against the rule of law and human rights, the survival of all three is in peril. The existence of healthy democracies and a robust rule of law is essential for the survival and success of the global human rights movement. The spread of illiberal democracy therefore creates significant questions about the future of human rights. This essay volume discusses how and why illiberal democracies are established, and what this means for human rights advocacy. The essays analyze the current transnational turn towards illiberalism, and discuss how governments and NGOs could respond.

With contributions from Arch Puddington, Takis Pappas, Sabrina de Regt, Eszter Zalan, Ela Goksun & Sasha Polakow-Suransky, Daniel Hegedüs, Robert Dekker & Tineke Cleiren & Ernst Hirsch Ballin, Otto Spijkers, and Steve Crawshaw.

