

DEMOCRACY UNDER SIEGE: THE POPULIST FACTOR IN THE CONTEMPORARY CRISIS OF CONSTITUTIONAL DEMOCRACIES

*Carlo Alberto Ciaralli**

Abstract

The essay analysis the relentless rise of populist political and cultural phenomenon in a global perspective and, mainly, in the political context of EU Member States. Populism, in XXI century, represents a critical challenge for national and EU institutions and, in a broader perspective, for representative democracy itself. Anyway, in essence, what is populism? On closer inspection, populism is not a monolithic phenomenon, but it is a multifactorial experience, where the usual political categories appear undetermined, often mixed and reassembled. The paper aims to study, with a legal perspective and a comparative and multidisciplinary approach, some relevant populist political experiences in the EU space, their communicative and political strategy, the features of their leadership, to better understand its origins, policy contents, differences among various national experiences, political and social perspectives and, indeed, the impact on European constitutional democracy's principles.

* Post-Doc Research Fellow in Constitutional Law, University "G. d'Annunzio" of Chieti-Pescara.

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1. Introduction

For an extended period of time, the populist factor has been studied and analysed as a residual or minority phenomenon in constitutional democracies, especially with reference to the contestation of the institutional, social and economic framework of Western societies. The academic analyses of this political category were mainly focused on the political implications of populist presence in specific societies, especially those with an unstable democracy and subject to constant institutional fluctuations. With the global growth of populist movements and the rise to power of their leadership also in Western liberal democracies, populism has become one of the most relevant contemporary challenges for democratic legal orders. Our time, not only in Europe, is the “golden age” of political, institutional and social populism¹.

Particularly in Europe, populism has produced significant consequences with reference to the functioning of institutions,

¹ With reference to the rise of populism and its “hegemonic diffusion” in Western liberal democracies, see, among others, E. Laclau, *On Populist Reason* (2005); M. Rooduijn, S.L. de Lange & W. van der Brug, *A populist Zeitgeist? Programmatic Contagion by Populist Parties in Western Europe*, 20 (4) *Party Politics* 563 ff. (2014); Y. Stavrakakis, *Populism and Hegemony*, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo & P. Ostiguy (eds.), *The Oxford Handbook of Populism* (2017), 536 ff.; T. Lochocki, *The Rise of Populism in Western Europe* (2018).

social and political approach to contemporary global issues and political parties' role².

First of all, in these pages I would like to point out that populism is not only a mere political or “ideological” form of protest against the *status quo* (understood as a political and economic ruling class and as a political system), but it is an original political evolution of nationalist political approach (especially the right-wing populism), from which it partially differs to assume original and innovative features. Populism is not always a threat for democracy. This phenomenon could also arise in libertarian forms against authoritarian regimes or illiberal governments. However, the concrete experience leads us to believe that the majority forms of populism in Europe and, more broadly, in a global dimension (nowadays, the right-wing populism) can produce a direct or indirect contrast with principles, values and procedural rules of constitutional democracies.

In this way, some factual experiences of populists in power show us that the fundamental constitutional principles are in a serious threat, due to the populist intent of change national Constitutions, in order to better deploy their political action and to achieve their institutional and electoral goals. In this sense, in accordance with the suggestion proposed by Landau, «constitutional change under populism carries out three core functions: deconstructing the existing political regime, serving as an ideological critique that promises to overcome flaws in the prior constitutional order, and consolidating power in the hands of the populist leadership»³.

In this framework, the same constitutional role played by political parties is questioned. Populism is reaching its goal of “replacing” political parties in the society through innovative

² An interesting research on the origins of populist phenomenon in a comparative perspective (with particular reference to the United States and Europe experiences) is offered by N. Urbinati, *Democracy and Populism*, 5 (1) *Constellations* 110 ff. (1998). On this topic, see also K.P. Miller, *Constraining Populism: The Real Challenge of Initiative Reform*, 41 *S. Clara L. Rev.* 1037 ff. (2001); C. Mudde, C. Rovira Kaltwasser, *Exclusionary vs. Inclusionary Populism: Comparing Contemporary Europe and Latin America*, 48 (2) *Gov. Oppos.* 147 ff. (2013).

³ D. Landau, *Populist Constitutions*, 85 *Univ. Chi. L. Rev.* 521 ff., 522 (2018).

communication methods and cultural models, disrupting the “politically correct” cage that has often imprisoned the traditional political parties. In a constitutional perspective, political parties are the fundamental and “natural” transmission chain between “power” and “people”. The disintermediation process, favoured by populist approach and new technologies applied to political communication and procedure, constitutes a relevant issue for the preservation of democratic representation system.

In parallel, I argue that the globalisation process has played a crucial role in the process of social and institutional proliferation of populist “political methodology” in Western societies. In this way, with particular reference to the Eastern Europe area, the combination between globalisation process and the “traumatic” shift from socialist system to liberal democracy has also produced a certain upsurge of nationalist tendencies which stand in contrast with the common European project. In this sense, in order to tackle the institutional challenges of populism, I claim that the main way is the strengthening of democracy (in its double sense, formal and substantive), neutralising institutional and social critical factors that make the populist appeal so strong in Western societies.

In this way, despite the differences due to the national specificities, the progressive growth of populism in Western societies is a “warning signal” of the sustainability of “traditional” constitutional model in the new global scenario. Global constitutionalism and its fundamental principles could be the necessary therapy against nationalist tendencies and closed attitudes, in order to guarantee a new type of global democratic model, based on the respect of civil freedoms, social rights and the rule of law. In essence, the present study aims to explore, with a legal, comparative and multidisciplinary approach, the main features of populist phenomenon in order to understand its origins, policy contents, differences among the various national experiences, political and social perspectives and, indeed, the impact on European constitutional democracy’s principles and national legal orders.

2. Populism, nationalism and democracy

The conceptual debate about populism is related to its real categorisation as a political, legal and social phenomenon. With reference to the mere textual data, the first impression is to be in front of a political phenomenon that places *demos* at the centre of its own ideological approach. In a famous essay published in 1966, the Italian political scholar Giovanni Sartori was the first one to emphasise the existence of a political pattern called “anti-system party”⁴, understood as a political and social force organised in a political movement or party that stands in a radical opposition to national and supranational economic, social and political framework (“political order”)⁵. In this sense, when we talk about the populist political movements and parties, we refer to really different political experiences with dissimilar “ideological” backgrounds⁶.

Populism is a composite and heterogeneous political factor and it can be analysed under various cultural and academic perspectives⁷. However, an academic categorisation of “populism”⁸ is proposed by Cas Mudde, according to which

⁴ With reference to the different meanings of “anti-system parties”, see, among others, the analysis proposed by M. Zulianello, *Anti-System Parties Revisited: Concept Formation and Guidelines for Empirical Research*, 53 (4) *Gov. Oppos.* 653 ff. (2018).

⁵ G. Sartori, *European Political Parties: The Case of Polarized Pluralism*, in J. La Palombara, M. Weiner (eds.), *Political Parties and Political Development* (1966), 137 ff. In this way, see also M. Canovan, *Populism* (1981).

⁶ Populist national experiences can arise from left-wing movements, right-wing movements or, third way, from antipolitics protest (without a “traditional” political background) against the old national and supranational political leaderships. A remarkable study relating to the various typologies of populist parties is proposed by P. Norris, *Varieties of populist parties*, 45 (9-10) *Philos. Soc. Crit.* 981 ff. (2019).

⁷ On the distinguishing features of radical right in Europe (before the contemporary rise of right-wing populism), see C. Mudde, *The Ideology of the Extreme Right* (2000). On the right-wing populism in Europe, see also H.G. Betz, *Radical Right-Wing Populism in Western Europe* (1994).

⁸ With reference to the different meanings of the word “populism” in the United States, South America and Western Europe academic debate, see the remarkable analysis of M. Rooduijn, *The Nucleus of Populism: in Search of the Lowest Common Denominator*, 49 (4) *Gov. Oppos.* 573 ff. (2014). On this topic, see also I. Balcer, *What Does Populism Really Mean? A Political Science Perspective*, in A. Kudors, A. Pabriks (eds.), *The Rise of Populism: Lessons for the European Union and the United States of America* (2017), 17 ff.

populism must be understood as «an ideology that considers society to be ultimately separated into two homogeneous and antagonistic groups, ‘pure people’ versus ‘corrupt elite’⁹, and which argues that politics should be an expression of the *volonté générale* (general will) of the people»¹⁰. In this way, we can talk of a real one “barrier axiom”, based on a rigid, Manichean, division between good and bad, *demos* and ruling power, democratic and antidemocratic. The barrier axiom is an essential pillar in populist rhetoric and action. Populist players need a political “enemy” to attack, proposing themselves as the only one political alternative legitimised by the people and skilled for troubleshooting¹¹. A political and popular alternative legitimised by popular consensus.

A great part of the academic literature underlines how it is extremely complex to identify an accurate description of populist phenomenon, especially with reference to the populism understood as an authentic “political ideology” or, in a different mean, a peculiar “political strategy”¹². In this multifaceted

⁹ Regarding to the “elites theory” in Western societies see, among others, C. Wright Mills, *The Power Élite* (1956); P. Bachrach, *The Theory of Democratic Elitism* (1967); T.B. Bottomore, *Elites and Societies* (1977); H.D. Lasswell, A. Kaplan, *Power and Society: A Framework for Political Inquiry* (1977); S.J. Eldersveld, *Political Elites in Modern Societies* (1989); L. Garrido Vergara, *Elites, Political Elites and Social Change in Modern Societies*, 28 *Rev. Sociología* 31 ff. (2013); M. Tomsic, *Elites in the New Democracies* (2016).

¹⁰ C. Mudde, *The Populist Zeitgeist*, 39 (4) *Gov. Oppos.* 541 ff., 543 (2004). With reference to the academic categorisation of populist phenomenon, see also J. Hopkin, M. Blyth, *The Global Economics of European Populism: Growth Regimes and Party System Change in Europe*, 54 (2) *Gov. Oppos.* 193 ff. (2018).

¹¹ In this way, it is relevant to emphasise the suggestions proposed by J.L. Cohen, *Hollow Parties and their Movement-ization: The Populist Conundrum*, 45 (9-10) *Philos. Soc. Crit.* 1084 ff. (2019).

¹² Barr, among others, defines populism not as a real “political ideology”, but as a specific “political strategy”. See, in this sense, R.R. Barr, *Populism as a Political Strategy*, in C. de la Torre (ed.), *The Routledge International Handbook of Global Populism* (2019), 44 ff. In this way, see also H. Kriesi, *Populism. Concepts and Conditions for its Rise in Europe*, 2 *Com. Pol.* 175 ff. (2015); P. Aslanidis, *Is Populism an Ideology? Refutation and a New Perspective*, 64 (1 suppl.) *Pol. Stud.* 88 ff. (2016); B. Bonikowski, *Three Lessons of Contemporary Populism in Europe and the United States*, 23 (1) *BJWA* 9 ff. (2016). However, in the opinion of L. Bustikova, P. Guasti, *The State as a Firm: Understanding the Autocratic Roots of Technocratic Populism*, 33 (2) *East Eur. Pol. Soc. Cult.* 302 ff., 306 (2019), populism «is both an ideology and a strategy». On this topic, see also J. Frank, *Populism*

scenario, trying to give a “satisfactory” explanation of populist phenomenon (despite the “definitional precariousness” of this phenomenon)¹³, it can be argued that populism is the political, social, legal and economic phenomenon in strong opposition to supranational and national ruling elites (in the framework of a liberal representative democracy or even an authoritarian or illiberal regime) that aims to overcome the *status quo* in order to restore the effective decision-making power to the people. On the other hand, some academic scholars argue that similar experiences such as the current political form called “populism”, in the history of Western liberal democracies, have not always been harmful to democracy¹⁴.

As a general rule, populism is a global political and social factor that can arise from the crisis of constitutional democracies, but it is not a distorting component of democracy or innately existent in it. It is a political, social, economic and legal experience which has its own life¹⁵.

and Praxis, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo & P. Ostiguy (eds.), *The Oxford Handbook of Populism* (2017), 630 ff.

¹³ The conceptual difficulty to identify some common features among the various populist experiences and, at the same time, to develop a correct categorisation of populist phenomenon is underlined by S. Tormey, *Populism: Democracy's Pharmakon?*, 39 (3) *Pol. Stud.* 260 ff., 270 (2018), according to which populism «has to be understood as one kind of politics, one approach among other approaches, whether technocratic or elitist – or indeed “horizontal” and leaderless».

¹⁴ In this way, see M. Laruffa, *The Absolutist Dream of Democracies in Crisis. The Political Culture Inspiring Soft and Hard Populism*, 2 *Pol. Soc.* 269 ff. (2019). Particularly, the Author refers to the seventh President of the United States of America, Andrew Jackson, and his political movement, the so-called “Jacksonian”. In the same way, with reference to the dynamics of contemporary representative democracy, G. Cerrina Feroni, *Ripensare la democrazia rappresentativa. Aldilà del “mito” populista*, 2 *Oss. Fonti* 1 ff. (2019), suggests that populist phenomenon should not only be understood in a “negative” perspective. In this regard, the Author highlights that a “democratic populism”, in the framework of a “mature democracy”, could be an “effective ‘tonic’ for the constitutional State”. In opposition to the latter approach, see, among others, A. Mueller, *The Meaning of ‘Populism’*, 45 (9-10) *Philos. Soc. Crit.* 1025 ff. (2019).

¹⁵ It is relevant to emphasise the original approach proposed by R.S. Jansen, *Populist Mobilization: A New Theoretical Approach to Populism*, 29 (2) *Sociol. Theory* 75 ff., 81 (2011), which proposes a different analytical plan, based on the «shift away from the problematic notion of “populism” and toward the concept of populist mobilization».

Secondly, populism is not a social factor presents exclusively in Western liberal democracies, but it can be born and grow under illiberal regimes¹⁶ as well, as a reaction to the lack of freedom and democracy generated by an authoritarian and illiberal national establishment¹⁷. Hypothetically, populism could be a “good option” to counteract despotic governments and inspire a progressive return to constitutional democracy¹⁸. In this context, the populist method is linked to the need to save democracy from undemocratic ruling classes and authoritarian governments¹⁹.

The conflict between “oppressed people” and “oppressive elites” is the cornerstone of populist political approach²⁰. Populist political movements and parties shake democratic institutions’ foundations, criticising the closed attitude of elites to the *demos*

¹⁶ In accordance with the approach proposed by C. Pinelli, *Illiberal Regimes in the Perspective of Comparative Constitutionalism*, 1 *Riv. Dir. Comp.* 3 ff., 3 (2017), it can be argued that «illiberal regimes are generally defined as regimes in which neither democracy nor fundamental rights are granted, and in which rule of law is substantially disregarded».

¹⁷ In this way, see K.M. Roberts, *Populism and Political Representation*, in C. Lancaster, N. Van de Walle (eds.), *The Oxford Handbook of the Politics of Development* (2018), 518 ff. An original approach to the “diarchic character” of contemporary populism is proposed by N. Urbinati, *Populism and the Principle of Majority*, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo & P. Ostiguy (eds.), *The Oxford Handbook of Populism* (2017), 572 ff.

¹⁸ On this point, see in particular E. Mavrozacharakis, *Populism and Democracy: An Ambiguous Relationship*, 7 (4) *EQPAM* 19 ff. (2018).

¹⁹ With reference to this profile, see, among others, A. Arato, *How we got here? Transition Failures, their Causes and the Populist Interest in the Constitution*, 45 (9-10) *Philos. Soc. Crit.* 1106 ff., 1111 (2019). In this way, the Author also emphasises that the populist approach is not always aimed at strengthening the democratic process. In fact, in accordance with the analysis proposed by Arato, «when there is social resistance and even mobilization against those in power, and especially as conflicts with the host ideologies and their carriers emerge, free and fair democratic elections become a threat, and authoritarian options easily come to be favored by populist governments».

²⁰ In this way, in accordance with the suggestion proposed by C. Mudde, C. Rovira Kaltwasser, *Populism*, in M. Freeden, M. Stears (eds.), *The Oxford Handbook of Political Ideologies* (2013), 494 ff., 503, it can be claimed that «most populists not only detest the political establishment, but will also critique the economic elite, the cultural elite, and the media elite. All of these are portrayed as being one homogeneous corrupt group that works against the ‘general will’ of the people».

and the abyssal distance between citizens and ruling elites²¹. With reference to the relationship between democracy and populism, it is relevant to emphasise the relevant role played by the legal category of “pluralism”²²; as is well known, pluralism is a key principle of contemporary Western liberal democracies. The populist movements and parties do not deny, *prima facie*, the constitutional principle of political pluralism; nevertheless, in their arguments can be clearly seen the purpose to delegitimise any political actor who supports a different thesis from his own. In the populist frame it is possible to identify the theoretical foundations of an authentic “constitutional theory”, based on three fundamental elements, “constituent power”, “popular sovereignty” and “constitutional identity”²³.

These key elements represent the populist legal approach to democratic institutions, the connecting point between

²¹ In this framework, regarding the different approaches on the relationship between populism and democracy, P. Blokker, *Populist Nationalism, Anti-Europeanism, Post-nationalism, and the East-West Distinction*, 6 (2) *German L.J.* 371 ff., 379 (2005), underlines that «populism should be understood as entailing a rather one-sided and particular view of democracy, emphasizing its emancipatory, redemptive features, rather than the fulfilment of ideal democracy. In contrast, the ‘pragmatic’ view of democracy is about order and the rule of law, and in this sense emphasises an opposed but equally one-sided view of democracy». On this topic, see also K. Abts, S. Rummens, *Populism versus Democracy*, 55 *Pol. Stud.* (2007), 405 ff.; N. Lacey, *Populism and the Rule of Law*, 15 *Ann. Rev. L. Soc. Sci.* 79 ff. (2019); C. Pinelli, *The Rise of Populism and the Malaise of Democracy*, in S. Garben, I. Govaere & P. Nemitz (eds.), *Critical Reflections on Constitutional Democracy in the European Union* (2019), 27 ff.

²² With reference to the category of “pluralism” as a fundamental pillar of Western legal orders, see, among others, K.D. McRae, *The Plural Society and the Western Political Tradition*, 12 (4) *Can. J. Pol. Sci.* 675 ff. (1979); J. Griffiths, *What is Legal Pluralism?*, 18 *J. Leg. Plur. Unoff. L.* 1 ff. (1986); S.E. Merry, *Legal Pluralism*, 22 (5) *L. Soc. Rev.* 869 ff. (1988); G. Teubner, *Global Bukowina: Legal Pluralism in the World-Society*, in G. Teubner (ed.), *Global Law Without a State* (1997), 3 ff.; M. Davies, *Legal Pluralism*, in P. Cane, H.M. Kritzer (eds.), *The Oxford Handbook of Empirical Legal Research* (2010); P.S. Berman, *Global Legal Pluralism*, 80 *S. Cal. L. Rev.* 1155 ff. (2007); G. Swenson, *Legal Pluralism in Theory and Practice*, 20 (3) *Int'l Stud. Rev.* 438 ff. (2018); K. von Benda-Beckmann, B. Turner, *Legal Pluralism, Social Theory, and the State*, 50 (3) *J. Leg. Plur. Unoff. L.* 255 ff. (2018).

²³ In this sense L. Corrias, *Populism in a Constitutional Key: Constituent Power, Popular Sovereignty and Constitutional Identity*, 12 (1) *Eur. Const. L. Rev.* 6 ff., 8 (2016). On this topic, see also D. Kelly, *Populism and the History of Popular Sovereignty*, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo & P. Ostiguy (eds.), *The Oxford Handbook of Populism* (2017), 512 ff.

constitutional framework and political model²⁴. In this way, populists utilise the category of popular sovereignty to support the continuous recall to the electoral phase and the strong criticism towards supranational and nonelected institutions. With reference to the populist cultural approach, constitutional identity represents the national legal and historical traditions that populists utilise to defend the category of “national identity” against any political actors who would like to affirm a general project of multicultural society²⁵.

In the field of populist theoretical approach, national Parliaments are described as bodies unable to give concrete and real answers to the needs of the people. In this sense, this type of attitude involves the implementation of direct democracy tools, often with opaque (or not completely transparent) decision-making procedures²⁶. In this way, Mudde and Rovira Kaltwasser talk about an “elective affinity” between populism and direct democracy²⁷.

In this sense, in accordance with the analysis proposed by Bilancia, the populist phenomenon should be interpreted as «no more than the most evident output of the distance between the people and the intellectual aristocracy of the governing bodies»²⁸.

²⁴ In this way, see the remarkable analysis proposed by L. Corso, *What does Populism have to do with Constitutional Law? Discussing Populist Constitutionalism and Its Assumptions*, 2 *Riv. Fil. Dir.* 443 ff. (2014).

²⁵ A populist ideological pillar at the basis of the American and European far-right populist experiences is the theory of “nativism”: in essence, in every national experience the prevalence must be recognised to native citizens and, on the other hand, migration policies should be reduced to a minimum or even completely stopped. This approach is substantially based on the fear that the “cultural amalgam” could hybridise or destroy local cultures and traditions on which the society hinges. In essence, populist model is based on the rejection of globalism theory and the idea of a multicultural society. Particularly, right-wing populist political movements and parties propose a cultural approach based on the “defensive closure” and on the electoral slogan “owners at home” or “stop the migrant invasion”. In this regard, see, among others, C. Mudde, *Populist Radical Right Parties in Europe* (2007).

²⁶ In this way, see, among others, M. Belov, *Direct Democracy and European Integration*, in S. Knezevic, M. Nastic (eds.), *Globalisation and Law* (2017), 19 ff.; K. Sengul, *Populism, Democracy, Political Style and Post-truth: Issues for Communication Research*, 5 (1) *Comm. Res. Prac.* 88 ff. (2019).

²⁷ C. Mudde, C. Rovira Kaltwasser, *Populism*, cit. at 20, 505.

²⁸ F. Bilancia, *The Constitutional Dimension of Democracy within a Democratic Society*, 11 (1) *IJPL* 8 ff., 21 (2019).

Nevertheless, the continuous recall made by populist political movements to the instruments of direct democracy does not necessarily mean a clear separation between populist voters²⁹ and non-populist voters³⁰. The populist ideological approach is strongly oriented to the enhancement of instruments of direct democracy and, on the other hand, to denouncing the contradiction between popular will and ruling classes³¹.

Anyway, although they often coincide, populism does not always coincide with nationalism. Populism and nationalism are different political categories, despite populism has gathered many elements present in nationalist movements (the ambition to the national supremacy in international competition, defense of national identity, refusal to integrate cultural elements other than natives). In this regard, an erroneous “conflation” has often been made between the categories of nationalism and populism³². In

²⁹ For an empirical study related to the political intentions of young people voters (and their opinion on the populist political movements and parties), see G. Pollock, T. Brock & M. Ellison, *Populism, Ideology and Contradiction: Mapping Young People’s Political Views*, 63 (2) *Sociol. Rev.* 141 ff. (2015).

³⁰ With reference to this point, see in particular K. Jacobs, A. Akkerman & A. Zaslove, *The Voice of Populist People? Referendum Preferences, Practices and Populist Attitudes*, 53 (4) *Acta Politica* 517 ff. (2018).

³¹ However, the constant reference of populist political movements and parties to forms of direct democracy does not always prove to be founded on solid reasons. In this way, taking a cue from the analysis of C. Pinelli, *The Populist Challenge to Constitutional Democracy*, 7 (1) *Eur. Const. L. Rev.* 5 ff., 11 (2011), it can be argued that «contemporary populist movements and parties are far from proposing alternative solutions to representation as practiced in constitutional democracies, nor necessarily favour the referendum, in spite of it frequently being believed as restoring democracy to the people. To the contrary, they regularly participate in elections and accept the rules of the representative system». In this way, see also F. Graef, *Populists as Strangers: How the ‘Politics of the Extraordinary’ Challenges Representative Democracy in Europe*, 09 *Dahrendorf FWP* 1 ff. (2019).

³² In accordance with the analysis proposed by B. de Cleen, Y. Stavrakakis, *Distinctions and Articulations: A Discourse Theoretical Framework for the Study of Populism and Nationalism*, 24 (4) *J. Eur. Inst. Comm. Cult.* 301 ff., 303 (2017), this “conflation” is generated because «populist political parties and movements usually operate on a national level, the populist appeal to “the people” (like democratic appeals to “the people” in general) tends to be an appeal to a “people” defined on the level of the nation-state. Moreover, both nationalism and populism revolve around the sovereignty of “the people”, with the same signifier often being used to refer to “the people” in both the populist and the nationalist sense».

fact, there are significant differences between these political concepts. Nationalist approach is based on the concept of “nation”, as a “superior” entity, in which a people with common language, culture, history and tradition joins together to defend their internal historical heritage against “foreign enemies”. Nationalist movements do not reject the presence of a national ruling elite, but contrast the foreign ruling elites in competition with the internal ruling class³³.

The other way around, in the populist vision there is a deep opposition between “people” and “ruling elites”, at national and supranational level. The cornerstone of populist approach is based on the negation of political and institutional legitimacy of each elite, seen as usurpers of the authentic power of *demos* (especially if not democratically elected).

The political organisations of contemporary radical right have had a progressive evolution of their language and their political methods. In particular, the gradual convergence between populist and nationalist approach has contributed to the formation of a hybrid form of political “ideology”, which attempts to reconcile the new social needs with the roots of 20th century right-wing nationalism. Regarding to the contact points between populism and nationalism, another relevant profile is related to the identification of the supremacy of “people” (against ruling elites) and the restatement of the “supreme” value of “national sovereignty”³⁴. In this framework, it can be argued that the

³³ According to the nationalist approach, the enemies are not only “elites” or “technocrats”. The target of nationalist politics is not the reaffirmation of people’s sovereignty as such, but the recognition of the supreme position of the concept of nation. In this sense, see D. Stockemer, *Conclusion*, in D. Stockemer (ed.), *Populism Around the World. A Comparative Perspective* (2019), 125 ff.

³⁴ With reference to the legal and political category of “sovereignty”, analysed in the light of contemporary global changes, see, among others, D.A. Smith, D.J. Solinger & S.C. Topik (eds.), *States and Sovereignty in the Global Economy* (1999); W. Twining, *Globalisation and Legal Theory* (2000); G. Simonovic, *State Sovereignty and Globalization: Are Some States More Equal?*, 28 (3) *Ga. J. Int’l & Comp. L.* 381 ff. (2000); E. Ip, *Globalization and the Future of the Law of the Sovereign State*, 8 (3) *Int’l J. Const. L.* 636 ff. (2010); M. Troper, *Sovereignty*, in M. Rosenfeld, A. Sajò (eds.), *The Oxford Handbook of Comparative Constitutional Law* (2012), 350 ff.; J.L. Cohen, *Globalization and Sovereignty. Rethinking Legality, Legitimacy and Constitutionalism* (2012); L.E. Grinin, *New Basics of State Order or Why do States Lose Their Sovereignty in the Age of Globalization*, 3 (1) *J. Glob. Stud.* 3 ff. (2012); J. Westaway, *Globalization, Sovereignty and Social Unrest*, 5 (2) *J. Pol. & L.* 132 ff. (2012); R.

category of sovereignty is a concept structurally connected to the origin and evolution of modern State and, in the last two centuries, to the consolidation of representative democracy in Western societies³⁵. National sovereignty and representative democracy, in this sense, are categories that have developed and interweaved over the years, to become the qualifying elements of modern Western democracies³⁶.

3. Disintermediation, post-ideological societies and crisis of political parties

The rise of populist and nationalist political movements and parties is, parallelly, the crisis of traditional political parties and, in general, of traditional instruments of democratic representation. Moreover, populist political movements and parties require a “big-man” that, only himself, can speak with the people and solve citizens’ problems. The fundamental role played by leadership in populist rhetoric is based on the originality and innovativeness that populist model has imposed in national and international political scenario³⁷.

Rawlings, P. Leyland & A. Young (eds.), *Sovereignty and the Law – Domestic, European, and International Perspectives* (2013); J.D. van der Vyver, *Sovereignty*, in D. Shelton (ed.), *The Oxford Handbook of International Human Rights Law* (2013), 380 ff.; S.D. Krasner, *The Persistence of State Sovereignty*, in O. Fioretos, T.G. Falleti & A. Sheingate (eds.), *The Oxford Handbook of Historical Institutionalism* (2016), 523 ff.; A. Stein, *The Great Trilemma: Are Globalization, Democracy, and Sovereignty Compatible?*, 8 (2) *Int’l Theory* 297 ff. (2016); G. Gee, A.L. Young, *Regaining Sovereignty? Brexit, the UK Parliament and the Common Law*, 22 *Eur. Pub. L.* 131 ff. (2016); J. Agnew, *Globalization and Sovereignty. Beyond the Territorial Trap* (2017).

³⁵ With regard to the relationship between sovereignty and constitutionalism, see in particular N. Walker, *Sovereignty and Beyond: The Double Edge of External Constitutionalism*, 58 *Va. J. Int’l L.* 799 ff. (2018).

³⁶ Indeed, several scholars emphasise that the categories of sovereignty and democracy are nodal points of populist and nationalist theoretical and dialectical approach. On this profile see, among others, T. Macdonald, *Sovereignty, Democracy, and Global Political Legitimacy*, in C. Brown, R. Eckersley (eds.), *The Oxford Handbook of International Political Theory* (2018), 401 ff.

³⁷ In this sense, taking a cue from the analysis proposed by K. Weyland, *Populism: A Political-Strategic Approach*, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo & P. Ostiguy (eds.), *The Oxford Handbook of Populism* (2017), 49 ff., 61, it can be argued that «the central role of personalistic leadership, which allows the leader great latitude for opportunistic calculations and

Furthermore, the populist rise, as is well known, coincided also with the decline of traditional political parties. It is relevant to emphasise that traditional political parties are in difficulty to represent the renewed demands coming from society and, in this way, voters move towards more radical and not politically correct electoral positions. The crisis of political parties should not be understood as the only factor in the growth process and spread of populist political approach. However, the inability of contemporary political parties to grasp the intense discomfort of large part of public opinion has contributed over the years to bringing citizens to populist model and its political practices. At the same time, voters cannot be blamed for this dynamic, arguing that the majority of electoral supporters of populist political movements and parties are people with a low level of education³⁸. From a theoretical perspective, in a liberal and constitutional democracy, this is not a valid argument. First of all, in the field of electoral competition, European constitutional democracies do not make differences among citizens (especially, for their personal wealth, status or assets) and, on the other hand, do not make differences based on the qualification obtained³⁹.

The central point of this profile is related to the correct comprehension of this electoral tendency and why the traditional political parties fail to achieve the popular *favor* (also) of disadvantaged social classes. In this way, populist political movements and parties do not join a specific traditional ideology and, for this reason, they are free to speak with a basic and simplified language to an indistinct mass of people. In this respect, populism tends to be critical of democratic institutions, seeking direct contact between leader and citizens.

manoeuvrings, also gives populism the striking unpredictability, shiftiness, and disorganization in the exercise of government power and in public policy-making that observers have noted».

³⁸ In this way, see the analysis of K.L. Scheppele, *The Opportunism of Populists and the Defense of Constitutional Liberalism*, 20 (3) *German L.J.* 314 ff. (2019). See also A. Akkerman, C. Mudde & A. Zaslove, *How Populist Are the People? Measuring Populist Attitudes in Voters*, 47 (9) *Comp. Pol. Stud.* 1324 ff. (2014).

³⁹ With reference to the political leadership selection methods, it is relevant to underline the remarkable analysis of S. Gardbaum, R.H. Pildes, *Populism and Institutional Design: Methods of Selecting Candidates for Chief Executive*, 93 (4) *N.Y.U.L. Rev.* 647 ff. (2018).

Their political approach is centred in a strong opposition to the ruling elites, often claiming to be “neither right nor left”, in the framework of so-called “post-ideological society”. In this sense, some academic scholars, referring to a new political approach, talk about a “thin-centred” ideology, based on the simultaneous presence of ideas and suggestions originally belonging to extremely different ideologies⁴⁰. Based on what has been argued so far, it can be claimed that the historical and ideological background of populism is quite limited. The ability to adopt, when required, any type of political attitude, adapting superficially to the demands of the *demos*, makes populist political movements and parties difficult to counteract on the level of a political dialectic that looks at the needs of the future and not only at the needs of the present time.

In the opinion of some academic scholars, a relevant critical point of contemporary Western democracies concerns the electoral power of populist political movements and parties and the related threats against supranational and, particularly, national democratic institutions. The appeal to the “people” is a central element in populist rhetoric. An appeal to the popular pronouncement, disintermediated from any kind of intermediation carried out by political parties, political institutions or, of course, intermediate bodies⁴¹, delegitimizing the traditional role played by political parties in Western liberal democracy⁴².

⁴⁰ A relevant definition of “thin-centred” ideology is proposed by B. Kramer, *Populist Online Practices: The Function of the Internet in Right-wing Populism*, 20 (9) *Inf. Commun. Soc.* 1293 ff. (2017). On this topic, see also C. Noble, G. Ottmann, *National Populism and Social Work*, 3 (3) *J. Hum. Rts. Soc. Work* 112 ff. (2018).

⁴¹ With reference to the relationship between populist leadership and *demos* and the role played by the intermediate bodies or institutions, in accordance with the analysis proposed by M. Rooduijn, *The Nucleus of Populism: in Search of the Lowest Common Denominator*, cit. at 8, 557, it could be argued that «populists want to get rid of intermediate institutions and organizations that stand in the way of a direct relationship between themselves and their followers».

⁴² In this way, based on the analysis proposed by T. Fournier, *From Rhetoric to Action, a Constitutional Analysis of Populism*, 20 (3) *German L.J.* 362 ff., 365 (2019), it could be argued that the leadership of populist political movements and parties tends to homogenise the “*demos*”, establishing a direct relationship with the people without mediation, given that «populist rhetoric refuses any pluralistic vision of the majority. Populist leaders claim to be the spokesperson of the Nation which, because of its unity, can have only one representative».

Furthermore, on this issue there are two key points. On the one hand, the populist idea of disintermediation between leadership and people⁴³. On the other hand, the refusal of a heterogeneous social context, proposing a unitary social and cultural model, in which leadership becomes “spokesman” of the people. In this way, it is crucial to emphasise the “paradox of populism” proposed by Urbinati, according to which the paradox of populism concerns the circumstance for which «as a movement, it arises as intense partisanship when rallies against existing parties; but its inner ambition is towards incorporating the largest number to become the only-party-of-the-people and dwarf all partisan affiliations and party opposition»⁴⁴. In this regard, populism aims to be recognised as the only one representative political force of *demos*.

In this frame, “disintermediation” is another relevant keyword for a better comprehension of populist approach related to the “old politics”. But, at a closer inspection, “disintermediation” does not represent the main factor for overcoming representative democracy, which still remains the essential tool to connect *demos* to legislative and political powers in Western constitutional democracies⁴⁵.

In the age of populism and disintermediation process, it is relevant to underline the role played by social networks in the current political and institutional framework. With the appearance of an “unmediated” or “disintermediated” method of political communication, political leaders can speak directly to voters, bypassing press, radio and, in more recent years, television. In the contemporary age, politics communication is the most important activity of each political organisation. An effective transmission

⁴³ A concrete responsibility must be recognised to the ruling elites and political parties, guilty of having often legitimised an attitude very close to the “institutional rupture”, relying only on the weapon of “politically correct” language. In this way, see B. Crick, *Populism, Politics and Democracy*, 12 (5) *Democratization* 625 ff. (2005).

⁴⁴ See N. Urbinati, *Liquid Parties, Dense Populism*, 45 (9-10) *Philos. Soc. Crit.* 1069 ff., 1075 (2019).

⁴⁵ In this regard, see B. Moffitt, *Populism 2.0. Social Media and the False Allure of ‘Unmediated’ Representation*, in G. Fitzi, J. Mackert & B.S. Turner (eds.), *Populism and the Crisis of Democracy* (2018), 30 ff.

creates a powerful political message⁴⁶. In this regard, the most relevant point about political communication concerns the means by which the political message is conveyed⁴⁷.

The importance of (multimedia) communication in the current political dialectic is confirmed by the phenomenon of “fake news” (digital disinformation), by which a strong sense of social hatred is directed and channelled, especially towards the elites in power. It must be emphasised that a correct “control” of information sources, especially in digital era, plays a crucial role in a correct information of citizens and prevents public opinion from choosing one political movement over another, based on erroneous or, at worst, artfully created information⁴⁸.

At the time of social networks, such political delegitimization can also take place through personal attacks directed towards other political leaders. In the above-mentioned traditional mass media there is (there was?) a filter, represented by press, between voters and political leadership. In this sense, it must be further emphasised that the new media have profoundly changed the people’s way of thinking, their customs and behaviours, even how to read and understand political and social events⁴⁹. A “daily social storytelling” in opposition to the ruling elites and citizens’ common sense, with the evident target to

⁴⁶ On this topic, see, among others, M. Ekstrom, M. Patrona & J. Thornborrow, *Right-wing Populism and the Dynamics of Style: A Discourse-analytic Perspective on Mediated Political Performances*, 4 (1) *Palgrave Commun.* 1 ff. (2018).

⁴⁷ In this way, see the analysis proposed by W.P. Nagan, S.R. Manasa, *The Rise of Rightwing Populism in Europe and the United States*, 6 (10) *Int’l J. Soc. Sci. Stud.* 50 ff. (2018).

⁴⁸ In this sense, it is important to emphasise the Report “A multi-dimensional approach to disinformation”, released by the European Commission’s High-Level Group on Fake News and Online Disinformation (HLEG) in March 2018. In this way, the Report utilises the word “disinformation”, because the use of the term “fake news” could be “misleading”. On this topic, see, among others, O. Pollicino, E. Bietti, *Truth and Deception Across the Atlantic: A Roadmap of Disinformation in the US and Europe*, 11 (1) *IJPL* 43 ff. (2019).

⁴⁹ On this point, in accordance with the suggestion proposed by C. Pinelli, *The Populist Challenge to Constitutional Democracy*, cit. at 31, 7, it is relevant to underline that «the decline of ideologies and social classes of the past century has been accelerated by, and complemented with, the advent of communicative systems that are believed to structure the public debate in terms of singular events rather than of principles, thus supplying the awareness of a common future with mediatically driven perceptions».

achieve electoral consensus and a growing cultural influence in the social body⁵⁰.

Populist leaders are often skilled communicators and, avoiding the mediation circuit, they pursue the target of spreading their messages directly to voters and dialogue in real time with citizens. In this way, it could be argued that right-wing populist political movements and parties (and their political leaderships) are very skilled to exploit the potentiality of new technologies⁵¹ and, consequentially, to spread their political messages⁵².

4. The populist phenomenon in time of globalisation and economic and financial crisis

The severe economic and financial crisis, “detonated” in United States since 2007 as crisis of private debt, has gradually expanded to European States, especially in Euro-Mediterranean area, in form of sovereign debt crisis⁵³. European Union Member

⁵⁰ In this framework, E. De Blasio, M. Sorice, *Populism Between Direct Democracy and the Technological Myth*, 4 (15) *Palgrave Commun.* 1 ff. (2018), talk about “technopopulism”, in order to emphasise the importance of the new social media in the populist rhetoric and popular consensus. In this way, see also A. Rozukalne, *Is Populism Related Content the New Guilty Pleasure for Media and its Audiences?*, in A. Kudors, A. Pabriks (eds.), *The Rise of Populism: Lessons for the European Union and the United States of America* (2017), 37 ff.

⁵¹ On this point, see the remarkable and innovative study proposed by A. Adimi Gikay, C.G. Stanescu, *Technological Populism and Its Archetypes: Blockchain and Cryptocurrencies*, 2 *Nordic J. Com. L.* 66 ff. (2019).

⁵² With reference to the populist social and communicative strategies, see, among others, P. Ostiguy, *Populism: A Socio-Cultural Approach*, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo & P. Ostiguy (eds.), *The Oxford Handbook of Populism* (2017), 74 ff.; T. Aalberg, F. Esser, C. Reinemann, J. Strömbäck & C.H. de Vreese (eds.), *Populist Political Communication in Europe* (2017); M. Mancosu, *Populism, Emotionalized Blame Attribution and Selective Exposure in Social Media*, 1 *Com. Pol.* 73 ff. (2018); G. Mazzoleni, R. Bracciale, *Socially Mediated Populism: The Communicative Strategies of Political Leaders on Facebook*, 4 (50) *Palgrave Commun.* 1 ff. (2018); S. Waisbord, *Populism as Media and Communication Phenomenon*, in C. de la Torre (ed.), *The Routledge International Handbook of Global Populism* (2019), 221 ff. Moreover, the contemporary approach of politics and economics to the new mass media induces further analytical studies on the real extent of messages conveyed by communication tools. In this way, see D. Yarrow, *Progressive Responses to Populism: A Polanyian Critique of Liberal Discourse*, 88 (4) *Pol. Q.* 570 ff. (2017).

⁵³ On the detonation of private debt as a trigger for the economic and financial crisis, see A. Pettifor, *Debttonation: how globalisation dies*, *Opendemocracy.net*

States found themselves essentially unfit to manage this global crisis. Conditioning measures on national economic policies decided by European Union institutions have been increasingly implemented by Maastricht Treaty in 1992, the adoption, in 1997, of Stability and Growth Pact, and even intensified through the Treaty on the Functioning of the European Union, in 2009.

Basically, economic policies of Member States are developed as part of a “multilevel constitutionalism”⁵⁴, on which the targets inherent deficit and public debt, that Member States are called to implement, are first established at supranational level and then accomplished by each Member State, whatever the internal allocation of powers between State and decentralised entities takes.

On the other hand, the role played by political actors and public decision makers has been progressively weakened. The increasing shift of decision-making level from national States to supranational institutions has involved the exclusion of important decision-making sectors, in particular the potentially unlimited national spending capacity, from national politics to supranational entities. In this framework, the introduction in some national Constitution of severe budgetary rules (the so-called “golden rule” of balanced budget) has involved a process, defined by a part of academic literature of “juridification” of economic concepts, which has significantly reduced the role of “politician” (and, consequently, of elective representation) in favor of the centrality of “cryptic” and technical economic and financial rules⁵⁵.

The deep economic and financial crisis has also expanded the social hardship areas in the European Union space⁵⁶. Starting

(2007). See, moreover, R. Boyer, *The Global Financial Crisis in Historical Perspective: An Economic Analysis Combining Minsky, Hayek, Fisher, Keynes and the Regulation Approach*, 3 (3) *De Gruyter online* 93 ff. (2013); D.D.E. Andersen, S. Krishnarajan, *Economic Crisis, Bureaucratic Quality and Democratic Breakdown*, 54 (4) *Gov. Oppos.* 715 ff. (2019).

⁵⁴ Nevertheless, especially in the last twenty years, constitutional principles that seemed to be consolidated are being questioned by populist parties and movements. In this sense, see P. Blokker, *Varieties of Populist Constitutionalism: The Transnational Dimension*, 20 (3) *German L.J.* 332 ff. (2019).

⁵⁵ In this way, see the analysis proposed by F. Bilancia, *Juridification, società civile e identità nazionali nel processo di integrazione europea*, 3 *Dir. Pubbl.* 937 ff. (2016).

⁵⁶ In this framework, see A. Pottakis, *‘Soft’ Approaches to ‘Harsh’ Realities: The EU Failings at Crisis Management*, 25 (1) *Eur. Pub. L.* 1 ff. (2019).

from these feelings of deep scepticism and frustration, populist political parties and movements have built their current cultural and electoral successes⁵⁷. Especially in times of economic and financial crisis⁵⁸, populist political approach is also revealed in their economic approach at national and supranational level⁵⁹. In the populist theoretical and rhetorical approach, each national or supranational independent institution, composed of technicians not democratically elected, should be subjected to the power of democratic political authorities, in order to avoid limiting the “sovereignty” of “politician” as an expression of “popular will”⁶⁰.

In fact, observing their political programs, the censures of populist political movements and parties are focused in contraposition to European migration policies, the unbalanced liberalisations in the fields of labour, service and financial markets and EU decision-making mechanisms. The European Union framework is even severely criticised, but the current European and, more generally, global economic framework based on the free market approach is never questioned.

As seen before, the populist forces (especially right-wing populists) dispute the “global” dimension of current economic neoliberal framework, proposing a gradual return to a more domestic dimension of capitalism. In this way, right-wing populist approach tends to strongly criticise the technical supranational

⁵⁷ On the progressive weakening of European economic and political governance, see, among others, C. Kombos, *Constitutional Review and the Economic Crisis: In the Courts We Trust?*, 25 (1) *Eur. Pub. L.* 105 ff. (2019).

⁵⁸ On this topic, an interesting analysis is developed by V. Hatzopoulos, *From Economic Crisis to Identity Crisis: The Spoliation of EU and National Citizenships*, 1 *Eur. Legal Stud.* (2017).

⁵⁹ With reference to the relationship between neoliberal and populist economic approaches, see, among others, J. Berzins, *Neoliberalism, Austerity, and Economic Populism*, in A. Kudors, A. Pabriks (eds.), *The Rise of Populism: Lessons for the European Union and the United States of America* (2017), 57 ff. Regarding the crisis of contemporary global capitalism, see the original approach proposed by W. Streeck, *The Crises of Democratic Capitalism*, 71 *New Left Rev.* 5 ff. (2011). In the field of democratic capitalism’s crisis and the notion of “authoritarian liberalism” in the European Union framework, see the remarkable study of M.A. Wilkinson, *The Specter of Authoritarian Liberalism: Reflections on the Constitutional Crisis of the European Union*, 14 (5) *German L.J.* 527 ff. (2013).

⁶⁰ With particular reference to the issue of “economic populism” (and also on the relationship between populism and supranational institutions), see, among others, D. Rodrik, *Is Populism Necessarily Bad Economics*, 108 *AEA* 196 ff. (2018).

institutions and to claim, if necessary, the enhancement of domestic economic and cultural dimension, with a consequent aversion to “inclusion policies”, seen as onerous and discordant with the “fundamental values” of the European and Western societies⁶¹. In this framework, it is relevant to emphasise that the “technocratic enemy”⁶² is not always clearly identified, given that «elites are always rather vaguely specified: unaccountable Brussels bureaucrats, mainstream politicians, experts of various kinds, the traditional (i.e. liberal) media, the IMF and more besides»⁶³. In the populist perspective, it is crucial to evoke an enemy of the people (especially if invisible or opaque), in order to direct popular hatred towards their own electoral interest.

On the other hand, the “aggressive” approach of populist political parties and movements towards liberal democracy has its historical roots in the epochal change represented by globalisation process, as a consequence (also) of the Soviet Union collapse⁶⁴. In this way, the globalisation process has led to the progressive reaffirmation of a self-regulated market framework, relegating national dimension to a limited role on the global economic sphere⁶⁵. At the same time, the globalisation of Western markets, legal orders and societies has indubitably played a leading role in

⁶¹ In this way, see especially M.D. Poli, *Contemporary Populism and the Economic Crisis in Western Europe*, 5 *Baltic J. Pol. Sci.* 40 ff. (2016).

⁶² In this way, according to the analysis proposed by H. Bang, D. Marsh, *Populism: a Major Threat to Democracy?*, 39 (3) *Pol’y Stud.* 352 ff., 357 (2018), the real challenge for Western democracy «concerns how to govern beyond neoliberalism’s depoliticizing technocracy, without falling prey to populism’s repoliticized bureaucracy».

⁶³ G.F. Thompson, *Populisms and Liberal Democracy – Business as Usual?*, 46 (1) *Econ. Soc’y* 43 ff., 49 (2017).

⁶⁴ In this way, in the opinion of C. Mudde, *The Populist Zeitgeist*, cit. at 10, 555, it could be argued that «the end of the cold war has changed the political relationships both within and towards liberal democracies. Most importantly, democracy has lost its archenemy, to which it was always compared favourably, and “real existing democracies” are now being increasingly compared unfavourably to the theoretical models».

⁶⁵ Regarding to this topic, it is a nodal point the relationship between globalisation process and contemporary crisis of national States. See, in this way, J. Leaman, *Reversing the Neoliberal Deformation of Europe*, in J.E. Fossum, A.J. Menéndez (eds.), *The European Union in Crises or the European Union as Crises?* (2014), 43 ff.

the rise of “anti-system” movements and parties⁶⁶. In this sense, the globalisation process has brought new levels of development and opulence in Western societies. In the meanwhile, it has also created new inequalities among national States and different social classes⁶⁷. In this multifaceted scenario, the resentment experienced by those who in the globalisation process have suffered more negative than beneficial effects have been the perfect breeding ground for the birth and rise of widespread “anti-system” sentiments, which were then routed to various populist political movements and parties in the whole world, not only in Europe.

However, the “new” evolution of populist political movements and parties is articulated in a strong connection between “political nationalism” and “economic protectionism”, with an intense antagonistic approach to the common market principles of liberalisation in the field of labour market and free competition. In this sense, migration crisis has further polarised the continental political framework along a deep fracture between “Europeanists” and “sovereignists”⁶⁸.

With reference to the legal aspects, populist political movements and parties often reject the legal legitimation of national constitutional Courts and supranational justice systems (e.g., European Court of Justice). Constitutional Courts are frequently seen as an interference with the supreme “general will” of the people, in particular when national and supranational

⁶⁶ In this sense, in accordance with the analysis of M.E. Szatlach, *European Identity and Populism*, XXXVI *Polish Pol. Sci.* 69 ff., 87 (2007), it could be argued that «a clear rise of populist tendencies in West Europe is not a result of an accidental convergence. It seems to be inseparably connected with an identity crisis caused by global and integration transformations in the contemporary world, and by inability to oppose the processes of changes».

⁶⁷ On this topic, see in particular D. Swank, H.G. Betz, *Globalization, the Welfare State and Right-Wing Populism in Western Europe*, 1 (2) *Socio-Econ. Rev.* 215 ff. (2003).

⁶⁸ Relating to the relationship between right-wing populist security approach and management policies of migration crisis, see B. Bugaric, *The two Faces of Populism: Between Authoritarian and Democratic Populism*, 20 (3) *German L.J.* 390 ff. (2019).

judgments tend to preserve supreme constitutional principles that populists aim to exploit for their own political goals⁶⁹.

The institutional approach adopted by populists reproduce their irrational political leverage, based on the imaginative fascination of people, starting from concrete issues but with extreme or often not realistic solutions. Populist approach calls into question the displacement of decision-making centres from domestic dimension to supranational bodies (called by many populist “technocrats”), often not democratically elected, demanding, also with demagogic arguments, the need to give back to the people a real decision-making power, also through the instruments of direct democracy⁷⁰. The reference to “technique” and “technicians”, authoritative or not, produces the effect of increasing popular aversion towards ruling class⁷¹ and the electoral *favor* of populist political movements⁷². In this way, if political parties or national public institutions cannot be held accountable, becoming “irresponsible” subjects of relevant legislative and economic policies, also in the field of important economic strategies implemented by European Central Bank⁷³,

⁶⁹ In the same sense, see J.W. Mueller, *Populism and Constitutionalism*, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo & P. Ostiguy (eds.), *The Oxford Handbook of Populism* (2017), 591 ff.

⁷⁰ The reference goes to the well-known “Rousseau platform”, used by Five Star Movement in Italy to allow its members and militants to determine the political line of the Movement on individual measures or policies, by an electronic and secret voting procedure managed by a private company. For an analysis about the main features of Five Star Movement, see, among others, A. Pirro, *The Polyvalent Populism of the 5 Star Movement*, 26 (4) *J. Contemp. Eur. Stud.* 443 ff. (2018); M. Bassini, *Rise of Populism and the Five Star Movement Model: an Italian Case Study*, 11 (1) *IJPL* 302 ff. (2019).

⁷¹ On this topic, see the analysis proposed by G. Rico, M. Guinjoan & E. Anduiza, *The Emotional Underpinnings of Populism: How Anger and Fear Affect Populist Attitudes*, 23 (4) *Swiss Pol. Sci. Rev.* 444 ff. (2017).

⁷² In this way, see B. Moffitt, S. Tormey, *Rethinking Populism: Politics, Mediatization and Political Style*, 62 *Pol. Stud.* 381 ff. (2014).

⁷³ In the EU framework, an interesting analysis of role and *status* of the European Central Bank is proposed by D. Howarth, P. Loedel, *The European Central Bank. The New European Leviathan?* (2005). On this topic, see, among others, M. Fratianni, H. Huang, *Reputation, Central Bank Independence and the ECB*, in P.L. Siklos (ed.), *Varieties of Monetary Reforms. Lessons and Experiences on the Road to Monetary Union* (1994); J. de Haan, *The European Central Bank: Independence, Accountability and Strategy: A Review*, 93 (3-4) *Public Choice* 395 ff. (1997); C. Zilioli, M. Selmayr, *The Law of the European Central Bank* (2001); P.

they will not even be able to claim the positive results obtained, showing, on the other hand, that they are almost helpless facing of political and economic processes, which take place at a higher level than national level⁷⁴.

EU democratic deficit, in this way, is another example of the contemporary weakness of politics, in a time characterised by the “supremacy of technique”. This weakness, perhaps paradoxically, reinforces the social thrust in the populist leadership against democratic institutions. At the same time, democratic deficit assumes the image of a European Union dominated by technicians, partially or largely disconnected from democratic and representative circuit and, therefore, not “evaluable” in their work through the electoral procedure. In this regard, populism could also be seen as an original type of popular “reaction” to the excessive power of technique and technicians over politics and politicians⁷⁵.

In essence, despite various political and national differences, the ideological and cultural narrative of populism aims at self-legitimisation in front of public opinion, in order to be recognised as the only ones able to restore decision-making power to the “base of the pyramid”, without radical changes in the

Magnette, *Towards ‘Accountable Independence’? Parliamentary Controls of the European Central Bank and the Rise of a New Democratic Model*, 6 (4) *Eur. L.J.* 326 ff. (2000); D. Ritleng (ed.), *Independence and Legitimacy in the Institutional System of the European Union* (2016); A. Verdun, *Political Leadership of the European Central Bank*, 39 (2) *J. Eur. Integr.* 207 ff. (2017); D. Curtin, *‘Accountable Independence’ of the European Central Bank: Seeing the Logics of Transparency*, 23 (1-2) *Eur. L.J.* 28 ff. (2017).

⁷⁴ Regarding to the “usurpation” of decision-making power by technocratic elites, in accordance with the suggestion proposed by P. Aslanidis, *Populism and Social Movements*, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo & P. Ostiguy (eds.), *The Oxford Handbook of Populism* (2017), 306 ff., 311, it can be argued that «the populist frame offers a diagnosis of reality as problematic due to the usurpation of sovereign authority by “elites” suggesting that the “people” should mobilise to reclaim what is rightfully theirs». In this way, see also J.E. Fossum, *The Crisis, a Challenge to Representative Democracy in the European Union?*, in J.E. Fossum, A.J. Menéndez (eds.), *The European Union in Crises or the European Union as Crises?* (2014), 637 ff.

⁷⁵ On this topic, see, P. Mair, *Political Opposition and the European Union*, 42 (1) *Gov. Oppos.* 1 ff. (2017).

political and economic system. In this sense, it can be defined as a particular kind of “revolution without revolution”⁷⁶.

The actual political agenda, especially in some EU national experiences, is monopolised by populist topics and slogans. Against these keywords, traditional political parties seem to be unarmed, unable to reply to the stresses coming from populists and, specifically, from their leadership. In this way, Pinelli argues that political parties and also national governments «appear responsible for the inadequate responses to the basic needs of their electors due, *inter alia*, to EU failures, together with the holes and the fictions affecting the narrative of the European crisis»⁷⁷.

In the theoretical and political populist approach, charismatic leadership is a central element of electoral successes⁷⁸. In this framework, it is important to emphasise that the political successes of populist political movements and parties are often linked to their leaderships. Better said: if a political leadership loses respect, populist movements is also strongly affected, to the point of risking the political disappearance. The “aggressive” approach of populist political movements and parties is based also in their hard methods of political communication, based on the direct conflict with the “great powers”, a latent refusal of political pluralism and liberal rules and a clear attack to the institutional *status quo*.

What we are discussing here does not exclusively involve the electoral plan or its relationship with representative democracy, but includes the cultural sphere of Western societies and their change of cultural paradigm, with reference to the influence on public decision maker. In this way, academic literature for a long time has studied and debated about the appearance and evolution of contemporary populism.

⁷⁶ With reference to the “revolutionary potential” of populism and the need to defend the principles of constitutional democracy, see, in particular, B. Ackerman, *Revolutionary Constitutions: Charismatic Leadership and the Rule of Law* (2019).

⁷⁷ C. Pinelli, *The Rise of Populism and the Malaise of Democracy*, cit. at 21, 44.

⁷⁸ In this sense, L. Viviani, *A Political Sociology of Populism and Leadership*, 8 (15) *Soc. Mutam. Pol.* 279 ff., 279 (2017), argues that «the relationship between populism and leadership plays a key role in the reconfiguration of political forms».

Particularly, as seen earlier, economic and financial crisis⁷⁹ has been a crucial event in the relevant growth of antisystem political groups, because it has expanded an economic and social discomfort within Western middle class and pushed citizens towards radical political positions opposed to the current economic and political system⁸⁰.

5. Populism in Europe: a challenge to the EU institutions

The populist spread in the EU space, with its pervasive propagandistic models, against the European '*ancient régime*', inspires to reflect on the European cultural, economic and legal framework⁸¹. The pressure exercised to achieve the power by

⁷⁹ However, the economic and financial crisis is not the only reason to explain the growth of populist political movements and parties. On this point, in accordance with the suggestion proposed by J. Hopkin, M. Blyth, *The Global Economics of European Populism: Growth Regimes and Party System Change in Europe*, cit. at 10, 195, «populism as a political movement in Europe did not start with the 2007-8 crisis. It has been growing continuously since at least the 1980s in the form of Green parties, various National Fronts and an assortment of so-called Progress parties».

⁸⁰ With reference to the rise of populism in time of economic and financial crisis, it is important to underline that a period of economic and financial difficulty is not enough to justify the global spread of populism. In this way, D. Halikiopoulou, S. Vasilopoulou, *Breaching the Social Contract: Crises of Democratic Representation and Patterns of Extreme Right Party Support*, 53 (1) *Gov. Oppos.* 26 ff., 28 (2018), argue that «economic crisis in itself is not enough to facilitate the rise of extreme right parties. This outcome is only likely if economic crisis is accompanied by severe problems of governability, resulting in a crisis of democratic representation».

⁸¹ In Europe, the effects of the economic and financial crisis manifested themselves with extreme harshness in Greece. In this field of analysis, for an academic debate on the Greek economic and social crisis, see, among others, Y. Stavrakakis, P. Angelopoulos, *The People, Populism and Anti-Populism: Greek Political Discourse Against the Shadow of the European Crisis*, 2 (54) *Actual Marx* 107 ff. (2013); S. Vasilopoulou, D. Halikiopoulou & T. Exadaktylos, *Greece in Crisis: Austerity, Populism and the Politics of Blame*, 52 (2) *J. Common Mkt. Stud.* 388 ff. (2014); T.S. Pappas, *Populism and Crisis Politics in Greece* (2014); C. Arvanitopoulos, *Populism and the Greek Crisis: A Modern Tragedy*, 17 (1) *Eur. View* 58 ff. (2018); J. Rama, G. Cordero, *Who Are the Losers of the Economic Crisis? Explaining the Vote for Right-Wing Populist Parties in Europe After the Great Recession*, 48 *Rev. Esp. Cienc. Pol.* 13 ff. (2018); M. Lisi, I. Llamazares & M. Tsakatika, *Economic Crisis and the Variety of Populist Response: Evidence from Greece, Portugal and Spain*, 42 (6) *W. Eur. Pol.* 1284 ff. (2019).

populist political movements and parties determines, when the target is reached, the implementation of every necessary effort to preserve the “new” *status quo*⁸².

Actually, one of the most important manifestation of the threat represented by populism in Europe is the so-called “Brexit”, understood as the exit process of United Kingdom from European Union, through a popular referendum held on 23 June 2016⁸³.

In this way, with reference to the approach proposed by the “Leave Movement”, Brexit electoral campaign was based, *inter alia*, on the restatement of British people’s power and its own sovereignty in its own territorial space, against the supposed “Brussels elite’s impositions”⁸⁴. In this sense, political and communicative approach adopted by movements in support of Brexit process (especially “Hard Brexit”)⁸⁵, have revealed

⁸² In this way, taking a cue from K. Weyland, *Populism: A Political-Strategic Approach*, cit. at 37, 55, it could be argued that «populism is notorious for its twists and turns, driven by the opportunistic efforts of personalistic leaders to concentrate power and stay in office. The driving force behind populism is political, not ideological». In the same sense, see A. Batory, *Populists in Government? Hungary’s “System of National Cooperation”*, 23 (2) *Democratization* 283 ff. (2016).

⁸³ With reference to the “Brexit” referendum and, more broadly, on the impact of British populism on the Brexit process, see, among others, P. Craig, *Brexit: A Drama in Six Acts*, 41 (4) *Eur. L. Rev.* 447 ff. (2016); M. Goodwin, *Explaining the Vote for Brexit*, in A. Kudors, A. Pabriks (eds.), *The Rise of Populism: Lessons for the European Union and the United States of America* (2017), 87 ff.; S. Usherwood, *Shooting the Fox? UKIP’s Populism in the Post-Brexit Era*, 42 (6) *W. Eur. Pol.* 1209 ff. (2019); P. Norris, R. Inglehart, *Cultural Backlash: Trump, Brexit, and Authoritarian Populism* (2019); C.S. Browning, *Brexit Populism and Fantasies of Fulfilment*, 32 (3) *Cambridge Rev. Int’l Aff.* 222 ff. (2019); D. Marsh, *Populism and Brexit*, in I. Crewe, D. Sanders (eds.), *Authoritarian Populism and Liberal Democracy* (2020), 73 ff.

⁸⁴ In this sense, see, among others, F. Panizza, *Populism and Identification*, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo & P. Ostiguy (eds.), *The Oxford Handbook of Populism* (2017), 407 ff.

⁸⁵ The main political player of electoral campaign for the United Kingdom’s exit from European Union has been Nigel Farage, former leader of the UKIP party. For an exhaustive analysis of this political phenomenon, see, among others, R. Hayton, *The UK Independence Party and the Politics of Englishness*, 14 (3) *Pol. Stud. Rev.* 400 ff. (2016); M.R. Steenbergen, T. Siczek, *Better the Devil you Know? Risk-taking, Globalization and Populism in Great Britain*, 18 (1) *Eur. Union Pol.* 119 ff. (2017); L. March, *Left and Right Populism Compared: the British case*, 19 (2) *Brit. J. Pol. Int’l Rel.* 282 ff. (2017); A. Pareschi, A. Albertini, *Immigration, Elites and the European Union. The Framing of Populism in the Discourse of Farage’s UKIP*, 2 *Com.*

important common features with many European populist political movements and parties, highlighting how, with democratic procedures, populism could destabilise national and European legal systems.

Basically, European populism proposes a critical approach towards the European integration process and the continental economic and legal governance. Populism assumes that the correct way for the well-being of people is a return to a regional dimension, understood as enhancement of national traditions, cultures, ethnics, values, in the EU framework⁸⁶. In this way, taking a cue from the analysis proposed by Taggart, it can be claimed that «the issue of Euroscepticism has been a hardy perennial for populist parties in Western Europe»⁸⁷.

In this framework, populist political movements and parties utilise democratic procedures in order to affirm their own political vision, concentrating directly the decision-making power in the hands of citizens, with the purpose of circumventing democratic procedures. Moreover, populist institutional approach aims to conquer the power within constitutionally methods and then, subsequently, change the Constitution to pursue their own political principles⁸⁸. Clearly, it cannot be argued that populists are intrinsically bearers of an illiberal or anti-democratic ideology. On the other hand, the disruptive proliferation of populist

Pol. 247 ff. (2018); T. Bale, *Who Leads and Who Follows? The Symbiotic Relationship between UKIP and the Conservatives – and Populism and Euroscepticism*, 38 (3) *Politics* 263 ff. (2018); G. Evans, J. Mellon, *Immigration, Euroscepticism, and the Rise and Fall of UKIP*, 25 (1) *Party Pol.* 76 ff. (2019).

⁸⁶ With reference to the relationship between “national traditions” and “supranational order”, it is relevant to emphasise the approach proposed by G. Soroka, F. Krawatzek, *Nationalism, Democracy and Memory Laws*, 30 (2) *J. Democr.* 157 ff. (2019).

⁸⁷ P. Taggart, *Populism in Western Europe*, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo, P. Ostiguy (eds.), *The Oxford Handbook of Populism* (2017), 249 ff., 257.

⁸⁸ With reference to this issue, see, among others, M. Tushnet, *Popular Constitutionalism as Political Law*, 81 *Chi.-Kent L. Rev.* 991 ff. (2006); C. de la Torre, L. Scuccimarra, *Global Populism and Processes of de-Democratization. An Interdisciplinary Dialogue*, 1 *St. Pens. Pol.* 129 ff. (2019). Regarding the constitutional reforms as a means of imposing the populist approach in the legal system, see, in particular, S. Chambers, *Democracy and Constitutional Reform: Deliberative versus Populist Constitutionalism*, 45 (9-10) *Philos. Soc. Crit.* 1116 ff. (2019).

phenomenon should be considered, with reference to national and supranational legal framework⁸⁹.

In May 2019 EU Member States' citizens have voted for the election of the new European Parliament. The recent electoral developments show us a general increase, although it has been less than expected, of right-wing populism in the EU space. However, this populist electoral increase in Europe has not occurred in a homogeneous form, but it has involved some EU Member States to a greater extent. Particularly, in Italy, France, Hungary, UK, Belgium and Poland the most voted movements and parties belong to the political area of populism⁹⁰.

The populist growth is evident, but not so strong to shift the institutional balance within the European Parliament, where the alliance between European Popular Party and European Socialist and Democratic Party remains the only one able to offer a solid and reliable majority, since it can also be open to the support of European Liberals and, perhaps, European Greens. In any case, the challenges facing the EU institutions remain of considerable importance. It is evident that the electoral escalation of populist forces is a political and institutional fact that should be considered, especially with reference to the populist movements and parties that adopt a marked anti-European approach. The new legislature of European Parliament and European Commission will have to regain confidence in relevant sectors of European societies, especially as regards the proximity of institutions to EU citizens.

In this way, despite the immense tragedy and threat represented by the pandemic, the continental strategy in order to provide common tools to deal with the health crisis and the subsequent economic shock could represent the point of

⁸⁹ With a clear stand on this point, N.W. Barber, *Populist Leaders and Political Parties*, 20 (2) *German L.J.* 129 ff., 130 (2019), suggests that «populists are not tyrants or dictators, though, as populism develops, they might slide into these forms of state. Tyrants and dictators' rule without the support of the bulk of the people, using fear and coercion as primary tools of government. Populists, in contrast, rely on the support of the people for their power – though, like all rulers, they buttress this support with coercion against some state members».

⁹⁰ The reference is to *Lega* (Northern League, Italy), *Rassemblement National* (National Gathering, France), *Fidesz* (Hungarian Civic Alliance, Hungary), *Brexit Party* (UK), *Vlaams Belang* (Flemish Interest Party, Belgium), *Prawo i Sprawiedliwość* (Law and Justice, Poland).

advancement in the problematic European integration process and the rediscovery of a new European solidarity dimension. On this path, the effects of economic and financial crisis (combined with the current health and migration crisis) will require an extensive participation of the EU institutions and Member States' governing bodies in order to design the future economic and political governance of the European Union⁹¹. In this way, it is not possible to postpone a deep analysis on the future of the European Union and, furthermore, it would be essential imagine a new way for the EU, based on a federal evolution of the distribution of powers and competencies between European Union and national entities. In this sense, the shift to a federal union could be an effective response to the crisis of the EU legal and political legitimation and a useful, but not entirely satisfactory, institutional method to contrast centrifugal tendencies⁹².

6. Populism in some relevant EU case studies

Unquestionably, populist political movements and parties have greatly affected the institutional, social and political framework of some EU Member States⁹³. An accurate analysis of

⁹¹ An interesting study on the effects of economic and financial crisis in the growth process of populism in Europe is proposed by Y. Algan, S. Guriev, E. Papaioannou & E. Passari, *The European Trust Crisis and the Rise of Populism*, BPEA 309 ff. (2017).

⁹² In accordance with this suggestion, see F.W. Scharpf, *Legitimacy Intermediation in the Multilevel European Polity and its Collapse in the Eurocrisis*, in J.E. Fossum, A.J. Menéndez (eds.), *The European Union in crises or the European Union as crises?* (2014), 93 ff.

⁹³ An important European case study is represented by the "Catalan affair", understood as the insistent request from large sectors of Catalan society for the independence from Spain. On this topic, see, among others, A. Hernández-Carr, *¿La hora del populismo? Elementos para comprender el «éxito» electoral de plataforma per Catalunya*, 153 *Rev. Est. Pol.* 47 ff. (2011); G. Ferraiuolo, *La via catalana. Vicende dello Stato plurinazionale spagnolo*, 18 *Federalismi.it* 1 ff. (2013); A. Galán Galán, *Del derecho a decidir a la independencia: la peculiaridad del proceso secesionista en Cataluña*, 4 *IdF* 885 ff. (2014); F. Bilancia, *Il "derecho a decidir" catalano nel quadro della democrazia costituzionale*, 4 *IdF* 985 ff. (2014); M. Porta Perales, *El Secesionismo en Cataluña: Metafísica nacionalista, populismo antiguo e intereses creados*, 50 *Cuad. Pens. Pol.* 129 ff. (2016); A. Dowling, *The Rise of Catalan Independence. Spain's Territorial Crisis* (2017); D. Gamper Sachse, *Ambivalences of Populism: The Case of Catalan Independentism*, 57 (4) *Soc. Sci. Info.* 573 ff. (2018); A. Barrio, O. Barberà & J. Rodríguez-Teruel, *'Spain steals from us!' The 'Populist*

the most relevant national experiences in the European Union area (with a comparative approach and a critical point of view) makes it possible to frame more precisely the essential features of populist political action.

Despite the different national experiences, some common factors could be found in the approach of populists to democratic dynamics, political communication and relations with national institutions. In some Member States that will be taken into consideration, populist political movements and parties have achieved national government, in coalition with other political movements (populists or not) or alone. In other national experiences, populists are still opposition forces. However, the rise of populists has deeply changed the political paradigm within the EU Member States. The populist challenge to the EU institutions and legal framework is more evident, especially in the Member States formerly belonging to the Warsaw pact⁹⁴, due to the presence of special forms of government, so-called “illiberal democracies”, a hybrid form of government that combines formally democratic structures and authoritarian factual tendencies⁹⁵. A difficult transition that has also produced the growth of movements which, within the Eu framework, affirm a different model of domestic political management. Until twenty years ago it seemed impossible to debate about the existence of an illiberal or authoritarian government within the advanced

Drift' of Catalan Regionalism, 16 *Comp. Eur. Pol.* 993 ff. (2018); A. Queralt Jiménez, *The Populist Drift of the Catalan Pro-independence Movement*, in J.A. Kämmerer, M. Kotzur & J. Ziller (eds.), *Integration and Desintegration in Europe* (2019), 255 ff.

⁹⁴ In this way, for an analysis of populist rise in Baltic area, see, among others, D. Brentin, T. Pavasovic Trost, *Populism from Below in the Balkans*, 3 (2) *Contemp. S.E. Eur.* 1 ff. (2016); D. Auers, *Populism in the Baltic States*, in A. Kudors, A. Pabriks (eds.), *The Rise of Populism: Lessons for the European Union and the United States of America* (2017), 151 ff.

⁹⁵ About this debated topic, see, among others, F. Zakaria, *The Rise of Illiberal Democracy*, 76 (6) *Foreign Aff.* 22 ff. (1997); G. Palombella, *Beyond Legality-Before Democracy: Rule of Law Caveats in the EU Two-Level System*, in C. Closa, D. Kochenov (eds.), *Reinforcing Rule of Law Oversight in the European Union* (2016), 36 ff.; C. Pinelli, *Illiberal Regimes in the Perspective of Comparative Constitutionalism*, cit. at 16, espec. 6-7; G. Halmai, *How the EU can and Should Cope with Illiberal Member States*, 2 *Quad. Cost.* 313 ff. (2018).

European legal, institutional and social model⁹⁶. This critical situation must necessarily lead the academic scholars to reflect more on the current limits of the European integration model and on the possible solutions to these issues.

We are talking about national governments that implement political and legislative proposals extremely distant from European legal framework and its set of values and principles, recognised by all Member States⁹⁷. The rise of populist political movements and parties in Europe is also a social, political and legal fact in other European national experiences (for example, Germany, Netherlands, Scandinavian countries), but until now with less impact on Member States' domestic policies.

6.1. Italy

In Italy, the deep distrust of citizens in domestic political class and the internal political instability are due to various factors, which are, among others: *a)* the deep economic and financial crisis, also exacerbated by the current health crisis; *b)* the ambiguity about the fate of the Italian public debt and the solidity of the national financial system; *c)* the pervasive corruption; *d)* the effects of high unemployment levels; *e)* the conclusion of Berlusconi's era and the usual bipolar political system; *f)* the technical governments, supported transversely by moderate right-wing and left-wing parties, who tried, with poor results, to limit the devastating effects of the economic crisis.

In this frame, populist ideas have spread in Italian society as a reaction, often indignant and resentful, towards ruling political class, perceived as too detached from social difficulties and unable to provide effective remedies.

In 2013 political elections, the main Italian populist party, the Five Star Movement, has come into the Italian Parliament with a relevant number of members, placing itself as an alternative to the "old politics" represented by centre-right and centre-left

⁹⁶ On this point, see the analysis proposed by R.D. Kelemen, *Europe's Other Democratic Deficit: National Authoritarianism in Europe's Democratic Union*, 52 (2) *Gov. Oppos.* 211 ff. (2017).

⁹⁷ In this way, see C. Pinelli, *Conditionality and Economic Constitutionalism in the Eurozone*, 11 (1) *IJPL* 22 ff. (2019); B. Bugarcic, *Central Europe's Descent into Autocracy: A Constitutional Analysis of Authoritarian Populism*, 17 (2) *Int'l J. Const. L.* 597 ff. (2019).

coalitions⁹⁸. Defining itself as a “post-ideological” political movement, Five Star Movement was five years in opposition to the national government, composed by centre-left parties and a part of the old centre-right coalition, attacking every political and economic governmental measure with extreme force and invoking a change in government leadership, based on the appeal to the popular vote, the ethical principle of morality against the pervasive corruption and the continuous consultation with its own voters through the telematic platform *Rousseau*. Initially, the Five Star Movement has supported the “Italexit” from the single European currency, opening the debate on the need for a popular referendum in order to decide whether to remain or leave the European Union and the complete review of national and European rules regarding common financial regulations and budgetary constraints⁹⁹.

At the same time, another populist political movement has been renewed, born in the 80’s as an anti-unitary and federalist party, with a clear far-right political connotation, founding its political approach on the citizens’ safety and the opposition to the massive and unlawful migratory flows. The “new” *Lega* (without the old word “North”) has quickly spread in the whole country, coming to be in 2018 political elections the greatest right-wing political force in Italy¹⁰⁰, leading, with its national secretary (Matteo Salvini), the whole Italian centre-right coalition.

In this way, in the electoral round of 4 March 2018, the political debate was centred on the European and national

⁹⁸ In this sense, it will remain famous in the popular imaginary the sentence pronounced by the founder of Five Star Movement, Beppe Grillo, during an election rally, in which he affirmed that the movement “will open the parliament like a can of tuna”. This sentence, beyond the unusual speech, symbolises the aim of the movement to completely undermine the party system, opening the Parliament to transparency and legality (at that time, several members of the Italian Parliament were subject to judicial investigations and there was talk of the “Parliament of investigated and sentenced”).

⁹⁹ As is well known, art. 75, second paragraph of Italian Constitution prohibits the popular referendum “for tax and budgetary laws, amnesty and indult, authorisation to ratify international treaties”.

¹⁰⁰ The change of name from “Lega Nord” to “Lega” would like to symbolise the change of political party’s paradigm, aimed at seeking electoral support also in Southern Italy, leaving the “Northern border” where it was historically closed.

migration policies, the high national public debt and the very high level of unemployment (especially the youth unemployment in Southern Italy)¹⁰¹. Following an ambiguous electoral result and through a difficult programmatic agreement, the two main Italian populist forces (Five Star Movement and *Lega*) gave life to an “atypical” coalition government.

The “government contract” between the two populist movements has produced the first populist government in Italy and the marginalisation of liberal and pro-European Italian parties¹⁰². In Italy, the “yellow-green” government has surprised the international observers for its severe disagreement with EU policies, based on the request for greater flexibility on public budget and closed attitude towards the migration phenomenon. The Italian populist “yellow-green” government resigned in August 2019, due to irreconcilable internal conflicts between the government partners (and to the 2019 European elections which placed *Lega* as the first Italian party while Five Star Movement losing almost half of the votes compared to the previous year), replaced by a government headed by the same President of Council of Ministries, Giuseppe Conte, but composed by Five Star Movement and a pro-European force, the Democratic Party, with a more condescending approach to the European institutions and policies. The right-wing component of the old government (*Lega*) is now in opposition, with its nationalist allied, *Fratelli d'Italia* (Brothers of Italy), a far-right party, that polls place around 15% of hypothetical electoral consensus.

Actually, the peculiar Italian anomaly with its political contradictions (two populist movements in government with very heterogenous programs and electoral basis), it would seem to be resolving in a revival of a political bipolarism, in which there are on the one side Five Star Movement, Democratic Party, pro-

¹⁰¹ In this way, see L. Fazzi, *Social Work, Exclusionary Populism and Xenophobia in Italy*, 58 (4) *Int'l Soc. Work* 595 ff. (2015).

¹⁰² In accordance with the suggestion proposed by T. Boros, M. Freitas, G. Laki & E. Stetter, *State of Populism in Europe* (2018), 77, it could be argued that *Lega* and Five Star Movement «are intensely Eurosceptic and their coalition agreement contains proposals that clearly run afoul of EU policies and Italy's obligations in the realm of fiscal policy (including budget balance and public debt) and asylum policy. Additionally, contrary to the austerity measures expected by the EU, the parties agreed on cutting taxes, amending the pension law and introducing a universal basic income».

Europe movements and Italian Left and, on the other side, *Lega*, liberals, Eurosceptic movements and far-right parties¹⁰³. In this frame, Five Star Movement seems to have lost most of its anti-system profile and, in parallel, the populist scenario seems to have moved to the far-right political field, in opposition to the government¹⁰⁴. The watchwords of the “new” Italian opposition are directed on the opposition to national and supranational migration policies, tax policies (defined as “oppressive” for citizens) and finally on the health crisis management, due to the asserted marginalisation of the oppositions and regional governments and a solitary management of the health crisis by the head of the government.

6.2. Hungary

Hungary is a paradigmatic model of the problematic transition from socialist legal and social framework to free market economy and democratic legal system. Hungary is an Eastern Europe’s State¹⁰⁵, EU member, which has made remarkable progress in recent years, consolidating its constitutional

¹⁰³ On this topic see, among others, M. Tarchi, *Italy: the Promised Land of Populism?*, 7 (3) *Contemp. Italian Pol.* 273 ff. (2015); B. Verbeek, A. Zaslove, *Italy: a case of Mutating Populism?*, 23 (2) *Democratization* 304 ff. (2016); L. Mosca, F. Tronconi, *Beyond Left and Right: the Eclectic Populism of the Five Star Movement*, 42 (6) *W. Eur. Pol.* 1258 ff. (2019).

¹⁰⁴ Nowadays, the polls indicate us a clear majority in favor of right-wing populist coalition, with the main political force (*Lega*) over 25% of electoral consensus and the traditional far-right parties close to 16%. Five Star Movement should get 15% of the votes, compared to 33% of last national political elections. In this way, also the main Italian pro-European party, Democratic Party, should get only 20% of the electoral votes.

¹⁰⁵ With reference to the rise of populist political movements and parties in Central and Eastern Europe, see, among others, B. Bugarcic, *Populism, Liberal Democracy, and the Rule of Law in Central and Eastern Europe*, 41 (2) *Communist post-Communist Stud.* 191 ff. (2008); U. Brunnbauer, P. Haslinger, *Political Mobilization in East Central Europe*, 45 *Nat'lities Papers* 337 ff. (2017); B. Stanley, *Populism in Central and Eastern Europe*, in C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo & P. Ostiguy (eds.), *The Oxford Handbook of Populism* (2017), 142 ff.; S. Engler, B. Pytlas & K. Deegan-Krause, *Assessing the Diversity of anti-Establishment and Populist Politics in Central and Eastern Europe*, 42 (6) *W. Eur. Pol.* 1310 ff. (2019); V. Havlik, *Technocratic Populism and Political Illiberalism in Central Europe*, 66 (6) *Probs. Post-Communism* 369 ff. (2019).

democracy and the rule of law¹⁰⁶. However, in the last years, it is possible to observe a clear deterioration of country's democratic conditions, especially due to the achievement of power by populist political parties.

In the year 2004, when it joined European Union, Hungary was considered a nation on the path of democratic reforms, one of the most advanced post-communist experiences in Eastern Europe. During the financial crisis and before the rise to power of populists, Hungary was experiencing a phase of deep economic difficulty, combined with a general lack of confidence in democratic institutions.

The electoral victory of populist front in 2010 was favoured by popular distrust and protests generated by the legal and financial measures adopted by the governments chaired by Gyurcsany and Bajnai to face economic and financial crisis which has hit the country and was intensified by international economic and financial crisis of 2008. In this phase, Hungarian Socialist Governments had been forced to request the assistance of International Monetary Fund, European Commission and World Bank, obtaining loan for 20 billion euros, at the cost of severe internal economic measures. The Hungarian Civic Alliance (*Fidesz*), the main opposition party, had directed the protests and supported a popular referendum initiative that led to the rejection of two of the most important measures presented by Gyurcsany Cabinet, forcing him to resign.

Since 2010, the Hungarian populist' electoral successes and following rise to power have produced, in a short time, a climate of deep aversion towards European institutions, as well as a weakening of democratic institutions¹⁰⁷. Moreover, the parallel

¹⁰⁶ In this sense, see B. Bugarcic, *A Crisis of Constitutional Democracy in post-Communist Europe: 'Lands in-between' Democracy and Authoritarianism*, 13 (1) *Int'l J. Const. L.* 219 ff. (2015). In this way, taking inspiration to the suggestion proposed by E.K. Jenne, C. Mudde, *Can Outsiders Help?*, 23 (3) *J. Democr.* 147 ff., 151 (2012), unlike other experiences of the post-communist Eastern European countries, it can be argued that «the Fidesz government came to power through free and fair elections; Fidesz enjoys significant support among parts of the Western establishment, particularly on the European right; and despite its fiscal woes, Hungary is not a poor country».

¹⁰⁷ On this point, see S. Donato, M. Lovec, *"Poor" Students or Poor Students? Institutional Quality and Economic Change as Drivers of Populism in CEE in a*

global economic and financial crisis (and its effects on national economic system) has produced a deep confidence in national populist leadership, creating a political atmosphere in which oppositions, free press and guarantee institutions are seen as interferences to government activity. In this way, it is taking place the phenomenon of “authoritarian or illiberal democracy”¹⁰⁸, understood as a legal system with formal guarantees for oppositions and freedom of speech but, upon closer examination, the system is moving towards a highly illiberal centralised system¹⁰⁹.

Indeed, according to the suggestion proposed by Bugarcic, it can be argued that the new Hungarian Constitution of 2011, «contains several provisions that radically undermine basic checks and balances of the old Constitution»¹¹⁰. Despite social and academic mobilisation against the constitutional reform, which intended to establish a strong illiberal turning point in the heart of Europe, the large parliamentary majority and the high popular consensus of government led to the approval of the new Hungarian Constitution (Fundamental Law).

In 2018, Hungarian populist President Viktor Orbán and his party *Fidesz* won the third consecutive legislative election with a large majority in national Parliament, which further cemented

Longitudinal Perspective, in M. Lovec (ed.), *Populism and Attitudes Towards the EU in Central Europe* (2019), 13 ff.

¹⁰⁸ Regarding to this topic, see A. Batory, S. Svensson, *The Use and Abuse of Participatory Governance by Populist Governments*, 47 (2) *Pol’y Pol.* 227 ff. (2019).

¹⁰⁹ With reference to the Hungarian state of affairs and, particularly, the analogies and differences among “illiberal democracy”, “authoritarian regimes” and “autocratic regime”, see, among others, M. Bogaards, *De-democratization in Hungary: Diffusely Defective Democracy*, 25 (8) *Democratization* 1481 ff. (2018). On this topic, see also M. Tushnet, *Authoritarian Constitutionalism*, 100 (2) *Cornell L. Rev.* 391 ff. (2015).

¹¹⁰ B. Bugarcic, *A Crisis of Constitutional Democracy in post-Communist Europe: ‘Lands in-between’ Democracy and Authoritarianism*, cit. at 106, 226. In this way, G. Halmai, *Populism, Authoritarianism and Constitutionalism*, 20 (3) *German L.J.* 296 ff., 302 (2019), emphasises that «the main argument of Central and Eastern European populists to defend their constitutional projects is grounded in a claim to political constitutionalism, which favours parliamentary rule and weak judicial review».

their central position in national political context¹¹¹. The success and strength of this movement (and its leader) in Hungary is due, in particular, to two main factors. First of all, the charisma and communication ability of President Orbán, which presents itself as a staunch defender of Hungarian citizens against internal and, mostly, external threats¹¹². For a better and clearer transmission of its political approach (particularly about the EU immigration challenge¹¹³), Orbán stands in strong conflict with the EU institutions¹¹⁴. Secondly, the issue of “migrants’ threat”, an approach that aims to create fear among citizens and push them towards a strong leadership to entrust the security of country and its borders.

As indicated above, a powerful aggregation factor used by populist political movements and parties, especially in countries subject to the transition from socialism order to liberal democracy, has been the opposition to the policies implemented by the institutions of the European Union, particularly with reference to

¹¹¹ On this point, see, among others, T. Toth, D. Kékesdi-Boldog, T. Bokor & Z. Veczán, “Protect our Homeland!” *Populist Communication in the 2018 Hungarian Election Campaign on Facebook*, 12 (2) *Cent. Eur. J. Comm.* 169 ff. (2019).

¹¹² The main features of Orbán’s political approach are well defined by A. Körösesnyei, *The Theory and Practice of Plebiscitary Leadership: Weber and the Orbán regime*, 33 (2) *E. Eur. Pol. Soc. Cult.* 280 ff. (2019).

¹¹³ On this topic see, among others, J. Fetzer, *Public Opinion and Populism*, in M.R. Rosenblum, D.J. Tichenor (eds.), *Oxford Handbook of the Politics of International Migration* (2012), 301 ff.; L. Davis, S. Deole, *Immigration and the Rise of Far-Right Parties in Europe*, 15 (4) *Ifo* 10 ff. (2017); C. Ruzza, *Populism, Migration, and Xenophobia in Europe*, in C. de la Torre (ed.), *The Routledge International Handbook of Global Populism* (2019), 201 ff. With reference to the European Union’s migrant relocation programme, see A. Pottakis, ‘Soft’ Approaches to ‘Harsh’ Realities: *The EU Failings at Crisis Management*, cit. at 56, espec. 4-5.

¹¹⁴ In this way, in accordance with the suggestion proposed by T. Boros, M. Freitas, G. Laki & E. Stetter, *State of Populism in Europe*, cit. at 102, 67, the Hungarian President’s party have «launched a massive anti-immigrant campaign right before the refugee crisis in 2015, and the intensity of this campaign has not decreased throughout the years. Fidesz’s xenophobic rhetoric, in combination with the country’s economic boom and the ruling power’s tough attacks on media freedom, did not leave much chance for the fragmented and paralysed opposition».

the European economic framework, common market rules and migration flows policies¹¹⁵.

On the current state of democratic legal order in Hungary, the independent international organisation *Freedom House*, in its Report “Freedom in the World 2019”, tells us that democratic level of Hungarian institutions and society is gradually decreasing, due to the reforms approved by governmental majority of President Orbán, which has significantly limited civic freedoms, especially in the field of freedom of information¹¹⁶.

More recently, in partial contradiction with the past, *Fidesz* party of Hungarian premier Victor Orbán has lost the control of Budapest municipality and over half of the provincial capitals of Hungary. In this sense, national public opinion and civil society have sent a vibrant signal of discontinuity with reference to the compression of civic freedoms, implemented by authoritarian and populist democracy existing in Hungary.

6.3. Poland

Poland is another EU Member State that until the end of the 80’s belonged to the Warsaw Pact, in the framework of socialist bloc. Until 2015, Poland has experienced a period of economic

¹¹⁵ Regarding this issue, taking a cue from the suggestion proposed by A. Danaj, K. Lazanyi & S. Bilan, *Euroscepticism and Populism in Hungary: The Analysis of the Prime Minister’s Discourse*, 11 (1) *J. Int’l Stud.* 240 ff., 241 (2018), it could be argued that «populist parties, at the regional level, have been opposing the policies of European institutions, creating, or fostering mistrust in the institutions of the European Union. Thus, Eurosceptic discourse, using a narrative with a realistic background, has become a crucial component of campaigning for rising populist parties».

¹¹⁶ *Freedom House*, Report “Freedom in the World 2019”. With reference to the analysis proposed by this independent international organisation, Hungary is classified as a State “partly free”, with an aggregate freedom score of 70/100. This aggregate ranking consists of two fundamental parameters, such as “political rights” (Electoral Process, Political Pluralism and Participation, Functioning of Government) and “civil liberties” (Freedom of Expression and Belief, Associational and Organisational Rights, Rule of Law, Personal Autonomy and Individual Rights). In this way, the Report underlines that «Hungary’s status declined from Free to Partly Free due to sustained attacks on the country’s democratic institutions by Prime Minister Viktor Orbán’s *Fidesz* party, which has used its parliamentary supermajority to impose restrictions on or assert control over the opposition, the media, religious groups, academia, NGOs, the courts, asylum seekers, and the private sector since 2010». This *status* of “partly free” country has been confirmed in the 2020 Report.

growth combined with the progressive development of an advanced model of liberal Western democracy. Nevertheless, the hegemonic affirmation of Western neoliberal model in Poland was not unanimously accepted and, at the same time, was not accompanied by a fair spread of wealth. In this sense, paradoxically, it was the far-right movements, in continuous political growth, that disputed the dominant model of economic development following the end of the Warsaw Pact.

In this way, according to the analysis proposed by Shields, it could be argued that the «resistance to the rise of neoliberalism in Poland has often been centred on a set of anti-political, populist gestures associated with the emergence of a new right and the steady disappearance of the left since 1989»¹¹⁷. The progressive growth of far-right in Poland and, more generally, in the whole Eastern post-communist scenario, has produced the revival of nationalism, undemocratic tendencies and, now, populist waves. Despite its membership of the European Union, populists in government with their strong and nationalist political program represent a significant challenge for the rule of law and European constitutional democracy¹¹⁸.

In 2015, populist political party Law and Justice (*Prawo i Sprawiedliwość*) won national political elections, establishing itself as a hegemonic party in Polish political framework¹¹⁹. With a weak opposition, *PiS* has gradually expanded its institutional and social influence, even penetrating constitutional guarantee bodies of Polish constitutional State¹²⁰. In this sense, the independent international organisation *Freedom House*, in its Report “Nation in Transit 2018”, highlights that Poland political framework could get worse, due to the institutional reforms proposed and

¹¹⁷ S. Shields, *Neoliberalism Redux: Poland's Recombinant Populism and its Alternatives*, 41 (4-5) *Crit. Soc.* 659 ff., 662 (2015).

¹¹⁸ With reference to the Poland's admission to the European Union and the political consequences of this adhesion in the Polish State's political dynamics, see M. Gora, K. Zielinska, *Competing Visions: Discursive Articulations of Polish and European Identity after the Eastern Enlargement of the EU*, 33 (2) *E. Eur. Pol. Soc. Cult.* 331 ff. (2019).

¹¹⁹ In this way, see B. Stanley, M. Czeńnik, *Populism in Poland*, in D. Stockemer (ed.), *Populism Around the World. A Comparative Perspective* (2019), 67 ff., 78.

¹²⁰ With reference to this point, see W. Sadurski, *How Democracy Dies (in Poland): A Case Study of Anti-Constitutional Populist Backsliding*, 18 (1) *Legal Stud. Res.* 1 ff. (2018).

approved by Law and Justice's government majority that could cause the deterioration of democratic conditions in the country, especially with reference to the principles of balanced powers and oppositions' visibility¹²¹.

As in Hungary, also in Poland the electoral success of Polish populist nationalism has given way to a quick process of constitutional order review in an illiberal sense. In a short time, fundamental guarantee bodies for the protection of liberal democracy and constitutional order have been blocked, as the constitutional court, governing bodies of judiciary power and also the authority for media and data protection. Law and Justice has engaged in a tough battle with the constitutional justice body, not publishing or applying its sentences, until the replacement of part of Polish Supreme Court members, with candidates chosen by the new majority¹²².

The ideological approach proposed by Polish populism in power is very complex, based, according to the suggestion advanced by Bugarcic, also in «a mix of ethnic nationalism and anti-capitalism reminiscent of that present in the interwar period»¹²³. However, at least until today, Poland is in a less deteriorated situation than the fragile Hungarian liberal

¹²¹ In this regard, *Freedom House*, in its Report "Nation in Transit 2018", outlines a rather worrying picture of Polish political situation: «Poland's democracy faced unprecedented challenges in 2017. The governing Law and Justice (PiS) party used its popularity to put forward a reformist agenda that—if implemented—will change the character of democracy in Poland. After taking over and crippling the Constitutional Tribunal in 2015, PiS pushed through a judicial reform in 2017 that undermines separation of powers. Additionally, the ruling party proposed changes to the electoral law that could threaten the integrity of elections». On this topic, see, among others, A. Młynarska-Sobaczewska, *Polish Constitutional Tribunal Crisis: Political Dispute or Falling Kelsenian Dogma of Constitutional Review*, 23 (3) *Eur. Pub. L.* 489 ff. (2017).

¹²² On this point see, among others, K. Kovacs, K.L. Scheppele, *The Fragility of an Independent Judiciary: Lessons from Hungary and Poland and the European Union*, 51 (3) *Communist post-Communist Stud.* 189 ff. (2018).

¹²³ B. Bugarcic, *Central Europe's Descent into Autocracy: A Constitutional Analysis of Authoritarian Populism*, cit. at 97, 602. The Author also identifies some common features between Hungarian and Polish populisms: a) "moralized anti-pluralism"; b) "non-institutionalized notion of the people"; c) "conservative and authoritarian ideology". With reference to the relationship between the rise of far-right populism and popular culture in Poland, see, among others, M. Kotwas, J. Kubik, *Symbolic Thickening of Public Culture and the Rise of Right-Wing Populism in Poland*, 33 (2) *E. Eur. Pol. Soc. Cult.* 435 ff. (2019).

democracy. Although a populist political party is in power and in absence of an effective opposition force in the country, *Freedom House* qualifies Poland as a “consolidated democracy” and «looking at the polls, Polish society seems to be predominantly happy with the direction the country is headed in»¹²⁴.

In this way, an appropriate example of the impact of populist policies on national legal order is provided by Polish judicial reform, concerning the lowering of retirement age of Polish Supreme Court judges and the power granted to the Polish President of the Republic to extend the period of judicial activity of Polish Supreme Court’s judges beyond the newly established retirement age. With reference to this impacting national reform (beyond the other specific contents), it is relevant to emphasise a relevant judgement of the European Court of Justice¹²⁵. The European Commission asked the ECJ rule on the compatibility of Polish judicial reform with European law, especially with the art. 19 TEU and the art. 47 of EU Charter of Fundamental Rights.

In this way, the Court has expressed its own distrusts about the impact of Polish judiciary reform on the principles of European legal system that Poland must respect as EU Member State, arguing that «in the present case, it must be held that the reform being challenged, which provides that the measure lowering the retirement age of judges of the *Sąd Najwyższy* (Supreme Court) is to apply to judges already serving on that court, results in those judges prematurely ceasing to carry out their judicial office and is therefore such as to raise reasonable concerns as regards compliance with the principle of the irremovability of judges»¹²⁶.

The guarantees of irremovability, impartiality and independence of judiciary bodies are fundamental pillars in the EU legal framework and «require that the body concerned exercise its functions wholly autonomously, being protected against external interventions or pressure liable to impair the

¹²⁴ According to the constant evaluation proposed by the international organization *Freedom House*, the aggregate freedom score of Poland (84/100) is that of a “free” country.

¹²⁵ European Court of Justice (Grand Chamber), Judgment 24 June 2019, Case C-619/18, *European Commission vs. Republic of Poland*.

¹²⁶ ECJ, Case C-619/18, pt. 78.

independent judgment of its members and to influence their decisions, with due regard for objectivity and in the absence of any interest in the outcome of proceeding»¹²⁷.

In this way, the discretionary power granted to the President of Polish Republic to extend the period of judicial activity of some Supreme Court's judges constitutes a deep fracture in the balance of powers and stands as a measure conflicting with the European Union legal order and its fundamental legal principles.

More recently, Polish parliamentary elections have seen a clear electoral success of sovereigntist and populist governing party Law and Justice (and its leader Jaroslaw Kaczynski), which have achieved the absolute majority of parliamentary seats. In this way, Polish parliamentary elections represent a further emblem of the deep rooting of governing party and its political proposals in Polish society and a strong signal to the EU institutions. In addition, on July 12, 2020, the Polish president Andrzej Duda, main exponent of conservative populism, won the second round of elections for Polish Presidency, defeating Rafał Trzaskowski, liberal mayor of Warsaw, with about a 51.2% of preferences, against about 48.8% of the contender.

7. Conclusions

As seen above, populism is an evolving phenomenon and also for this reason it is extremely difficult to draw lasting conclusions. Anyway, some empirical researches show us how globalisation process and crisis of traditional democratic representation have favoured the rise of populist political movements and parties (especially right-wing populism). This growth changes regarding to the different national experiences. On closer inspection, some of them have proved to be more "receptive" to the appeal of populist arguments, especially those who are facing the difficult transition from socialism legal and economic system to liberal democracy (a transition, perhaps, too rapid and drastic for legal and economic national frameworks)

¹²⁷ ECJ, Case C-619/18, pt. 108.

and, on the other hand, those who are in a difficult economic and financial condition¹²⁸.

The growth of populist political, legal and cultural model is particularly relevant in European Union, in which populist movements and parties are well organised at continental level and skilled to gather and mobilise growing masses of population against European Union institutions (Euroscepticism) and the implementation of their policies. With reference to this topic, an interesting suggestion is advanced by Taggart, according to which «the ubiquity of Euroscepticism in Western European populism is a testimony to the difficulty of constructing an integrated Europe. A complex, opaque, and distant political architecture has fed the populist distrust of the political institutions in general»¹²⁹.

This analysis has also underlined the current crisis of the Western model of representative democracy. Constitutional democracies and their ruling classes are the most sensitive targets of populist political and social action. The same form of liberal and democratic government of Western societies is a contributory factor in the growth process of populist model. In this way, it can be claimed that the same liberal Constitutions are in a potentially dangerous condition, given that the concrete experiences of populism in power show us the interest of populist political movements and parties in changing national Constitutions to weaken the system of institutional balance and guarantee among powers¹³⁰. The importance of safeguarding the principles of constitutional democracy requires the guarantee of a correct equilibrium among powers, that represents one of the most

¹²⁸ In this way, D. Swank, H.G. Betz, *Globalization, the Welfare State and Right-Wing Populism in Western Europe*, cit. at 67, 238-239, emphasise that «specifically, our findings support the argument that international integration, or the notable increases in transnational flows of trade, capital and people in recent decades, has contributed to the electoral success of new far-right parties in Western Europe». On this topic, see also T. Pauwels, *Populism in Western Europe: Comparing Belgium, Germany and the Netherlands* (2014).

¹²⁹ P. Taggart, *Populism in Western Europe*, cit. at 87, 260.

¹³⁰ With reference to the popular constituent power in a populist perspective, according to the analysis proposed by G. Halmai, *Populism, Authoritarianism and Constitutionalism*, cit. at 110, 306, it is relevant to note that «unlike liberal constitutionalism, populists claim not only that the power to create a constitution belongs to the people alone, that is, that the people have a monopoly over the original or primary *pouvoir constituant*».

important features of liberal democracy¹³¹. In this regard, to contrast the populist growth in the European Union framework, it is essential to reinforce representative democracy and its “intermediate bodies” (political parties¹³², trade unions, environmental, cultural and social associations) and, on the other side, promote a path of greater proximity of national and supranational institutions to the people, also through the improvement of direct democracy instruments.

Constitutional democracy hinges on three fundamental pillars: legal majority’s decision-making power, recognition of minority’s constitutional role and principles of rule of law. This equilibrium allows the democratically elected majority to decide but, at the same time, it foresees that there are fundamental constitutional principles, rights and freedoms that cannot be affected (parliamentarism, guarantee of international recognised inviolable rights, freedom of speech, freedom of assembly, freedom of association, right to vote etc.). This equilibrium between majority decision-making power and protection of political minorities is the founding pillar of political dialectics within the framework of democratic legal order¹³³. In the same way, for a functioning legal system, mutual recognition among political players of their own constitutional role is essential. If populists aim at the delegitimization of political adversaries (or “enemies”), the same “social agreement” that acts as the pivot of Western democratic society is questioned. In the event that social agreement fails, the consequences for constitutional democracy

¹³¹ On this topic, see, among others, the analyses proposed by F. Bilancia, *Constitutional Roots of Democracy*, 3 *Costituzionalismo.it* 33 ff. (2019).

¹³² The importance of a truly competitive party system for a correct functioning of the structures of representative democracy is underlined by N.W. Barber, *Populist Leaders and Political Parties*, cit. at 89, espec. 134-135. In this sense, with reference to the importance of traditional parties in the legal and democratic order, see N. Urbinati, *Liquid Parties, Dense Populism*, cit. at 44, espec. 1079 ff.

¹³³ On this topic, in accordance with the suggestion proposed by J.L. Cohen, *Hollow Parties and their Movement-ization: The Populist Conundrum*, cit. at 11, 1090, it can be argued that «party competition and party government in a well-functioning democracy entails acknowledgement and acceptance of plurality, alternation, the legitimacy of the opposition, willingness to compromise, self-limitation and self-restraint although this taming of conflict does not rule out polarization or radical partisan positions regarding even constitutional change».

and legal order could be disastrous. In this regard, one could speak of a rupture of constitutional balance, to the point of reaching, as sometimes has happened, the “authoritarian drift” of the State, even if masked by democratic electoral process in order to choose the government majority.

In this way, it is also useful to develop a deep analysis on the actual role played by “traditional” political parties in the current social and legal framework. Analysing the factual data, it appears that political parties are detached from social context, leaving a relevant space to the populist forces, which are well-organized and skilled to communicate their political messages more effectively. In this sense, to contrast the populist spread, the traditional political parties should review their own internal organisation, in order to open up political parties more to civil society and avoid a self-referential dimension. In this sense, overcoming the traditional internal dynamics and promote a deep comprehension of social and cultural changes could be the correct way in order to achieve a “new” relationship between people and political “apparatus” and also to counter populist tendencies.

In another respect, as is well known, European experiences of populism in power confirm that the main target of these “illiberal” or “authoritarian” democracies are the independence of judicial power, media freedom, rights of minorities and constitutional principle of rule of law. In this frame, the so-called “Visegrad group” (composed of Hungary, Poland, the Czech Republic and Slovakia) represents a relevant challenge of some Eastern European States to the common rules of European Union, especially in the field of migration policies. An alliance that stands in strong opposition to the European Union institutions, creating a wound in the continental unity and a powerful factor of cohesion among European populist nationalisms.

We are talking about legal principles that set themselves as an essential pillar of Western legal framework, as well as the EU legal framework. The real threat for constitutional democracy represented by populist constitutional approach is related to the failure to recognise legal limits to the affirmation of its own political and institutional targets¹³⁴. The progressive growth of

¹³⁴ In this sense, according to the suggestion proposed by T. Fournier, *From Rhetoric to Action, a Constitutional Analysis of Populism*, cit. at 42, 365, it can be

populist movements and parties is not an occasional event or exclusively due to external conditions to national political systems. Personalism, opportunism and strategic flexibility are therefore essential features of populist leaderships.

In essence, I argue that populism is an “anti-ideological ideology”, understood as a political model that expresses strong and manifest ideological elements, but it is based on a deep negation of “traditional” ideologies and stands in strong opposition to the rule of law and, in general, to the general principles of European legal order.

Fighting populist tendencies means strengthening democratic instruments at national and supranational level, inside and outside the decision-making centres. It is essential to revitalise the principles of global constitutionalism as a fundamental pillar around which to build the conditions to counter the decline of representative institutions and contrast the advance of political and social forces that are in opposition with democratic rules and procedures. In this way, a functional European integration, based on the solidarity among Member States, European institutions and citizens, could be an effective reaction to the populist challenge¹³⁵.

On the other side, democratic resistance to the populist advance can be built up by making citizen’s participation channels more open to the institutions. The democratic “antibodies” that Western societies must develop to contrast the rise of populism must necessarily consider an intense consolidation and efficiency of democratic processes. In this way, although it is not possible to hypothesise (how it is done in many areas of ideological populism), that every governmental decision must be taken directly by citizens, contemporary representative democracy

argued that «populist rhetoric is the use of political arguments aimed to convince a fictional majority that a constitutional democracy gives rise to a tyranny of minorities».

¹³⁵ In this way, in the opinion of G. de Burca, *Is EU Supranational Governance a Challenge to Liberal Constitutionalism?*, 85 *Univ. Chi. L. Rev.* 337 ff., 367 (2018), it is correct to affirm that «the project of supranational European integration clearly challenges the functioning of liberal constitutional democracy at the national level in various ways and, to some extent, has posed challenges to the functioning of democracy that liberal constitutionalism is designed to protect». On this topic, see also L. Guiso, H. Herrera, M. Torelli & T. Sonno, *Global Crises and Populism: the Role of Eurozone Institutions*, 34 (97) *Econ. Pol’y* 95 ff. (2019).

provides various types of public control mechanisms (the most important and effective are democratic elections).

In the framework of democratic answers to populism, Bugarcic emphasises that «if European democrats of various political colors do not start offering a more compelling agenda, Europe is on a dangerous political path»¹³⁶. This is a nodal point in the conflict with populist tendencies in Europe. EU institutions must produce effective policies to face the challenges of financial, migration and health crises, guarantee of social rights, unemployment issue and climate change.

Moreover, it is also essential a process of deep review and consolidation of common institutional governance, in order to make the image and substance of European Union closer to the citizens and not just a set of cumbersome and rigid legal and financial rules, experienced by Member States and citizens like an insurmountable steel cage¹³⁷. At the same time, it is relevant to underline that a greater attention and proximity of EU institutions could be a decisive factor to stem populist advance in Europe and defend the principles of European constitutional framework¹³⁸.

Ultimately, populism is also a legal and cultural issue for Member States, European Union and European societies. The model of political representation of twentieth century seems to be in a process of dissolution. Nevertheless, the old system is dying and the new one cannot be born. In this context, the founding values of common European experience must be appreciated and reinforced, allowing them to live effectively in European society by defeating, or at least arresting, the populist and nationalist tendencies which, today as in the past, arise as a factor of potential disintegration of European legal culture and values.

¹³⁶ See B. Bugarcic, *Could Populism Be Good for Constitutional Democracy?*, 15 *Ann. Rev. L. Soc. Sci.* 41 ff., 54-55 (2019).

¹³⁷ In this frame, taking a cue from the suggestion proposed by B. Stanley, *Confrontation by Default and Confrontation by Design: Strategic and Institutional Responses to Poland's Populist Coalition Government*, 23 (2) *Democratization* 263 ff., 278 (2016), it is correct to argue that «populist governance may be thwarted more effectively by the design of institutions than by the strategies of political opponents».

¹³⁸ In this sense, see in particular G. Gerim, *Re-thinking Populism within the Borders of Democracy*, 8 (3) *Italian Sociol. Rev.* 423 ff. (2018).