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## THE LONG MARCH THROUGH THE INSTITUTIONS

András Sajó, *Ruling by Cheating.  
Governance in Illiberal Democracy*  
Cambridge, Cambridge University Press, 2021

Some ten years ago, many scholars were still ready to routinely reject attempts to discuss crisis of democracy. But the times have changed. The upsurge of populist movements and illiberal regimes cannot be ignored anymore. It is certainly discomfoting to look at Venezuela, or Turkey, where democratic façades poorly hide authoritarian practices. Still, if things were better in established, or seemingly established, liberal democracies, such unpleasantries would be of much less interest and they could be safely left to “area specialists”. The problem is that populism and illiberalism do not linger on the margins of the “democratic community of nations” anymore. Trump and Brexit provided powerful wake-up calls; *ditto* for the already well-established illiberal regimes in the European Union. Hungary and Poland are the talk of the town; the regimes in Bulgaria and Romania might be less loud, but their illiberal qualities are no less pronounced; in the rest of the EU, liberal democrats, confronted with powerful populist movements and parties, await each election with trepidation.

This condition is the topic of András Sajó’s new book. The book is both precious and unsettling. Professor Sajó is a committed liberal and constitutionalist. He is also a deeply concerned scholar: constitutional democracy seems to be neither capable nor willing to confront the dynamics of the populist and illiberal onslaught. Such a combination of incapacity and unwillingness – Sajó provides many examples of both – pushes constitutional democracy to the edge of the abyss. It follows, insists Sajó, that the theoretical focus should be broadly twofold: theory must explore both the inner deficits of constitutional democracy, and the ways populism

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and illiberalism make use of those deficits. This methodological stance is an important novelty of Professor Sajó's book: illiberalism "thrives on the inherent shortcomings, uncertainties, and inconsistencies of constitutionalism" (p. 7). Scholarly response to populism and illiberalism is very impressive. Yet, systematic efforts to explore such regimes and movements from the perspective of theoretical and practical failings of constitutional democracy remain relatively rare. Sajó fills the gap by focusing on the constitutional structure and dynamics of the illiberal regimes. He convincingly demonstrates that those regimes are organized and that they function as the perverted mirror images of constitutional democracy. They keep the organizational structure of political authority, hold competitive elections, do not formally challenge the rule of law, and do not deprive citizens of basic constitutional rights. They however relinquish normative assumptions behind the constitutional democratic setup and proceed with practices that destroy the spirit of constitutionalism. Sajó identifies the core illiberal attitude to constitutionalism as cheating, understood as "pretending to observe a rule in order to depart from it, most often reaping undeserved benefits from the cheated persons or from the 'system'" (p. 281).

Each of these claims requires a careful elucidation, which is provided in chapters 2–8. This is preceded by a conceptual clarification. Sajó warns that understanding populism and illiberalism is more difficult than judging them as bad. Moral contempt will not change the minds of the people who readily follow plebiscitarian leaders; it will not help the case of constitutional democracy either. Thus, he departs from the analytical question of what we have when we have an illiberal regime. The central claim is that illiberal democracy is a *democracy*. Professor Sajó agrees that the essence of democracy is political autonomy, or collective self-government.<sup>1</sup> Now, self-government is problematic, since it carries "self-destructive tendencies" (p. 7). If you want to understand totalitarian potential of democracy, just read Rousseau, suggests Sajó (pp. 33–34). The people can autonomously decide to follow values and goals that deny freedom and equal respect. Political autonomy can squash personal autonomy, to create "a single-voice regime" (p. 3). Still, such a practice remains democratic. If "they the people" (Sajó's expression) go to polls and vote for Trump or Orban, how can we, self-styled constitutional democrats, possibly argue that the regime is not right? In other words: if popular self-government is the essence of democracy, how can we deny the democratic quality of illiberal regimes? The short answer reads: we cannot. Committed constitutional

1 Referring to the "essence of democracy" does not imply that Sajó would argue that there exists "democracy as such". We can only distinguish among different types of democracy. At stake is finding the common denominator that justifies calling each of these very different regimes "a democracy".

democrats have a bitter pill to swallow: “Illiberal democracies are the democracy of, and for, illiberals” (p. 7). Democratic legitimacy of such regimes stems from the “popular support for the leader and his regime, even if this support is based on xenophobic and authoritarian predispositions, or conservative patriotism in search of recognition” (p. 6). Max Weber comes in handy, with his concept of plebiscitarian leader democracy. It is a regime of routinized charisma in which democratic elections function as the plebiscitary instrument of sanctioning personal and unlimited domination of the ruler.<sup>2</sup> Sajó argues that this concept nicely summarizes the essence of illiberalism. The rest of the book is devoted to the meticulous analysis of that essence.

So, what is exactly “the democracy for illiberals”, and how does it work? Its theory and practice are defined by a particular interplay between the ruler, the regime, and subjects. Although the book focuses on the constitutional structure and dynamics, Sajó realizes that the peculiar nature of illiberal democracy necessitates going beyond law and politics. If the people willingly choose to be dominated by a plebiscitarian leader, it follows that illiberalism cannot be grasped without reference to the psychological, cultural, and economic conditioning of that people. Here, the main concept is dependency (Chapter 3). Everyone’s life is state-dependent. The state itself transpires as a complex network of the formal legal institutions and “the informal structures, norms, and exchanges” (p. 95). The state as the network redistributes political, economic, and symbolic goods to its clients. The clients are unequal – the leader’s entourage will get much more than the ordinary subjects – but no one who qualifies as the people will be left out.

This leads to an important question: who are the people? The question is addressed in Chapter 4. Illiberalism rests on the distinction between those who qualify and those who do not qualify to belong to the people. The distinction is presented in ethical terms: only those are “good”, or people-worthy, who subscribe to the regime’s identification of “authenticity”. “They the People” are those who are proudly nationalist, who accept that society and community are based on religion, who acknowledge “our glorious past”, who readily share “family values”, etc. An individual deserves to be free only if he or she agrees that personal autonomy derives from the conceptually and normatively preceding value of belonging to a higher-order unity. Those who disagree are excluded as unworthy; they are enemies (p. 124). Of course, there is nothing new here. It is easy to recall historical examples of the radical left and radical right movements and regimes

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2 Weber, M., 1978, *Economy and Society. An Outline of Interpretive Sociology*, Berkeley, University of California Press, pp. 266–268.

that tried to achieve unity by sweeping exclusion of “enemies”. But illiberal democratic treatment of peoplehood and popular sovereignty differs, insists Sajó: it is still a democracy. Illiberalism simply pushes to the extreme the problematic liberal concept of popular sovereignty by unleashing its totalitarian potential (see *e.g.*, p. 151). Popular sovereignty becomes a matter of identity, which is ultimately embodied in the person of the leader. The leader chooses who the people are. He manufactures collective identity: “[t]he leader must find attractive popular characteristics for a sufficient number of voters. He must respond to large-scale frustration, particularly to a sense of loss of self-respect” (p. 131). Central to this enterprise is a heavy reliance on collective resentment: the regime ideology nourishes the feelings of victimhood, hurt pride, and moral indignation, to create a culture that is both narcissistic and intolerant (pp. 161–169). We proudly love ourselves; we equally proudly hate others.

This finally brings us to the formal structure and workings of illiberalism. Two illiberal features stand out. Substantively, the regime claims primacy of the collectivist values. Procedurally, it abandons the vital constitutionalist quality of the limited government. But, to repeat, this does not lead to the rejection of the institutions of constitutional democracy. Let us briefly look at the phrase in the title of this review. The phrase was coined by Rudi Dutschke, the leader of the German leftist student movement in the late 1960s. In his praise of Dutschke, Herbert Marcuse defines two features of “the long march through the institutions”: “working against the established institutions while working in them... [and] the concerted effort to build up counterinstitutions.”<sup>3</sup> This could be an accurate summary of Sajó’s reading of illiberal anticonstitutionalism and its institutional setup (Chapter 5). Constitutions of illiberal regimes are mostly like constitutions of liberal democracies. Constitutional institutions remain in place: the plebiscitarian leader and his clique work within them, but they deprive them of the constitutionalist values, meaning and purpose, to turn them into the instruments of the preservation and advancement of the illiberal rule (p. 155). The regime also creates quasi-autonomous bodies (“counter-institutions”) that serve two goals. First, they inhibit the institutions that could give a voice to opposition or that could engage in protecting the rule of law. Second, the counterinstitutions inhibit basic rights: the Hungarian example of the institutional treatment of freedom of information and academic freedom provides a good illustration (p. 231).

Chapters 6 (human rights) and 7 (the rule of law) are brilliantly argued. Sajó focuses first on their normative, substantive, and procedural meaning in constitutional democracy. The rule of law and human rights

3 Marcuse, H., 1972, *Counterrevolution and Revolt*, Boston, Beacon Press, p. 56.

are the cornerstones of constitutionalism. But Sajó proceeds – in a scrupulous dialogue with many different theories and through a careful exploration of the practice of constitutional democracies – to show that both institutions can be easily misunderstood or even abused. This is followed by the examination of their fate in illiberal regimes. Reading this analysis is a distressing experience for anyone who cares about freedom and equality.

The book closes with the exploration which argues that cheating and deceit are the defining practices of illiberal democracies (Chapter 8). Political and legal techniques of cheating are many, and Sajó studies them carefully. Still, the gist of the argument is normative: cheating is an amoral practice. This insight summarizes what might be the core inference of the book. Constitutionalism is not merely and not primarily about institutional architecture and legal rules; it stands or falls depending on the dominant societal and political attitudes to the values of decency, civility, tolerance, and equal respect for all.

Illiberal democracy is a democracy that holds a catastrophic totalitarian potential. The analysis Professor Sajó offers in his book looks devastatingly accurate. This reviewer would have loved to see an additional chapter, which would outline a constitutionalist democratic alternative to the present condition. But it might be that such a chapter would not methodologically fit into the plan of the book. Or it might be that it is too late for alternatives.

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