

The challenge of illiberalism in the European Union

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Abstract:

This chapter discusses how the European Union offers a favorable political configuration for illiberalism, particularly given its transformative impact on national sovereignty and democracy. It explains how illiberalism developed specific features within the EU political framework that combines electoral democracy with the rule of law, while describing the rise of right-wing populist parties in Europe following the continent’s migration crisis.

This chapter highlights that although Europeans may have progressively lost faith in institutions, political parties and governments, they remain attached to the ideals of liberal democracy, to the EU, and even more so to the euro. It describes the rise of illiberalism in the broader context of the European crisis of liberal democracy and underlines the impact of an emerging European public space on its extension.

Furthermore, this chapter explains how Europeans have tried to mobilize a series of resources and tools in order to tackle this challenge of illiberalism in the EU over the last 20 years, based on a “learning by doing process” combining moral, institutional and financial reactions and judicial, diplomatic, partisan pressures and sanctions.

Introduction

European illiberalism is a crisis of liberal democracy, whose initial signs can be traced to a rise in the populist vote against the backdrop of globalization. This current crisis is the result of a historic configuration created by the collapse of communism. Intensification of economic competition, geopolitical instability (Götz 2021), demographic changes through aging and immigration (Hadj Abdou 2021), and the crisis of the welfare state are eroding support for mainstream parties on both the right and the left in favor of populists who embody a new opposition (Buruma 2002), attracting the working classes with an anti-system rhetoric (Blokker 2021). Popular sovereignty is pitched against representative democracy, intermediary bodies, and courts, presented as obstacles controlled by “elites,” “the political caste,” or an “oligarchy”

that ignores or manipulates the will of the people (Bertoncini 2017). Between the late 1980s and early 1990s, populists took on the theme of globalized elites accused of being in the pay of world financial powers, of betraying their people and their country, etc. These populist parties flourished and have continued to multiply ever since.

The European Union offers a favorable political configuration for populists. First, the European Union is a perfect target for the populist discourse. As the animating principle of European integration is to organize an “ever closer Union” between Member States (Solemn Declaration 1983), it is easy to accuse governments of giving away national sovereignty; it is also easy to accuse them of betraying the people by transferring their powers to entities which are not accountable to the national populations, such as the European Commission or the European Central Bank. Second, the political benefits derived from Euroscepticism are significant and give populist actors particularly high visibility in the public sphere and in the European Parliament, which provides them with significant institutional and financial support (Lorimer 2020). However, it is in terms of political resources that populists derive the greatest advantage from the European Union, allowing them to present themselves as the only real opponents, those who carry a double opposition to the political establishment: both to the way in which the national government conducts public affairs and to the European Union.

Europe’s crisis of liberal democracy developed specific features due to the existence of the European Union. Membership of this bloc requires each Member State to adopt an institutional and political framework that combines electoral democracy with the rule of law. The so-called “Copenhagen criteria” were proclaimed by the European Council in 1993, with an eye to the potential membership of all the former communist countries, echoing the values and principles enshrined in the EU treaties. Article 2 of the Treaty on European Union defines a fundamental corpus of values, which, if not observed, constitutes a breach of the membership contract: *“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”* Any illiberalism observed in a Member State therefore constitutes a challenge both to national liberal constitutionalism and the European legal and political order.

This chapter starts by tackling the electoral rise of right-wing populist parties in Europe following the continent’s migration crisis. Populist actors increasingly use new forms of media, i.e. social networks, to directly target their audience, and therefore more easily spread misinformation. Populist parties in the West and illiberal states in the East may incessantly critique the European Union, though they could not exist without it. While Europeans may have progressively lost faith in institutions, parties, the government, and more, they remain attached to the ideals of liberal democracy, to the Union, and even more so to the euro.

The illiberal offensive in Europe: competing forces

The turning point: 2015-16

In contrast to the optimism of the 1990s, the first two decades of the twenty-first century have been marked by a wave of unease, with the United Kingdom becoming the first country to make the decision to leave the European Union (Brexit) in June 2016. An illiberal cycle appears to be ascending in Europe. Positive outcomes for right-wing populists have been seen in several

elections, notably in Austria with the election of Sebastian Kurz of the Austrian People's Party where he won 31.5% of the popular vote (December 2017), France, where Marine Le Pen secured a place in the second round of the presidential election with 33.9% of the popular vote for the National Rally (formerly: National Front) (May 2017), the Alternative for Germany (AfD) winning 94 seats in the national parliament in Germany with 12.6% of the popular vote (September 2017), and the reelection of Miloš Zeman in the Czech Republic with 51.4% of the popular vote (January 2018). Or consider Italy (March 2018), an EU founding country where, for the first time since 1945, a populist coalition government won with Matteo Salvini as deputy Prime Minister and interior minister with 37% of the popular vote in the Chamber of Deputies and 37.5% in the Senate, Sweden (September 2018) where traditional parties lost support while the radical right-wing Sweden Democrats picked up 17.5% of the vote, and even Spain (December 2018) where, again for the first time since the end of the Franco era, a far-right party, Vox, emerged on the electoral landscape (The PopuList n.d.) winning 12 seats in the Andalusian regional election. Other left-wing populist parties such as Podemos in Spain and Syriza in Greece may be considered as anti-system parties but are not categorized as illiberal here.

Opposition to hosting refugees during the 2015 refugee crisis provided illiberal governments with significant political leverage. In 2015 in Poland the Law and Justice Party (PiS) was able to attract voters from the right and centre-right through its opposition to the quota system supported by the governing Civic Platform (Jaskulowski 2019). In 2015, the PiS won while denouncing the unequal impact of European integration in Poland, calling to make it less liberal and more social. Indeed, in 2018 only 48% of Hungarians considered it their duty to welcome refugees fleeing war and poverty into their country (compared to 62% on average across the European Union) and more than two-thirds of the population expressed concern about immigration (66%) and Islam (68%). In Poland this number climbed to 78% of respondents worried about Islam (Reynić 2019, 52).

In a bid to outdo their far-right opponents, illiberal governments seized on the issue of national sovereignty and hardened their anti-EU stance (Bustikova and Guasti 2017). Populists and far-right parties spread virulent anti-immigration rhetoric. In January 2016 the Czech finance minister (who later became Prime Minister), Andrej Babiš, gave the following reasons for his opposition on Twitter: "Today, when you see countries that are more developed than us and whose tradition of hosting immigrants is more established than ours failing to integrate migrants from the Middle East and Africa, you should not be surprised that I will not let in any refugees. Honestly, I do not believe they can be integrated into our society" (ibid). Despite this strong example of xenophobic speech, CEEu countries are not major refugee destinations – Hungary may be a point of entry as it has an EU border, but it is not often the final stop, and the Czech Republic is among the least religious countries in Europe (Evans and Baronavski 2018). Still, a lack of Muslim immigrants has not stopped these governments from politically capitalizing on the issue, to the point where the European Commission warned about misinformation being spread by the Hungarian government.

The 26th Krynica Economic Forum was held in September 2016 amidst the fallout from Brexit. Eurosceptic movements writhing from the Eurozone and migration crises were strengthened (Taggart and Szczerbiak 2018). Viktor Orbán and Jarosław Kaczyński, who were not in favor of Brexit, intensified their activism. In Krynica they called for their two countries to inspire each other, marking a transition from national dissent to a larger-scale movement (Sierakowski 2016). This was no longer about advocating a departure from the EU, but about a group of Member States organizing opposition to European Union's liberalism. The election of Donald

Trump in the U.S. in the fall of 2016 caused the enthusiasm generated by the Krynica forum to peak among populists, who took full advantage of the refugee crisis. These leaders' public statements and events went in a symbolic new direction centered around reinventing Europe along Christian or Catholic lines in a very public fashion, such as Orbán's shift from illiberal to Christian-illiberal democracy (Reuters 2018). In a more polarizing and divisive perspective, he went to the lengths of creating a forum in Rome with Legutko in January 2020 at the National Conservatism Conference devoted to "God, Honor, Country: President Ronald Reagan, Pope John Paul II, and the Freedom of Nations – A National Conservatism Conference."

Support for democracy predominates

Survey data reflect a degree of receptiveness to authoritarianism in European opinion, as demonstrated by a 2017 Pew Research Center survey (Wike, Simmons, Stokes, and Fetterolf 2017) revealing a non-negligible level of support for the illiberal option. When asked the question "Would a system in which a strong leader can make decisions without interference from parliament or the courts be a good or a bad way of governing this country?", the highest level of support among the ten European countries included in the survey came from the Italians (29%), British (26%), and Hungarians (24%). Support for this type of system was lower in other countries, including Poland (15%).

The 2018 *Democracies Under Pressure* (Reynié 2019) survey conducted in 42 countries including 28 EU Member States revealed a high degree of receptiveness to illiberalism. A third of Europeans (32%) believe that "Being led by a strongman who does not have to worry about Parliament or elections" is or would be a "good" ("very good" + "good") way of governing a country. The mean level of support for an authoritarian style of government was 40% in ex-communist EU countries, although results were lower in Hungary (34%) and even lower than the EU mean in Poland (23%).

It is difficult to interpret these data. Indeed, it is evident that the majority of Europeans simultaneously still support representative democracy: 68% of European respondents believe that "there is no substitute for the democratic system, it is the best possible system" versus 32% for whom "other political systems might be just as good as the democratic system." Admittedly, in the 11 ex-communist states, support for the authoritarian option is significantly higher (40%). However, when the emphasis of the question is switched from democracy as a general category to determining whether "Having a democratic political system with an elected Parliament that controls the government" is or would be a good or a bad way of governing a country, 87% of Europeans responded "a good way" ("good" or "very good") and the mean score for the 11 ex-communist countries is similar (86%).

Survey data clearly confirm that there is popular support for an elected government in illiberal democracies, but there is weaker popular support for the constitutional constraints associated with liberal, constitutional democracy, such as minority rights, opposition rights in Parliament, or constitutional review. This is in line with the self-identification of these regimes as "illiberal democracies" and their routine submission to elections to reinforce their democratic credentials through (carefully engineered) elections (Kaltwasser and Van Hauwaert 2020).

Let us assume that some of the illiberalism expressed in European opinion originates not from a rejection of representative democracy and the rule of law, but rather from dissatisfaction with the way in which democracy works, which is a very different matter. Indeed, in the

Democracies Under Pressure survey, 50% of Europeans responded “poorly” (“poorly” or “very poorly”) to the question of “Would you say that democracy in your country works well/poorly?”. This figure indicating disappointment with democracy rises to a mean score of 64% in the 11 former Soviet bloc countries. The explanation for illiberalism in public opinion being linked to democracy working poorly rather than a rejection of democracy is confirmed by the high level of support shown for public freedoms. Almost all European respondents stated that: “the ability to protest, march in the streets and dissent” is “important” (“important” or “very important”), for a properly functioning democracy (88%). The same applies to “the ability to take part in the decision-making process” (95%), “the ability to vote for the candidate of your choosing” (96%), and “having the right to say what you think” (98%). The figures are just as high for the 11 ex-communist countries.

Illiberalism in European societies: The broader context

Illiberal crisis in Eastern Europe or European crisis of liberal democracy?

The much-touted contrast between a liberal Western Europe and an illiberal Central and Eastern Europe should also be put into perspective. Ivan Krastev’s interpretation is relevant in this regard. In his view, the crisis in Eastern Europe is not a crisis of democratization, but rather a crisis of liberal democracy, which he attributes to economic failures and a penchant for rejecting globalization and multiculturalism. This is combined with the effects of European and EU decline on the world stage. Krastev concludes that the political crisis affecting Central and Eastern Europe is not fundamentally different from the crisis seen in Western Europe. In his view, although Central and Eastern Europe are more vulnerable with less democratic experience and weaker institutions, the crisis remains the same (Krastev 2016).

In European societies the swift, irreversible, and most dramatic effects of aging have only recently started to be felt. From 2015 onwards Europe’s mortality rate will have exceeded its birth rate (Eurostat 2019). An aging population leads to the rise of a conservative culture, characterized by risk aversion, sensitivity to security issues, and greater sensitivity towards change, differences, and, specifically, immigration (Reynié 2019). The aging population can only be offset or mitigated by positive net migration and, in the case of Europe, people coming from Muslim countries, creating an ethnic and cultural reshuffle of societies. This leads to times of existential insecurity and bewilderment, filled with misunderstandings and intercultural conflicts as seen in the heated debates on multiculturalism (Chin 2021), freedom of the press (Culloty and Suiter 2021), gender equality, the right to express one’s sexual orientation freely (Pető 2021; Mancini and Palazzo 2021), etc.

It is in this European context that a political phenomenon, which we can designate as “heritage populism” (Reynié 2016), is growing (Blokker 2021; Berezin 2021). Some Europeans fear losing their material heritage, i.e. their standards of living, but others, and also the same people, fear losing their cultural heritage, i.e. their lifestyle. Both lead to the emergence of heritage populism. Some Europeans impoverished by globalization and confused by the erosion of established identities have become captivated by this new form of populism. The welfare state and the “Heimat” (homeland) seem to be threatened at the same time. Furthermore, in Europe, Islam and the status of minorities have become more controversial, focusing on the practice of female genital mutilation and forced marriage, the wearing of headscarves and burqas in public, halal meat, street prayers, building minarets and mosques, or private dispute settlement according to Sharia (Hadj Abdou 2021; Mancini and Palazzo 2021).

Tensions are marked by public contestation as in the cases of the Rushdie affair, i.e. the controversy surrounding the publication of *The Satanic Verses* (1988) resulting in Ayatollah Khomeini issuing a fatwa against the author and multiple murders, attempted murders, and bombings ensuing thereafter, the Mohammed cartoons in Denmark (2004) followed by violence, such as the assassination of the Dutch director Theo Van Gogh in 2004, the deadly shooting at the French satirical paper Charlie Hebdo in 2015, or the traumatic series of Islamist attacks in Europe since 2004 (Reynié 2019). Fear of material and cultural destabilization has led to a demand for protection encouraging the development of conservative thinking, which goes significantly beyond the left-right divide. The electoral stronghold of this heritage populism is thus potentially very broad because the combination of the two types of existential fears, giving it an inter-class sociological basis.

People are calling for protection of their European way of life, their “Heimat”; they are calling for political regulation and control over the course of events rather than a retreat into nationalism. The idea of a retreat into nationalism is a misinterpretation of the current situation in Europe. Thus, in the European political landscape we do not find a significant trace of this historical nationalism associating nationalist passion with the desire to go to war against one or more countries, or even the world. This nationalism previously existed, though it is no longer.

In the West, in a very different way, this new heritage populism has managed to hijack European political values. In the wake of the controversy triggered by the anti-Muslim stance (ascribing the term “Islamofascist”) in the later work of Oriana Fallaci (Fallaci 2002; 2006), a feminist member of the Italian anti-fascist resistance movement during the Second World War turned journalist, and Pim Fortuyn, an openly homosexual Dutch former Marxist and university professor of this sociology, who created his own political party and actively advocated for closing Dutch borders to Muslims (and who was later assassinated by a left-wing environmentalist and animal rights activist), populists recycle their rejection of immigration and Islam as a tool to promote gender equality, freedom of speech, freedom of conscience, secularism, etc., allowing them to make significant electoral progress. In the East, at the end of communism, economic globalization was seen as a promise of improvement to living standards. Yet these post-Communist countries have also seen their national cultural (and constitutional) identity threatened by the European Union. First, the idea that there is a liberal European ideological agenda (Krastev and Holmes 2020), through which the founding countries of the EU would impose onto new Member States a system of values arising from cultural liberalism: LGBTQ rights, abortion rights, gender equality, etc.; secondly, the idea that the European Union would like to force the countries of Eastern Europe to welcome refugees, in particular refugees from Muslim countries. In other words, post-Communist countries faced the threat of having a multicultural society imposed upon them, though this issue may not be limited to East-Central Europe but expanded to Western Europe and the mainstream politicians (David Cameron, Angela Merkel, and Nicolas Sarkozy) that have denounced multiculturalism (Reynié 2013; Malik 2015; also Chin 2021).

The thesis of a European crisis of liberal democracy can also be documented by mentioning the emergence of crises indicative of the beginnings of an illiberal swerve (instead of being a symptom of a general negative trend, like backsliding) (Bustikova and Guasti 2017). The Catalan crisis of 2017-18 is a possible example of this swerve. The Catalan separatists, who advocated separatism through a referendum that was nevertheless unconstitutional, claimed that the decision to become independent was legitimate and sovereign on the grounds that it resulted from a people’s vote. Symmetrically, in a kind of illiberal dialectic, the way in which the

government in Madrid repressed this attempt at separatism could be regarded as an erosion of the rule of law (BBC 2019b; Balcells 2019; Fernandez Sola 2020). Regardless, considerable allowances were made for Spain by the European Union and Member States, some of which were clearly concerned by a separatist precedent being set, which would threaten them directly. While pragmatism and caution appear necessary when faced with such crises, they feed into a perception that principles are being adapted to circumstances.

Furthermore, in the United Kingdom the result of the June 2016 referendum has prompted a political crisis during which the prorogation of the UK Parliament was overturned by the Supreme Court in 2019 (*Miller II*), leading to attacks, notably from Conservatives, who condemned it “a constitutional coup” (BBC 2019a). Later in 2019, the Conservative Party won reelection with a program that promised reforms to bring an end to the political uses of judicial review. The scope of these unprecedented attacks is amplified by Prime Minister Boris Johnson’s strategy, crudely pitting the people against Parliament, in an effort to sideline the parliamentary opposition and its powers of inquiry.

However, the situation in Western Europe must be distinguished from that in Eastern Europe. In Western Europe, among populists, we find the themes of the loss of sovereignty and a national identity threatened by immigration; these themes are central to a new political party, Chega, formed only in 2019 by André Ventura in Portugal. Yet, on the one hand, illiberal populists are not in power in Western democracies and, on the other hand, they almost always accept or do not oppose cultural liberalism, as evidenced by the inability of populist parties in Europe – Rassemblement national (France), Lega (Italy), FPÖ (Austria), Portugal (Chega) and the AfD (Germany) – to oppose the euro. By contrast, in Eastern Europe these themes constitute an illiberal program that is implemented by parties that have come to power in Hungary in 2010, Poland in 2015, Croatia (with the consistent reign of the Croatian Democratic Union (HDZ)) (Mujanović 2019), as well as Serbia, North Macedonia, Montenegro, Bosnia and Herzegovina, Kosovo, and Albania (Kapidžić 2020; also Sotiropoulos 2021). However, some argue that the extent to which the Visegrád countries specifically are participating in “democratic backsliding” is slim (Bakke and Sitter 2020). Moreover, a recent YouGov survey shows that support for certain populist ideals (Henley and Duncan 2020) decreased in 2020 in Denmark, France, Germany, Italy, Poland, Spain, Sweden, and the United Kingdom, though a strong-immigration stance remained. Furthermore, there has also been a rise in the belief in Covid-19-related conspiracy theories, notably that fatality rates have been exaggerated and concern over a vaccine, in France, Germany, Greece, Hungary, Italy, and Poland (Henley and McIntyre 2020).

The majority still supports the European Union

In some analyses the rise of illiberalism is explained by the spread of nationalist opinion. On the contrary, however, the data shows support for the EU and the euro, which constitutes a barrier to populists seeking power and a serious limit on their ability to take action once they enter government.

According to the *Standard Eurobarometer 91* (July 2019), 44% of Europeans trust the European Union. This is the highest level of trust seen since the fall of 2009 (48%). In 20 Member States (versus 17 in the fall of 2018) (Eurobarometer 2018), the percentage of people stating that they trust the EU was higher than the percentage of those responding that they distrust it. Trust in the EU was 50% or above in 18 countries (versus 14 in the fall of 2018),

notably in Bulgaria (55%, 2 points higher than in the fall of 2018), Hungary (55%, 7 points higher than in the fall of 2018), Poland (54%, 7 points higher than in the fall of 2018), and Romania (52%, 2 points higher than in the fall of 2018). While trust in the EU was lower among Croatians (46%), Slovenians (45%), and Slovaks (44%), these figures nevertheless reflect a satisfactory level of support for the Union.

The 2019 European elections confirmed these public opinion data. Electoral turnout was up significantly from previous elections at 50.6%, a figure last exceeded in 1994 (56.6%). A study conducted for these elections calculated the weight of European electorates irrespective of the electoral weight of retrospectively formed parliamentary groups. This revealed that the total for populist-right and far-right lists was 46.9 million votes, i.e. 23.7% of all votes cast and 11.8% of all European voters registered to vote (Lano, Grelon, Delage and Reynié 2019). It is worth mentioning that the high turnout was the result of increased youth participation (up 14 points for under 25 year-olds and up 12 points for 25-39 year-olds compared to 2014) (Standard Eurobarometer 91.5 2019; European Sources Online 2019), but we also saw increased support for the radical right, Greens, liberals, and declining support for traditional political parties both on the left and on the right (Wiebrecht and Downes 2019).

The rise of illiberalism checked by the popularity of the euro

Euro-scepticism has been defined broadly as skeptical or negative attitudes (stemming from the sovereign debt crisis, mistrust in political parties and institutions, etc.) towards the EU and the process of European integration (Taggart 1998). Continued support for the euro is a further sign that levels of nationalist opinion are low, since support for the euro implies accepting the abandonment of countries' monetary sovereignty in favor of the post-national construction of the eurozone (Bergbauer, Jamet, Schölermann, Stracca, and Stubenrauch 2019). According to the *Standard Eurobarometer* 93 (July-August 2020), two-thirds of respondents (67%) in all 27 Member States are for "A European economic and monetary union with one single currency, the euro." In the eurozone, according to the *Flash Eurobarometer* 481 (October 2019), 65% of the respondents think having the euro is a good thing for their country. This is the highest proportion since 2002 when this question was first asked. It is also the majority view in 18 area countries (out of 19). And these results come after a long series of challenging events: the 2004, 2007, and 2013 enlargements, the failure of the European Constitutional Treaty (2005), the 2008 financial crisis, and the migration crisis of 2015/16.

No measurement of citizen support for the European Union is complete without also measuring their support for the common currency, the euro. Complex, remote, and disembodied as it is, the European Union is a topic for the elite. Why support it? To perpetuate peace, prosperity, and democracy. Though it may be obvious, Europe's performance is nonetheless forgotten or understated, invisible or assimilated, weakened or contested. Money, on the other hand, is a simple everyday object, omnipresent and tangible. The euro is not just the single European currency, it is more importantly the only European object that circulates every day, passes through all our hands, and is a universal unit for measuring the value of things, work, wages, pensions, assets, scandals, differences, and inequality. The euro is the people's Europe, everyday Europe. It is the Europe of property, of the tangible assets that tens of millions of individuals endeavor to build for themselves, their enterprises, to invest in their life projects, their retirement, families, children and grandchildren. It is because it is the best guarantee of the value of property that the euro is popular. And it is much more popular than Europe.

The majority of Europeans who responded to our survey (Hamilton and Reynié 2019, 114) want to keep the euro (62%), while less than a third (29%) believe that we should return to former national currencies and simultaneously feel that doing so would not be possible. A small minority (9%) consider abandoning the euro both desirable and feasible. The single currency therefore remains widely popular. In most countries, the level of support for the euro is higher than that of Europe.

Support for the euro is particularly high among retirees (69%). It is also very high across most social categories (74% among senior executives and those with intellectual professions, and 61% among skilled employees and those with intermediate professions). It is only in the minority among unskilled employees and workers, but is still found among nearly half (49%) of respondents in this category. Attachment to the euro therefore appears to be strong and is a major element of electoral resistance to populist positions, including among the working classes.

Populist hostility to the euro is seen by voters as a threat to their own interests. Anti-European discourse may be well received because it is general, anti-system, and hostile to the elites. It is an expression of protest that costs nothing; discourse against the euro, however, amounts to asking citizens to put their interests at risk. Such is the limit of populist undertakings. Parties that persist in fighting the euro are finding that their electoral base is limited; they can only expand by moderating their criticism of the euro... or by rallying to support the European currency, which would lead them to join the European idea! In the eurozone countries that experienced a strong surge in the populist vote between 2016 and 2018, opinion has remained strongly in favor of the European currency: in France (66%), Austria (65%), Slovenia (63%), Germany, Slovakia, and the Netherlands (62%) and Italy (54%). The case of Italy is particularly revealing given that support for the euro was at just 45% in March 2017, one year before the general elections, only to climb to 54% eight months after the victory of a populist coalition, as if the Italians sought to declare the limits of governmental populism. The euro therefore confirms its role as a great protector of European political order. It effectively reduces the political risk that national general elections have tended to reintroduce in recent years.

The future of illiberalism will be determined in part by the European public space

The future of illiberalism will be determined in part by the European public space giving rise to phenomena that generate the Europeanization of public opinion, and even demonstrations for the cause (Habermas and Derrida 2003). This is one of the lessons of the European mobilizations against the military intervention in Iraq. Between January and April 2003 nearly 3,000 demonstrations took place in 90 countries, bringing together more than 35 million demonstrators. The largest gatherings were in Europe. The demonstration on February 15, 2003, commented on by Habermas and Derrida, was the summit of this planetary protest: on that day, nearly 900 demonstrations brought together more than 13 million citizens, 80% of whom marched in European cities (Reynié 2005).

The Europeanization of electoral populism, even the affirmation of an illiberal culture visible through the considerable success of certain books, for example those by Oriana Fallaci, or Thilo Sarrazin, former member of the Executive Board of the Deutsche Bundesbank and author of the controversial book on Muslim immigrants *Germany Abolishes Itself* (Sarrazin 2010) that denounced German immigration policy and attacked multiculturalism; he was then forced to

leave the Social Democratic Party due to pressure from European leaders at both the national and Union levels. Once elected, populist leaders inevitably take on the pressure exerted by public opinion. The European Union's resistance to illiberalism will therefore not depend only on legal and institutional mechanisms, but will also depend on the state of European public opinion and in particular, of course, on its electoral expression.

Illiberal regimes are known to limit opportunities for criticism and accountability. Attacks on journalists and the press are often accompanied by attempts to control (and when possible, take over) the media (Culloty and Suiter 2021; Sotiropoulos 2021). These attacks are a result of populism “as an organization-mobilization strategy rather than as an ‘illiberal’ ideology per se” (Kenny 2020). At the same time, the rise of European populism and illiberalism was also caused by the disintegration of the media system, due to the proliferation of television and radio channels, audience fragmentation, and the brutal intrusion of new forms of media. Populist political actors and their pundits use social media to reach their audience directly, i.e. without the editorial controls of traditional media (Schroeder 2018), which is similar to what populist parties inflict onto governments: they denounce them for their endogamous elitism, corruption, manipulation of the audience, etc. This new media context is therefore particularly favorable to populists, as they revel in criticizing the media, in over-personalizing their public speeches and in mobilizing support (Hameleers et al. 2018) for populist causes through crafting anti-elitist identity frames (Bos et al. 2020) (although recent scholarship questions the widely assumed echo chamber effect of social media in cementing support for populist parties) (Boulianne, Koc-Michalska, and Bimber 2020). Moreover, their use of social media, unchecked by traditional editorial practices, allows for the dissemination of disinformation (Brattberg and Maurer 2018).

The illiberal offensive is also being led within civil society (also Bolleyer 2021). The relationship between civil society and illiberal governments must not be simplified by focusing exclusively on the shrinking civil society space. An illiberal civil society exists, it is actively supported by illiberal governments, and it provides the Polish, Hungarian and, to a lesser extent, Slovakian and Czech governments with significant support (Novakova 2020). Illiberal civil society plays a key role in implementing government programs, spreading government propaganda, and endorsing a populist climate. Political organizations, civic associations, and churches invariably target vulnerable groups such as ethnic minorities and refugees. They encourage religious conservatism, campaigning against abortion rights and the demands of the LGBTQ community in particular. Such clashes have crystallized into an offensive against the European Union. PiS member and MEP Ryszard Legutko provided an example of this rhetoric when he accused the European Union of pursuing a cultural agenda aimed at eroding the traditional values of family, Church, and nation by promoting immigration, feminism, LGBTQ rights (such as gay marriage), and, in a broader sense, multiculturalism (Legutko 2016).

The EU facing illiberalism

The EU's vulnerabilities

The EU was rather vulnerable to the rise of illiberalism for several complementary reasons:

- its great openness to the world – economic, social, cultural, etc. – which makes it very susceptible to political trends observed in other countries, including the U.S.;
- the unprecedented demographic downturn across the continent is fueling widespread identity anxiety, which can be captured by populist and authoritarian political forces; these forces have launched a battle for Europe's future largely based on identity politics

and targeting the EU as a threat to the values – particularly religious values – of European civilization by promoting multiculturalism, immigration, sexual freedom, etc. (Chopin, Fraccaroli, Hernborg, Jamet 2019).

- the EU's hybrid political nature as a “federation of nation states” (to use Jacques Delors' expression), based on a pooling of national sovereignties that gives rise to multiple frictions between states, especially when it is in the interest of their leaders to heighten tensions with Brussels;

- last but not least, because of the economic focus of European integration, which tends to fuel a quite materialistic perception of EU citizens (in particular as consumers), by EU institutions, its representatives have more difficulty in connecting with their sentiments, which are more directly targeted by populist leaders.

The EU suffers from a democratic asymmetry between its institutions (Commission and Council) enjoying real, but indirect, democratic legitimacy and democratically-elected national government leaders. The EU accession process and subsequent daily routine of membership automatically increase the powers of the executive, while weakening the impact of (domestic) constitutional accountability processes to check its prerogatives (see Meyerrose 2021).

Illiberal actors have used their EU membership to strengthen their political influence, both in their own countries and beyond. Decision-making processes that require unanimity or a qualified majority enhance the powers of illiberal vetoplayers on the European scene. At the micro-political level illiberal actors have been able to strengthen their influence by joining European political collectives bringing together other actors sharing the same ideological orientations, political groups in the European Parliament, on the one hand, and pan-European political parties, on the other. In 2019 Fidesz was the only member of the European People's Party to increase its electoral support. The result is a complex protective network across EU institutions, party families, and processes that produces an authoritarian equilibrium, normalizing the presence of illiberal political actors inside the Union (Kelemen 2017; 2020).

Illiberal national governments have been able to take advantage of the benefits of the single market (in terms of investment, jobs, purchasing power, free movement, and ensuing remittances, etc.) and the massive financial transfers made by the Union budget (up to several GDP points per year) (European Commission 2018; Bertonecini 2020, 6). Leaders such as Viktor Orbán or Jarosław Kaczyński are too aware of the attachment of their fellow citizens – and allied market players – to these benefits to dare question their country's membership of the EU (Scheiring 2021; Ganga 2021).

The European and international media have greatly amplified the relative influence of illiberal actors by systematically reporting on their progress and current or potential victories, not only in Poland or Hungary, but also in Austria, Italy, or the Netherlands. This overexposure reflects the fact that the electoral victory of an illiberal party is a political event in and of itself, whereas the more classic victory of a mainstream party or coalition does not make headlines (Hameleers and Vliegthart 2020). Some argue, however, that newspapers in most countries “do not overrepresent populist actors and tend to evaluate them negatively,” though admitting “we still find abundant populist content in the news” (Wettstein, Esser, Schulz, Wirz, and Wirth 2018). It also stems from a form of journalistic laziness relying on the binary opposition of “illiberal” versus traditional parties, whereas a more refined analysis of national political life in the EU 27 would require an account of their multiple shades of gray.

All in all, the “illiberal” or “populist” parties have thus been given far more political influence than their actual institutional influence warrants – after all, they only govern in a few EU countries. The parties of the conservative right have been particularly tempted to adopt their own diagnoses and remedies or, at the very least, to make potential allies of such folk in European debates. But it is ultimately the internal opposition between illiberal parties that has often been an obstacle to their cohesion and influence: it is by nature difficult to form an “international group of nationalists,” as was pointed out by the weak solidarity shown between them on the issues of relocating asylum seekers or during budget negotiations.

The EU's attempts to control the rise of illiberalism

Faced with the emergence of illiberal Member States, the EU has found itself in the uncomfortable situation of the shepherd having “left the wolf in the sheepfold.” While the EU can indeed impose respect for the rule of law and civil liberties on candidate countries (on the basis of the so-called Copenhagen criteria), it does not have the means to sanction them in a similar fashion once they have become Member States. This is why Europeans have tried to mobilize a series of resources and tools in an attempt to stem the rise of illiberalism in the EU over the last 20 years, based on a three-stage process of “learning by doing.”

In the first stage, the advent of an Austrian government composed of representatives of Jörg Haider's extreme right-wing FPÖ party in 1999 led to moral and political condemnation. The other 14 Member States froze their diplomatic relations with Austria for 6 months before requesting a report on the state of civil liberties, which appeared satisfactory. Conservative Chancellor Wolfgang Schäussel constantly asked that his government be judged on its actions, which proved to be in line with the rules and principles of the EU. At the time, moral and diplomatic reactions were all the more lively as they served as a warning shot to the 15 or so candidate countries negotiating their forthcoming accession to the EU. Until the late 1990s, the draw of the EU was considered sufficient to ensure the democratization of accession countries, but Slovakia was the first to test the bounds of an illiberal swerve in Mečiar's authoritarian nationalism between 1994 and 1998. This initial crisis demonstrated the corrective role played by European Union membership: fearing that it would be excluded from the first wave of enlargement in 2004, Slovakia opted to resume its process of democratization (Bustikova and Guasti 2017).

This crisis also shed light on the relative weakness of EU institutions to respond to national political developments and the fragility of the democratization process in ex-communist countries that were about to join the EU (Grzymala-Busse and Innes 2003; Guasti, Siroky, and Stockemer 2017; Vachudova 2015). It is in this context that the Amsterdam Treaty (1997) and Nice Treaty (2001) clearly aimed at hardening the EU's response to challenges to its founding principles (Article 2) by Member States via introducing a special procedure to sanction potential violations of the rule of law by Member States (Article 7), with the hope that it would be sufficient to prevent authoritarian regression post-accession (Sadurski 2009-2010).

This second stage relies on a mechanism that can lead to the suspension of the targeted Member State's voting rights in all of the EU's decisions, but not their exclusion. It can be triggered by one-third of the Member States, the European Commission, or the European Parliament (with a 2/3 majority), but its actual use appears to entail significant difficulties. Some authors have criticized the Commission for relying too heavily on dialogue and the persuasion of cooperating Member States for bringing states guilty of illiberal swerves back on the track of liberal democracy (Pech and Scheppele 2017). The decision to take such action falls on the Council of

the European Union and requires the unanimous support of its Members, excluding the challenged state. However, the limits of this mechanism are clear from the reluctance shown by Council members and the veto recently pledged by each of the two states involved (Poland and Hungary) in a bid to protect each other from the adoption of Article 7.

Of all the European institutions, the European Parliament appears most involved in tackling the illiberal shift. The European Parliament's insistence resulted in a major interinstitutional conflict with the Council on account of the Article 7 procedure the Parliament initiated against Hungary.

The limitations of the existing mechanisms have been apparent from efforts by the Commission, Council, and Parliament to develop workarounds to the Article 7 TEU process, inventing various peer-to-peer mechanisms that involve all Member States (instead of singling out wrongdoers) premised on the cooperation of offending Member States (instead of sanctioning them). The latest improvement introduced by the Commission in 2019 involves an annual report on each Member State, followed by peer-to-peer discussions, so as to raise alerts under a monitoring process covering all Member States – whose efficiency and impact remain to be confirmed.

The difficulty of activating the sanctions provided for in Article 7 of the TEU has prompted a number of European political actors to envisage a third stage in their fight against illiberal actors: that of using the weapon of financial sanctions against countries that do not respect the principles of the rule of law (Rubio 2020; Uitz 2020). The Commission's proposal on rule of law conditionality for spending aims to target countries such as Poland and Hungary, which happen to be important net beneficiaries of EU funds, especially in the field of territorial cohesion and agriculture. The idea is to “hit them in the wallet” in order to get them to respect the rule of law. However, given the unanimity rule applied for all major EU financial decisions on the creation or allocation of expenditures and resources, this conditionality proposal turned into a perfect blackmail opportunity for illiberal Member States, especially in the context of the need for the economic rescue package in the wake of the COVID-19 pandemic. Not only have they been able to oppose the adoption of the European multi-annual budget for the period 2021-27, but they have also delayed the launch of the Next Generation EU recovery plan, adopted by forceps by the heads of state and government in July 2020, but whose effective implementation requires ratification by the 27 national parliaments in the Union.

The German Presidency of the Council has had to try to find the least aggressive formulas possible to get a form of conditionality accepted (Rubio 2020), to which the European Parliament, also a decision-maker, has shown itself to be strongly attached. By amending the Commission's initial proposal the mechanism put forward effectively targets the essentially financial derivatives of membership (mismanagement of funds, conflicts of interest, corruption), i.e. it reaffirms the need to protect the Union's financial interests; a task already incumbent on the Commission and the Court of Justice. It also paves the way for possible sanctions targeting not only financial misbehaviors, but also more general breaches of the rule of law, based on a decision by a qualified majority vote.

The three stages of reactions of European institutions to “illiberal” practices or regimes have fueled a “co-owners’ crisis” from which it seems difficult to escape, since the States concerned are involved in the decisions to be made, and can moreover block dozens of other European decisions subject to the unanimity rule. Looking back over the last 20 years, this relative

impasse should encourage the most legitimate and effective reactions, particularly judicial, diplomatic, and partisan ones.

Judicial procedures do indeed provide for rather classic remedies and sanctions, which do not relate to the rule of law in general, but to specific and characterized breaches of EU norms and decisions. They rely on infringement actions brought by the Commission on a case-by-case basis, typically without mobilizing the founding values of the EU. Infringement action turned out to be the primary means of protecting judicial independence from illiberal reforms: for example, in April 2020 the Court of Justice condemned Poland, Hungary, and the Czech Republic for their refusal to participate in the relocation of asylum seekers provided for by a decision of the Council of Ministers (made by a qualified majority) (C-715/17, C-718/17, and C-719/17, *Commission v. Poland, Hungary and the Czech Republic*). Following the forced departure of the Central European University from Budapest (it is now in Vienna), the Court also condemned Hungary in October 2020, stressing that the additional conditions imposed upon foreign higher education institutions to carry out their activities on its territory are incompatible with EU law, and in particular, academic freedom (C-66/18, *Commission v. Hungary*). Together with the judgment that found transparency requirements imposed on foreign-funded NGOs and their donors (C-78/18, *Commission v. Hungary*), these latest cases demonstrate the readiness of the CJEU to apply EU treaty provisions and the Charter of Fundamental Rights against illiberal legal reforms (see also Wyrzykowski and Ziolkowski 2021).

Diplomatic responses should also be used more by Europeans. Whereas they seemed to overreact in 1999 when a coalition government including the extreme right was formed in Austria, EU states now seem to be rather inert towards countries such as Hungary or Poland, beyond their moral and political disapproval. Rather than seeking to sanction these countries via the EU, its procedures, and funding, should they not return to the diplomatic pressure and sanctions they can exert themselves? These would consist both in reducing or even freezing bilateral cooperation and contacts, but also by ignoring the interests of Poland, Hungary, and illiberal governments as much as possible in all European negotiations.

Last but not least, partisan pressure and sanctions could undoubtedly have an equally important effect, though they are rarely resorted to. While the national leaders of the EPP had been able to distance themselves from Wolfgang Schäuble in 1999 (even though his government had not committed any reprehensible acts or statements), the EPP has long been reluctant to sanction Viktor Orbán, or exclude him from their ranks, despite the will expressed by some of their Member parties, particularly the Nordic ones. The electoral support Fidesz was able to marshal in 2019 has made any EPP sanction even more difficult. It was only when the EPP decided to modify its statutes in March 2021, so as to ease a possible suspension or exclusion of its members, that Viktor Orbán's party made the decision to leave it – which could be a game changer in the future¹. In contrast, Polish conservatives do not enjoy the solidarity of a powerful political family in the EU, since they sit in the “Conservatives and Reformists” group rather than the EPP. This could explain why the preventive phase of Article 7 was first triggered against Poland on December 20, 2017 at the Commission's request.

¹ Should Orbán's Fidesz party join the ECR group alongside Matteo Salvini's "Lega", this "illiberal" group could become the 3rd largest in the European Parliament and exert a more impactful influence on the EU's decisions.

Taking back control on what fuels popular illiberalism: Europe as a dual sovereignty

The difficulty met in dealing with the consequences of illiberalism must naturally encourage the EU to try and fix the causes of such illiberalism.

All over the world states are claiming their national sovereignty. Most, in reality, only manage to negotiate a relative and fragile independence. Only democratic states also recognize the sovereignty of the people. The democratic ambition is to achieve double sovereignty: that of free countries led by free citizens. In the democratic world the two sovereignties are intimately linked to one another. Without popular sovereignty, national sovereignty is tyranny; without national sovereignty, popular sovereignty is an illusion, even a lie.

What are the capacities of a democratic European state in the world today? How efficient is it? This is the question President Emmanuel Macron asked in his September 2017 speech at the Sorbonne, introducing the concept of “European sovereignty” (Macron 2017). Indeed, globalization radically alters the situation of states, and in particular that of European democratic states, whose capacities are threatened simultaneously by emerging national powers and by non-state powers, for example Big Tech, upon which European states have failed to impose tax obligations. Yet the power to levy taxes is considered one of the fundamental attributes of national sovereignty.

Europeans are faced with the question of whether national sovereignty alone will be sufficient to face the gigantic challenges of our time: power policies, financial instability, terrorism, climate crises, technological issues, pandemics, migration, trade agreements, energy issues, etc. Europeans are addressing the European Union with a request for an effective public authority capable of protecting them, but also giving them access to the world’s opportunities through investment programs responding to the problems of transport, defense, energy, telecommunications, innovation, research, environment, and solidarity, etc.

Conclusion

Populist parties in the West and illiberal states in the East accuse the European Union of being a supranational power that both contradicts national sovereignty and is responsible for its impotence. However, without this Union most European states would be unable to meet the expectations of their citizens. It is precisely when an elected power is unable to respond to collective aspirations that populists enter onto the scene. As an additional public power, the European Union is increasing the capacities of each of the countries of the Union to meet the expectations of its citizens. In this case, the European Union becomes the best bulwark against a wave of illiberalism engulfing the European continent. Resistance to the illiberal push will also depend on the ability of the European Union as an additional public power to strengthen the dual sovereignty, national and popular, of its Member States – while consolidating its own democratic foundations and functioning.

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