

Can the EU survive in an age of populism?

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9 January 2017

Another year has passed and another threat to the existence of the European Union is looming. The good news is that the greatest disruption of 2016, namely Britain's vote to exit the EU, appears manageable. The bad news is that both France and Italy face the prospect of a populist political victory this year, which could well spell the end of a process of nearly 60 years of European integration.

Why does populism threaten the EU? And why has the EU become the favourite target of populist parties?

Until recently populist criticism was based largely on what the EU does, especially in the economic sphere. In Greece and in other countries hit by the euro crisis, criticism of austerity naturally attracted a strong popular base as the massive 'Ochi' in the Greek referendum of 2015 showed. But there was also broad support when the government accepted a new, largely unchanged austerity package a few days later because membership in the EU and the euro were considered more important.

In France, by contrast, the EU cannot really be said to have imposed austerity. As the President of the Commission Juncker admitted candidly, the country cannot be subjected to the strictures of the EU's budget rules (the so-called Stability Pact) "[because it is France](#)". But it is in this country that anti-EU sentiment is much stronger.

France is just one example of a wider trend towards populism across all of Europe, even in countries where the economy is generally doing well (such as Austria), and even where the benefits of EU membership are palpable, as in Poland or Hungary.

This new and growing opposition to European integration is no longer based mainly on what the EU does (austerity and free trade), but what it represents. In other words, populist parties

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are asking the question: “Who are we?” This is a legitimate question in countries that find themselves having to adapt to a large-scale influx of foreigners, but whose self-image is not one of an immigrant society. This question of identity constitutes a much more powerful driver of politics than does the question: “How much money do I make?” Unfortunately, identity is such a deeply felt issue that it does not leave room for compromise.

Most observers of populist parties, especially of the right-wing variety, have focused on their attitudes towards foreigners and minorities. But a much more important aspect is their attitude towards democratic institutions. The more objectionable aspect of populist parties is their premise that the will of the people should not be constrained by any other force. Populists thus usually reject the basic premise of a ‘liberal democracy’, which imposes limits on the power of the majority and protects minorities, including those who lost the election. The limits on the power of the majority are usually achieved through a complicated system of what is called ‘checks and balances’ in the US. Independent judiciaries, fundamental rights enshrined in a constitution and the requirement for super majorities to change certain parts of the political system are among the most important mechanisms employed to limit the rule of the majority. Populist parties, of course, chafe under these checks and balances when they come to power. This is why the pro-Brexit press in the UK called High Court judges “traitors” when they decided that the House of Commons should be involved in the process.

At the national level, constitutional courts often represent the strongest constraint on the unfettered rule of the majority. It is thus natural that the attitude towards constitutional courts represents a litmus test of the attitude towards liberal democracy when a populist party obtains a majority. Recent developments in Poland and Hungary, where the governmental majority has changed its composition and the remit of constitutional courts, provide telling examples in this respect. It is only consistent that Prime Minister Orbán of Hungary has openly stated his preference for an ‘illiberal’ democracy.

The ultimate defence of the institutions of a liberal democracy cannot be formal rules and procedures, since a sufficiently large majority can overturn them. The best example of this can be found in the history of the United States. During the Great Depression, President Franklin D. Roosevelt undertook a wide range of deep economic reforms, which are, today, almost universally acclaimed as having laid the foundations for the recovery and the formation of the modern American welfare state. During his first term, however, the President had been stymied by the Supreme Court, which had ruled in a number of cases that key elements of the ‘New Deal’ infringed on states’ rights and were unconstitutional, often only with a 5:4 vote inside the Court itself. In 1936, Roosevelt won an overwhelming re-election victory, with super majorities for his Democratic party in both the Congress and the Senate.

Early in 1937, the President proposed a simple bill, which would have effectively forced Supreme Court Justices to retire at age 70. Given the number of judges who were beyond this age, this would have allowed him to ‘pack’ the Court with new appointees approved by his

large majority in both houses. But Roosevelt did not succeed in this plan. The proposal encountered widespread opposition, including within his own party. The Democratic Chairman of the Senate Judiciary Committee even played a key role in delaying the formal legislative proposal so much that it ultimately fell by the wayside when newer decisions of the Court removed some obstacles to the New Deal. The failure of Roosevelt's attempt to pack the Court ultimately strengthened the country's checks and balances, but the entire episode shows that principles can come under threat even in countries with an established liberal democracy and that formal safeguards are of little use if there is not sufficient popular support for the institutions.

The EU can be viewed as the pinnacle of a liberal democracy. Most EU decisions require either unanimity or a super-majority. The essence of the EU is the rule by Treaty, rather than the rule of the majority of the moment. This is a first reason why populist parties are usually anti-EU.

The sentiment that the EU frustrates the will of the people is reinforced by the feeling that elections have become meaningless because they might produce new leaders. But key policies, for example, austerity, free trade and open borders, continue as before. In the words of Ivan Krastev, "Voters were able to change governments, but not policies."¹

Moreover, the European Union has to face the charge that its leaders and its bureaucracy in Brussels have not been elected. This charge also applies to national institutions, such as courts, which are also not elected. What they have in common is that they have been put in place by democratically elected governments and Parliaments, precisely to place limits on the actions of future governments and the majority of the moment. The European institutions and their rules are thus lumped together with unelected national institutions as part of the 'elite', which is seen to frustrate the will of the people (usually called the ordinary people, as opposed to the cosmopolitan elite). Europe, or rather the European Union, is thus an easy target for all populist movements.

There is little the EU can do to counter this populist narrative. National politicians might adopt the rhetoric, and sometimes the programme, of populist parties. On economic issues the EU can change tack. The Commission has de facto abandoned austerity, and the most recent trade deal with Canada (CETA) might be salvaged through an elaborate compromise. But the EU and its leaders cannot pretend that they adhere to the idea that checks and balances are merely obstacles to the implementation of the will of the people, or that foreigners threaten our way of life. Some of the member states that are most critical of the EU's liberal DNA also expect it to defend the freedom of movement of their citizens.

¹ Ivan Krastev, "The Unraveling of the post-1989 Order", *Journal of Democracy*, Vol. 27, No. 4, October 2016.

The EU can, and should improve its performance in many respects. But it cannot change its fundamental nature. It is condemned to remain a bulwark of liberal democracy. It cannot match the promises of easy radical solutions offered by today's populists on both the right and the left. Its insistence on rules and procedures does not appeal greatly to societies that feel threatened by forces outside their control, whether these take the form of globalisation or immigration. But this lumbering embodiment of a multi-level democracy and open economy will become more attractive when the populists fail to deliver and when the weakening of checks and balances inevitably leads to excesses.