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## LATEST EDITION OF LIBERAL DEMOCRACY IS NOW AVAILABLE (terms and conditions may apply)

### 1. INTRODUCTION

Liberal democracy is in crisis: “But ... do we know what it is?” “The confusion of terms”, claims Helena Rosenblatt, “impairs liberals’ understanding of their own principles and weakens their politics”, which “their opponents easily exploit the verbal ambiguities” – which is why it’s “high time that we clarify what the term ‘liberal democracy’ means and what it stands for”.<sup>1</sup> What liberal democracy stands for depends on what we mean by asking that question, and that can be a number of things. “What exactly do we mean by liberal democracy?” What do we really mean by “liberal democracy”? The answers to these questions remain inseparable from how one responds to other, equally basic ones: What are the functions of liberal democracy? What are the dispositions of liberal democracy? How do liberal democracies function, in reality? What could be the functions of liberal democracies, possibly?

That is increasingly hard to say. The form of government that, (according to Fareed Zakaria’s seminal article)<sup>2</sup> appeared to require nothing more than respect for fundamental liberties, separation of powers and free and fair elections, has over the course of next two decades mutated into “a complicated interaction between [...] political competition, stable institutions of state, vibrant organs of civil society, meaningful political intermediaries”, which “reinforces the democratic virtues of popular sovereignty”, in which “the majority, either directly or through representative bodies,

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1 Rosenblatt, H., 2018, Liberal Democracy Is in Crisis. But ... Do We Know What It Is?, *The Guardian*, 27 May, (<https://www.theguardian.com/commentisfree/2018/may/27/liberal-democracy-history-us-politics>, 21 March 2021).

2 Zakaria, F., 1997, Illiberal Democracy, *Foreign Affairs*, 76, pp. 22, 26.

exercises decision-making political power”, and in which “the losers of today have a credible chance to reorganize and perhaps emerge as the winners of tomorrow”<sup>3</sup> – or, on another recent view, into a form of government in which “periodic free-and-fair elections in which a losing side cedes power” and “the liberal rights [...] that are closely linked to democracy in practice” depend on “the stability, predictability, and integrity of law and legal institutions” that ensure “the maintenance of a reasonable level of democratic responsiveness”, which requires “meaningful political competition” that includes “relatively free ability to organize and offer policy proposals, criticize leaders, and secure freedom from official intimidation”<sup>4</sup>.

The meaning of ‘meaningful’, the reasonableness of ‘reasonableness’, and the distinct ‘vibrant’ and ‘civil’ character of society are all impossible to determine – except on the spot – by those who chose to qualify the individual *desiderata* of liberal democracy by using the terms that rather than to contribute to the clarity of its conceptions concept, do the exact opposite (and even end up surreptitiously infusing them with their authors’ parochial conceptions of political legitimacy). By way of quick example, consider an increasingly fashionable term ‘democratic rotation’. While the idea of ‘rotation’ makes sense in the regimes in which no more than two parties continue to alternate between ‘government’ and ‘opposition’, the idea of ‘rotation’ makes little sense in multiparty regimes where the identity of opposition cannot in principle be known in advance. A standard more congenial for those kinds of democracies is not alternation in power, but the substitution of government, which no longer enjoys the confidence of the majority of the people at large with the ones that do by means of periodic parliamentary elections: smjenjivost vlasti – not izmjenjivanje (dvaju partija) na vlasti.

Which brings us to a more important, broader point. The ‘meaning’ of liberal democracy cannot be divorced from a wide variety of more or less intentional terminological mutations, which, for the most part go unnoticed by a vast majority of scholars. Rather than something that can with greater or lesser success be extracted from the names under which we know them, the ‘meaning’ itself is better understood as an assumption we feel compelled to make in order to be able to repair an imminent ‘conversational breakdown’.<sup>5</sup> Rather than the most rigorous way to articulate

3 Issacharoff, S., 2015, *Fragile Democracies: Contested Power in the Era of Constitutional Courts*, Cambridge, Cambridge University Press, p. 270.

4 Ginsburg, T., Huq, A., 2019, *How to Save a Constitutional Democracy*, Chicago, University of Chicago Press, p. 245.

5 Riemer, N., Word Meanings, in: Taylor, J., (ed.), 2015, *The Oxford Handbook of the Word*, Oxford, Oxford University Press, p. 315.

the meaning of a particular term, ‘providing definition’ is better seen as one of ‘repair strategies’ we may resort to when we fear that an ongoing conversation might no longer continue to unfold in conformity with our original expectations.

If so, why not confront the question of mutual expectations head on? Rather than rushing to provide a definitional answer to a definitional question “What is liberal democracy, why not begin the process of providing an answer with a follow-up question: ‘why do you want to know?’”<sup>6</sup> Being straightforward seems like a good idea, but getting to the point is hard not only because people naturally recoil from laying bare their ulterior motives and true intentions, but also because the words they use to formulate the content of their mental representations are inevitably ‘loaded’: not just with more or less specific mental images that change over time, but also with connotations which make the abstract notions that they are trying to articulate appear in a more or less favourable light. So rather than trying to define liberal democracy by identifying its *genus* and *differentiae* it may be more productive to confront the question of its contemporary connotations by asking what makes liberal democracies (un)democratic, and what (il)liberal.<sup>7</sup>

## 2. LIBERAL DEMOCRACY AS ‘DEMOCRATIC’

Though it may seem that we have no way of knowing what ‘democratic’ means without an attendant notion of democracy, we don’t seem to think of liberal democracies as ‘democratic’ because they are democracies. Rather, we do so because we assume that we may refer to them as such because at some point in the past they’ve been sufficiently democratized. What that entailed in the past was an ongoing conformity with the principle of popular sovereignty. In its ‘sound historical sense’, according to Bernard Crick, ‘democratic’ referred to ‘a majority consenting to be ruled in a broadly popular way and with a type of regime that need[s], unlike old autocracies, to mobilize and enthuse the masses.’<sup>8</sup> Though increasingly maligned by those who today call themselves liberal, similar beliefs

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6 Tushnet, M., Bugarič, B., 2021, *Power to the People: Constitutionalism in the Age of Populism*, Oxford, Oxford University Press, p. 10.

7 Any attempt to detect even a quasi-metaphorical ‘liberal temper’ of ancient Greek democracy is ‘deeply misguided’, not just because this form of government hasn’t left any ‘direct institutional legacy’ but also because there is ‘no such thing as an ancient Greek democracy’ to begin with. Cartledge, P., 2016, *Democracy: A Life*, Oxford, Oxford University Press, pp. 219, 306–307.

8 Crick, B., 2002, *Democracy: A Very Short Introduction*, Oxford, Oxford University Press, pp. 200, 210.

about the majoritarian and popular character of democratic rule used to be shared not only by those on the Left, such as Crick, but also by those 'on the Right', such as Friedrich von Hayek, for instance, who are today hailed (or denounced) as the patron saints of neoliberalism. According to Hayek, the term 'democratic' is "used to describe particular aims of policy that happen to be *popular* [even though] there is no necessary connection between democracy and any one view about how the powers of the majority ought to be used".<sup>9</sup>

From the perspective of the historically prevailing understandings of what makes something 'democratic', more recent tendencies to either juxtapose 'democratic' to 'popular', or to reinforce 'popular' with 'democratic' – such as in Samuel Issacharoff's references to 'democratically popular president[s]', 'democratically tolerant governments', or 'democratic virtues of popular sovereignty'<sup>10</sup> – sound curious enough to give rise to some interesting questions: if governments may indeed be democratically tolerant, how are they different from those that are undemocratically tolerant? In what sense are the virtues of popular sovereignty distinctly 'democratic' if most democracies claim legitimacy in virtue of their allegiance to the ideals of popular sovereignty? If most of them still see themselves as the governments that are, proverbially, of, for, and by the people, wouldn't it make more sense to insist not on the democratic virtues of popular sovereignty but on the popular virtues of liberal democracy? And finally: if there is, in fact, a difference between the democratically and undemocratically popular presidents – as Issacharoff's phrase suggests – in what sense are the presidents that are only being 'popular' different from those that are only being 'democratic'?

Most of us have strong intuitions about what those terms mean. The problem is that we rarely pause to reflect on how they affect our attitudes toward politically relevant institutions, governments, and situations. When it comes to parliamentary elections, our attitudes don't seem to change depending on whether we think of them as 'democratic' instead of 'popular'.<sup>11</sup> When it comes to the decisions of representative institutions, however, it's not unreasonable to assume that we'd be more inclined to

9 Hayek, F., 2011, *The Constitution of Liberty*, Chicago, University of Chicago Press, p. 168.

10 Issacharoff, S., 2015, pp. 147, 33, 286 respectively.

11 On second thought, this may not be completely true if it's true that "our core concept of elections is not derived from our abstract notions of democracy, but from our experience of *games*. On this view, the difference between democratic and popular elections would be small, but non-trivial: to call them 'democratic' would be to point to their conformity with the spirit of fair play, to call them 'popular', appears to evoke a slightly more solemn occasion."

consider them: dogmatically anti-pluralist and contemptuously dismissive of the interests of small and vulnerable minorities – if described as majoritarian; as unwise to ignore but otherwise quite possibly ‘vulgar’, ‘embarrassing’ and ‘foolish’ – if described as popular; or as having been reached in conformity with proper procedures, which is to say – ‘carefully, not hastily, wisely, not foolishly’ – if described to neither as majoritarian nor as popular, but democratic. In this case, ‘democratic’ will not be a reference to something which is of democracy, for democracy, and by democracy (to paraphrase Lincoln’s famous motto about the character of popular government) but something which made a decision under consideration (minimally) acceptable, (broadly) adequate, or sufficiently legitimate.<sup>12</sup>

From that perspective, ‘democratic’ is an adjective that functions not simply as the badge of honour but also as a symbolical passport stamp: giving those who’ve received it from the self-appointed legitimacy inspectors a moral and political equivalent of a free pass. To the extent to which it alludes to something specific about contemporary democracy, ‘democratic’ is perhaps best understood as an allusion to the ‘distanced’ ‘demure’ and ‘temperate’ disposition of its institutions.<sup>13</sup> Interestingly enough, though experts and non-experts alike have no problem thinking of actually existing liberal democracies as the outcomes of the successive waves of ‘democratization’, they can almost never be caught referring to liberal democracies as the products of liberalization. What in their minds makes those democracies ‘liberal’ is not the degree to which they’ve been liberalized, but the degree to which they conform with the precepts of liberal constitutionalism.

### 3. LIBERAL DEMOCRACY AS ‘LIBERAL’

Though there is something vaguely ironic about calling a doctrine that demands compliance with the ideals of the rule of law and judicial independence ‘liberal’, most scholars take its name for granted because they assume that the central purpose of the constraints that the doctrine of liberal constitutionalism calls for is to advance the cause of individual liberty: the supreme ideal of modern liberalism. While this seems to be the assumption they are willing to make when it comes to liberal constitutionalism, notice that this doesn’t seem to be the case when it comes to other liberal ‘-isms’, such as liberal nationalism. Unlike liberal constitutionalism,

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12 Dahl, R. A., 1989, *Democracy and Its Critics*, New Haven, Yale University Press, p. 185.

13 Frankenberg, G., *Authoritarian Constitutionalism – Coming to Terms with Modernity’s Nightmares*, in: Alviar, H., Frankenberg, G., (eds.), 2018, *Authoritarian Constitutionalism*, Cheltenham, Edward Elgar Publishing, p. 23.

liberal nationalism is 'liberal' not because of what it does to promote the ideals of liberty or liberalism, but because of how it is in the matters of nationality: less intensely preoccupied with the primacy of one's own nation and more liberal-minded toward the aspirations of other nationalities.

Notice however that the liberal nationalism that in theory appears as a less nationalistic form of nationalism, in practice turns out to be something else: more nationalistic, and, *ceteris paribus*, less liberal form of liberalism. If so, nothing stops us to begin thinking about liberal constitutionalism along the same lines: both as a more liberty-minded version of constitutionalism, as well as a more constitutionality-minded version of liberalism, a liberalism dedicated not only to liberty but also to 'practicality'. As William Connolly argues,

*[li]beral practicality involves the wish to support policies which appear attainable within the current order; it is the desire to be part of the action, to be "in the middle" of things, to propose policies today which might be instituted tomorrow. [Such liberalism must] assume[e] that allegiance to the order is intact unless there is overt, widespread, and well-articulated opposition to it; that belief in the legitimacy of the order is equivalent to the order's legitimacy; and that the beliefs most pivotal to the question of legitimacy are those concerning the constitutive principles of the political process; and that [...] they could not themselves become illegitimate'. [As liberalism] gradual[ly] retreat[s] from practicality [it increasingly relies on] the abstract voice of virtue [...] to set the limits of the morally tolerable in the existing order.<sup>14</sup>*

Rather than trying to pin down the meaning of liberalism as a doctrine that provides the basis for liberal democracy as a particular form of constitutional government based on the precepts of popular sovereignty, one might start from the question of what it means to be, or – to put it even more precisely – think, feel and act like a liberal. Over the last several decades, 'liberal' attitudes have been described not only as 'generous' and 'open-minded', but also as 'bleak',<sup>15</sup> overflowing in 'weak and sentimental generosity',<sup>16</sup> 'downright snivelling',<sup>17</sup> as well as perennially torn 'between moral aspiration and sober apprehension of reality'.<sup>18</sup>

14 Connolly, W., 1987, *Politics and Ambiguity*, Madison, University of Wisconsin Press, pp. 83–84.

15 Anderson, A., 2016, *Bleak Liberalism*, Chicago, University of Chicago Press.

16 Williams, R., 2015, Liberal, in: *Keywords: A Vocabulary of Culture and Society. New Edition*, Oxford, Oxford University Press, p. 132.

17 Trilling, L., 2018, *Life in Culture: Selected Letters of Lionel Trilling*, New York, Farrar, Straus and Giroux, p. 159.

18 Anderson, A., 2011, Character and Ideology: The Case of Cold War Liberalism, *New Literature Review*, Vol. 42, p. 209.

This is important, because this is where liberals differ much more than those who defend a uniquely liberal constitutionalism care to admit. From the perspective of the historically changing ‘characterology’ of modern liberalism, a conflict between the populists and anti-populists in early 21<sup>st</sup> century Europe looks less like a battle between the forces of illiberalism and the defenders of liberalism, and more like a conflict between two regional versions of liberalism: a politically self-confident, economically socialist and radically reformist parliamentarism of the 19<sup>th</sup> century liberals in Europe, and the self-righteously ‘petulant’ liberalism of the late 20<sup>th</sup> century ‘progressives’ in America, whose ‘upper-middle-class benevolence’ (as Christopher Lasch memorably put it) extends only to those who already approve of their ‘hygienic conception of life’.<sup>19</sup>

Unlike the garden variety of authoritarian, Christian, socialist, conservative, nationalist, and even fascist liberalisms in continental Europe, the liberalism of the American progressives exists only within the dichotomies which pit it against conservatism and communitarianism. If so, which liberalism are we talking about when we worry about the state of actually existing liberal democracies? The liberalism of classical liberalism, the liberalism of liberal parliamentarism? Or the liberalism of ‘Anglo-American academic theory’ (where ‘liberal’, at the end of the day, still functions as a code-word for Democrat and ‘conservative’ for Republican)?<sup>20</sup> This is important, because the democracy we refer to as Western and liberal, may at a deeper level be better described as subtly but thoroughly Americanized.

#### 4. IL/LIBERAL DEMOCRACIES AS (DIS-)QUALIFIED

While the idea of illiberal democracy made eminent sense even among liberal political theorists well into the late 1990s, a growing number of contemporary theorists thinks of illiberal democracy as a ludicrous and potentially dangerous oxymoron: no more meaningful than the idea of an ‘atheist pope’, as János Kornai put it.<sup>21</sup> What makes the notions of ‘atheist pope’ seem ludicrous is not the logical impossibility of there being the head of Roman Catholic Church who doesn’t privately believe what he

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19 Lasch, C., 1995, *The Revolt of the Elites and the Betrayal of Democracy*, New York, London, WW Norton & Company, p. 28.

20 See: Dietz, M., 1998, Merely Combating the Phrases of This World: Recent Democratic Theory, *Political Theory*, Vol. 26, Issue 1, p. 112.

21 Kornai, J. Vulnerable Democracies – An Interview with János Kornai, (<https://hungarian-spectrum.org/2016/12/29/vulnerable-democracies-an-interview-with-janos-kornai>).

professes in public. Rather, it is an image of what an exemplary, or at least typical pope looks like. To those whose first mental image is Francis, John XXIII, or John Paul II, the idea of an atheist pope will in all likelihood seem preposterous, but to those whose first mental image is of someone like Cesare Borgia, the notion of an atheist, or even murderous pope will seem perfectly plausible. When it comes to ‘illiberal’ democracy, its incoherence lies not in the immanent connection between democratic government and the ideals of liberalism but in a mismatch between two sets of mental images: those depicting the states of affairs we think of as being characteristic for a ‘democracy’, and those which we consider as being, for whatever reason, characteristically ‘illiberal’.

Adjectives are important. While scholars appreciate the polysemy of concept-nouns, they tend to ignore the adjectives that provide them with politically salient connotations, and the suffixes, which make those connotations positive or negative (and which, nowadays, make it more natural to speak of politicians as more likely to be popul-ist, than simply popul-ar, making those that are popular easy to accuse of being authorit-arian, unlike those who will be authorit-ative as long as they are ‘democratically popular’). When it comes to the terms which suffixes such as -ism, -ist, or -ian or – ‘enrich’ with pejorative connotations their immediate rhetorical purpose is to make those who would otherwise be more skeptical about the substance of the assertions they convey as foregone conclusions: be that about someone’s excessive or obsessive concern with something which is otherwise commendable, acceptable, or tolerable (as with statism, nationalism, libertarianism, or authoritarianism); one’s failure to make reasonable use of their mental or moral faculties (as with conformism, fundamentalism, dogmatism and opportunism), or some other moral flaw or reproachable state of mind (as in the case of illiberalism, majoritarianism, extremism, or Schmittianism).<sup>22</sup> From a more panoramic

22 What’s interesting from a cognitive point of view, says Friedrich Ungerer, is that “t[he transpositional adjectives such as ‘democratic’, or ‘liberal’] are so popular today in spite of the fact that they attempt to do the impossible: to extract something like a salient quality from the most regional of concepts, the domain concepts [such as ‘democracy, or ‘liberty’]. The result is very often a rather vague adjectival concept, a fact reflected in the paraphrases that traditional analysis has provided for this type of derivation (‘belonging to’, ‘being part of’ or ‘being seen from the viewpoint of’). Yet it is probably this openness, this special feature of suggesting a stable adjectival concept [such as ‘liberal democracy’, or ‘democratic legitimacy’] where there is nothing but the nominal source concept to fall back on that makes this type of suffixation so attractive. Compared with the more tangible and discrete conceptualizations that most other suffixed items provide, one might say that adjectival domain concepts thrive on their intended vagueness.” Ungerer, F., 2002, *The Conceptual Function of Derivational Word-formation in English*, *Anglia*, Vol. 120, pp. 534, 550.

perspective, the social function of these and similar terms is always two-fold: exhortatory *vis-à-vis* the external, and disciplinary, *vis-à-vis* the internal audiences – aiming, on the one hand, to persuade those who are still undecided and join the right side in the conflict between the forces of good and evil, while at the same time seeking to “quiet doubt on the side on which the arguments are used”.<sup>23</sup>

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23 Arnold, T., 2000, *The Folklore of Capitalism*, New York, Beard Books, p. 381.