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The Crisis of Democracy and the Legitimate Rule of Law: Kelsen, Populism, and the Politics of Recognition

Abstract

RESEARCH OBJECTIVE: This essay examines how deliberation and recognition contribute to our understanding of democracy as a form of government combining two sources of legitimacy, one based on a legal procedure and the other based on ideological faith commitment.

THE RESEARCH PROBLEM AND METHODS: Although joint deliberation about policy aims and recognition of person's political identities are often assumed to be complementary (Habermas, 1996; Honneth, 2014; Taylor, 1994), I argue that this need not be the case. Political identities oriented by faith commitments pose a challenge to deliberation oriented by rational compromise. A one-sided emphasis on deliberation or recognition as exclusive sources of democratic legitimation threatens to debase the *res publica* to an arena of identity politics whose populist proclivities are antithetical to liberal democracy. Exacerbating this trend is the phenomenon of political polarization caused in large part by the economic stratification and socio-cultural fragmentation of a global, digital form of capitalism. My method for examining and resolving the problem relies on notable philosophers who have written about the legal and political implications of deliberation and the politics of recognition: Charles Taylor, Jürgen Habermas, and Hans Kelsen.

THE PROCESS OF ARGUMENTATION: The paper begins by summarizing the importance of recognition for political life and its ambivalent humanistic and nationalistic (and sub-nationalistic) senses (Part 1). I then turn to Kelsen's critique of recognition as incompatible with the rule of law, followed by his

qualified endorsement of recognition, understood as a necessary political ethos underwriting a liberal, deliberative form of democracy (Parts 2 and 3). Turning to our contemporary democratic crisis, I show how structural transformations within and between political parties and the public sphere have given rise to authoritarian forms of populism (Part 4). I conclude by noting how imperatives within digital capitalism produce ambivalent effects regarding the restoration of the res publica to a forum for political deliberation.

RESEARCH RESULTS: The paper shows that competition between deliberative and recognitive forms of democratic legitimation is not rivalrous but mutually beneficial.

CONCLUSIONS, INNOVATIONS, AND RECOMMENDATIONS: The paper concludes that the current legitimation crisis has fostered a populist reaction against liberal democracy. It proposes an innovative approach to understanding this reaction in terms of the failings of one-sided deliberative and recognition-based forms of democratic politics. It recommends a restoration (or reinvention) of these forms in healthy combination at the level of party-based political reform and reform of the public sphere.

INTRODUCTION

Deliberative and recognitive conceptions of democratic ethos align with two conceptions of how we conceive the legitimation of law as morally obligatory: as an outcome of fair cooperation oriented toward rational conciliation for the sake of the common good or as a direct entailment of a mutually recognized ethos whose adherents regard as true. In the former (deliberative) conception, a fair procedure that recognizes individuals as bearers of a universal human right not to be coerced without their rational consent holds primacy over individuals' particular value commitments (Habermas, 1996). By contrast, a politics of recognition bids us to acknowledge the embeddedness of our particular value commitments (interests, identities, and perspectives) in ways of life held on faith alone, the existential urgency of which is beyond deliberative compromise (Mouffe, 2013).

Theorized as e x c l u s i v e l y deliberative or recognitive, democracy fails to provide ethical justification for law. I argue that this fact explains today's widespread belief that democracy is suffering

a legitimation crisis, specifically broad discomfort with traditional political parties whose elite leadership is popularly viewed as too willing to compromise their party's constituents' interests for the sake of passing laws that their opponents can support. Conversely, it also explains current skepticism about anti-elitist populist movements that seek to replace these leaders with charismatic, authoritarian figures who claim to speak for the people and their narrowly recognized vision of the law (Urbinati, 2019).

My essay explores the theoretical and practical possibility for mitigating, if not resolving, the current crisis of democracy. I hypothesize that mitigating this crisis would necessitate revitalizing traditional political parties as parties of intra- and inter-party deliberation that simultaneously recognize (and prioritize) the particular value commitments of their constituents. I suspect that the condition for promoting such a transformation would include de-polarizing the public politically (e.g., educating them about media disinformation and manipulation) and fostering trust and cooperation based on policies that reduce social inequality and other causes of political antagonism.

Before proceeding further, allow me to clarify my approach. A perennial philosophical question that arises whenever one is applying a normative ethical theory to evaluate and/or explain social reality is: How can this theory be justified as setting forth ideal norms for criticizing and reforming really existing social practices and institutions? My approach assumes that the iconic theories it proposes to examine can be justified only to the degree that they describe actual normative expectations that most participants in political life share, and indeed must share, if that form of life is to count as democratic for them. Because these expectations – to secure peaceful cooperation under mutually acceptable legal conditions and to acquire governing power as a member of a party whose members recognize their own understanding of law and polity as uniquely true – stand in a relationship of tension, it is important to know whether (and if so, how) this tension can be managed so as to preserve a stable and ethically vibrant democracy.

I submit that a stable and ethically vibrant democracy manages this tension by emphatically maintaining a legitimate rule of law, which, following Hans Kelsen's pioneering legal philosophy, constitutionally limits the politics of recognition in a way that endorses

a liberal democratic ethos of deliberation and recognition. Such a vision of legitimacy should nurture political parties that function to pursue partisan agendas by means of inter- and intra-party forms of impartial deliberation and compromise. I test this hypothesis by examining the rise of new populist movements and parties that appear to function differently, by being less partisan along the familiar Left/Right political spectrum and less deliberative in identifying with mandates of a charismatic leadership. My essay incorporates a philosophical analysis of populism and political parties in terms of their competing ethical assumptions, which, to reiterate my earlier thesis, can be correlated with argumentative deliberation and social recognition, respectively. It concludes by recommending policies by which political parties can better integrate their partisan and deliberative functions with new forms of digital populism, thereby becoming more democratically inclusive and accountable. In this regard I assume that national solidarity, deliberative political behavior, and political polarization (identity politics and partisanship) are sensitive to growing economic stratification and dislocation.

1. IDENTITY AND THE POLITICS OF RECOGNITION

When Charles Taylor composed his famous essay on the politics of recognition over thirty years ago (Taylor, 1994), he challenged the liberal idea that equal treatment before the law entailed recognizing only the bare humanity that we share with everyone else. To this liberal idea he added another that stressed the ethical urgency of recognizing our identities as individuals and members of groups.

Despite the Romantic ideal of authenticity, which says that each should strive to realize their innate personalities by living only in conformity to themselves, Taylor, citing a venerable tradition extending from Aristotle to Hegel, maintained that our individuality only emerges by conforming to and identifying with others in relations of solidarity. Individuation depends on socialization. Who we are is determined by our relationships with others. It is others after whom we model our behavior and from whom we derive our beliefs, values, and feelings of love and hate. This elemental dependence on others presupposes a positive attachment to at least

some of them. Whether or not I can be said to identify with t h e m, I certainly identify with and internalize part of what they stand for. This identification would not happen unless they affirmed me. It is they, after all, who encourage my behavior, beliefs, feelings, and desires. Thus, who I am depends on others not only encouraging me to be a certain way but on their abiding confirmation of my being the person they approve of. In this respect, my certainty of who I am depends on others r e c o g n i z i n g m e a s s u c h.

So understood, the politics of recognition that Taylor addresses reflects the fact that we relate to each other politically not merely as embodiments of one and the same humanity, the dignity of which requires u n i v e r s a l legal recognition in the form of equal rights and s a m e n e s s of treatment. Rather, we also relate to each other as individuals whose distinct interests, values, and social perspectives, in short, attachments to 'friends like me' and antagonisms toward 'foes like them,' generates p a r t i s a n moral recognition and group identification. Here, unlike my rational, cosmopolitan "identification" with humanity, affective s o l i d a r i t y with others like me matters most directly and as is often the case most supremely. This becomes apparent in cases involving group-specific entitlements, such as affirmative action quotas, religion-based exemptions, guaranteed proportional political representation of women and minorities, and regional self-governance of indigenous peoples and sub-nationalities. In these instances, the demand for d i f f e r e n t i a l and e x c e p t i o n a l treatment exceeds the demand for formal, uniform protection against discrimination. Such demands, in turn, cannot but divisively influence the way we understand our legal rights; we thus find ourselves embroiled in a dual-sided political struggle for the hearts and minds of others.

This tension can also be framed in terms of the classical opposition between reason and experience as competing sources of morality. Recognition of our universal humanity is made possible by means of conceptual abstraction; it reveals a largely innate species-relative capability p o t e n t i a l, such as the mature ability to hold oneself and others to rational account, that marks out a minimum threshold for respecting the dignity of persons.

Reason might not be as free standing of social recognition as some philosophers claim it is. Even if it were, so that recognizing a person's

humanity were possible without socially interacting with them, it would not suffice to recognize their individuality; for I discover the individuality of the other not by abstraction, but by social engagement. Furthermore, to fully understand the other's individuality involves some appreciation of it; the less we appreciate a person the more likely we are to dismiss or overlook aspects of their personality that are positively noteworthy (demonizing someone almost invariably reduces them to a caricature or faceless stereotype). Such appreciation e s t e e m s what they have done or l o v i n g l y n u r t u r e s who they are and aspire to be (Honneth, 1996; Ingram, 2021). They in turn enable me to discover myself by affirming and confirming who I am. In this way we find ourselves attached to and identified with particular persons in r e l a t i o n s h i p s o f e t h i c a l s o l i d a r i t y that cannot be extended to humanity as such without suffering dilution. Limited communities of partial (and partisan) care thus compete with cosmopolitan m o r a l d u t i e s to unknown strangers. Taken to the extreme, such tribal proclivities threaten to extinguish our respect for equal human rights and democratic fairness.

Liberal theorists such as John Rawls (1993), Jürgen Habermas (1996), and Taylor (1994) have proposed to mitigate this tension by proposing the idea that our partisan loyalties should be held in check by our fundamental duty as citizens to live together peacefully according to a mutually accepted legal framework establishing fair terms of cooperation. The underlying assumption here is that because our shared identity as citizens committed to peaceful coexistence is rational, it should take precedence over and inform our non-rational, non-shareable partisan identities.

But is that always so? Peaceful coexistence – no matter how oppressive – is not always rationally preferable to civil war. Religion, with its potential subordination of secular life to otherworldly salvation, presents another challenge to this line of reasoning. As Taylor and others have observed, any secular belief of deep existential import can rise to the level of religious commitment. Duties of citizenship might also be upheld as part of a superordinate civic faith. Whether that faith is tied to a cult of patriotic nationalism (as Rousseau taught) or to more cosmopolitan ideals, such as respect for human life and individual dignity, there is no escaping the fact that liberal notions of democratic citizenship, despite their rational claim to universality, are

no different than non-rational ideologies, both secular and religious, that claim to be universally true. Indeed, human rights and civic duties, no less than religious beliefs, can be "weaponized" to suppress social revolts of oppressed groups. Lacking the natural foundation of myth, such modern ideologies must prove their truth in a politics of recognition. In sum, secular liberalism marks out an identity (a locus of identification) that competes with, rather than transcends, other identities.

2. KELSEN'S DEFENSE OF THE RULE OF LAW AS A COUNTERWEIGHT TO THE POLITICS OF RECOGNITION

Recognition theory privileges the social and political dimensions of human life over the legal. According to this theory, recognition of one's humanity and the universal rights that correspond to it merges with recognition of one's nationality and the rights that a majority (or even minority) legislates in the name of "the people". The temptation to identify the polity with "the people" as sovereign legislator, however, must be resisted. As Hans Kelsen argued over a century ago (Kelsen, 1920a), the theological concept of a sovereign popular will is incompatible with the rule of law. The idea that law is founded on voluntary recognition, as in a social contract (real or tacit) between sovereign subjects (or nations), is incoherent.

> According to the doctrine of recognition positive law is valid only if it is recognized by the individuals subject to it, which means: if these individuals agree that one ought to behave according to the norms of positive law. This recognition, it is said, actually takes place, and if this cannot be proved, it is assumed, fictitiously, as tacit recognition. The theory of recognition, consciously or unconsciously, presupposes the ideal of individual liberty as self-determination, that is, the norm that the individual ought to do only what he wants to do. This is the basic norm of this theory (Kelsen, 1967, 218–283).

Self-authorized legal obligation equates normative legal duty with action guided by prudential self-interest: We (I) should do what we (I) want to do. But self-contracting legislators lack authority to act,

their 'laws' remaining indistinguishable from arbitrary power-backed commands (or threats) devoid of authorization from a constitution or customary G r u n d n o r m (Kelsen, 1967).

As compelling as Kelsen's rejection of mutual recognition as a contractual basis for rights is, his own legal positivist conception of a sovereign and self-authorizing legal order can no more be logically sustained than can the conception of a sovereign personal authority (or sovereign nation). Leaving aside the paradoxes associated with an infinite regress of authorizations or of a quasi-theological self-authorized norm, there remains the fact that lower acts of legislation, adjudication, and application concretely interpret – and by so doing legislate and authorize – higher legal authority.

The circular nature of legal authorization as a dynamic process effaces the foundational (hierarchical) image of the rule of law and suggests instead a more diffuse model that also softens the distinction between law as a theoretical concept and law as a political process of recognition.

Kelsen himself maintained that under conditions of modern ethical pluralism, any preference for peaceful coexistence would necessarily favor liberal democracy as the political procedure most likely to procure this goal under a stable rule of law. In common parlance, democracy is simply the principle that the people must be consulted, either through direct plebiscite or indirect election of lawmakers, to ensure that the law reflects the will of the majority. Most important from Kelsen's perspective (and in contrast to Carl Schmitt's) is that the will of the majority doesn't precede and pre-determine the law, as if there already existed a homogeneous "will of the people" (Schmitt, 1988). Rather, the will of the majority first comes into existence as a result of a democratic procedure. To cite Kelsen's early essay on democracy:

> Here precisely resides a decisive advantage of democracy and its majoritarian principle, that it nonetheless secures by means of the simplest organization a certain p o l i t i c a l i n t e g r a t i o n of a society legally regulated by a state (*Staatsgesellschaft*) […] That the 'will of the state' created juristically is supposedly the 'will of the people' is thus itself a fiction – albeit a fiction closest to reality – s o l o n g a s t h e p r o c e d u r e f o r c r e a t i n g t h e w i l l i s d e m o c r a t i c a l l y o r g a n i z e d (Kelsen, 1920b, 28; my emphasis).

The key idea expressed in the above passage is that a political will must be created out of an aggregate of conflicting wills through a process of "integration". This understanding of democracy goes against the simple view of democracy as a procedure for weighing and ranking preferences through a counting of votes. If what we mean by democracy is nothing more than the aggregation of preferences, then democracy cannot function as a true decision procedure for lawmaking because a dominant preference – assuming one could emerge that would avoid familiar paradoxes associated with collective choice cycling – would fall short of what we mean by a majority will.

In order for democracy to function as a procedure for integrating conflicting preferences into a majority will – not to mention a "people's will" or a popular mandate – it must also facilitate critical public deliberation on the opportunity costs associated with our preferences. This deliberative understanding of democracy is clearly articulated in Kelsen's later essay on democracy, where he writes:

> Because the permanent tension between majority and minority, government and opposition, results in the dialectical process so characteristic of the democratic formation of the will of the state, one rightly may say: d e m o c r a c y i s d i s c u s s i o n (Kelsen, 1955, p. 25–26; my emphasis).

Assuming that Kelsen is correct that discussion is necessary for the democratic integration of conflicting preferences into a dominant majority will, we must ask how much integration is needed to constitute such a will. Here, Kelsen rejects the idea that integration entails anything like a consensus on generalizable interests, or a general will. As he puts it, "the content of [democratic] legal order may be a compromise" that balances particular interests (Kelsen, 1955, p. 28). Beyond having one's interests included in a political compromise, which might not always happen in the short term, there remains another kind of political integration that is perhaps most essential to democracy: p o l i t i c a l a g r e e m e n t o n t h e a p p r o x i m a t e f a i r n e s s o f t h e d e m o c r a t i c p r o c e s s s u f f i c i e n t t o g e n e r a t e a c c e p t a n c e o f t h e o u t c o m e.

Here, Kelsen reminds us that modern democracy only functions to integrate the minority into the majority so long as it constitutionally entrenches a foundational principle of liberalism:

> Modern democracy cannot be separated from political liberalism. Its principle is that the government must not interfere with certain spheres of interest of the individual, which are to be protected by law as fundamental human rights or freedoms. It is by the respect of these rights that minorities are safeguarded against arbitrary rule by majorities (Kelsen, 1955, p. 28).

The compliance of minorities with democratic majority rule depends on their being protected from majoritarian tyranny through their secure exercise of basic, constitutionally entrenched rights. However, as we have seen, given that Kelsen's circular account of lawmaking and legal authorization entails that the concrete prescriptive content of rights must be interpreted and legislated by those in power, constitutional norms do not provide an absolute barrier to majoritarian tyranny. Here we return to the problematic dialectical merging of the rule of law and the politics of recognition.

Now, one way to restore legal checks on majoritarian tyranny (recalling the connection between political self-determination and deliberation) is to

> include in our definition the idea that the social order […] in order to be democratic, must guarantee certain intellectual freedoms, such as freedom of conscience, freedom of press, etc. (Kelsen 1955, p. 4).

Without the protection of dissenting voices, the discussions necessary for generating an autonomous political will would be incapable of integrating groups of widely opposed interests and ideologies. A more ambitious way to include minority voices in the deliberative process, Kelsen suggests, is to guarantee minority representation in government itself. That said, purely legal remedies along these lines will likely not succeed in fairly incorporating minority opinions into the process of political will formation unless they are accompanied by an ethos of civility that motivates political actors – along several dimensions of mutual recognition – to refrain from imposing their private wills on their fellow compatriots imperialistically.

3. THE POLITICS OF RECOGNITION IN KELSEN'S ACCOUNT OF DEMOCRACY

The reluctance of political actors to impose their will tyrannically, I argue, requires that politicians and citizens mutually recognize each other as persons meriting equal moral respect. According to Kelsen, this "feeling for equality" presupposes

> that all individuals are of equal political value and that everyone has the same claim to freedom [...] and r e c o g n i z e s h i m s e l f i n t h e o t h e r (Kelsen, 1955, p. 25–26; my emphasis).

One manifestation of this kind of recognition is the respect shown to fellow political interlocutors who enjoy fundamental human rights to speak, associate, and disseminate public opinion. Here the accent is on recognition of each person's human dignity, or m o r a l autonomy.

Another manifestation of mutual recognition is r e c i p r o c i t y. In recognizing oneself in the other, one recognizes common interests and ends that can (indeed must) be furthered through cooperation. At the very least, consociates must collaborate in speaking to one another, influencing one another, and shaping opinions that will form part of the wider public discussion regarding justice and welfare, as well as shape policies impacting the scope of their freedom. This notion of reciprocity – of proposing just and beneficial forms of social cooperation – brings us back to the idea of political society as a social contract. It emphasizes the ethical duty of citizens in a democracy to join in solidarity in the pursuit of securing their common welfare in a just manner. Without civic solidarity, democratic life is ill equipped to withstand legally permitted forms of majoritarian tyranny.

Solidarity may or may not entail a willingness on the part of those so conjoined to make reasonable sacrifices. Citizens are nonetheless called upon to sacrifice some of their freedoms for the common good during national emergencies and they are called upon to sacrifice some of their wealth in guaranteeing that those among them who are worst off can enjoy roughly equal opportunities to exercise political and civil freedom through accessing provisions of health, education, and welfare. Hence, Kelsen notes that the citizen of a democracy "represents the a l t r u i s t i c type, for he [sic] does not experience the

other as an enemy but is inclined to see in his fellow man his f r i e n d" (Kelsen, 1955, p. 26; emphasis added). With Schmitt's definition of the political as an antagonism between friend and foe no doubt in the back of his mind, Kelsen here maintains the contrary view that citizens of a liberal democracy are ethically committed to recognizing each other as friends who care for each other. Just as parents seek to instill confidence in their children so that they can express their individuality, so too citizens of a democracy are willing to make altruistic sacrifices for the sake of enabling each member of society to become fully autonomous agents who confidently express their individual opinions.

Finally, Kelsen observes that citizens of a democracy are predisposed to resolving their differences through peaceful means, through the force of reason, impartial evidence, and critical reflection on their own fallibility and the opportunity costs imposed on others by single-minded pursuit of their own interests. Legitimation of the law follows from adherence to deliberative procedure rather than from revelatory recognition of a substantive ethical truth that is dogmatically held as certain and unquestioned.

> Because [democracy] guarantees internal peace, it is preferred by the peace-loving, non-aggressive type […] [T]he respect for science corresponds perfectly to that kind of person which we have described as specifically democratic. In the great dilemma of volition and cognition, between the wish to dominate the world and that to understand it, the pendulum swings more in the direction of cognition than volition […] because with this type of character the will to power, the intensity of ego experience, is relatively reduced and self-criticism relatively strengthened (Kelsen, 1955, p. 28).

The above citation reaffirms the importance of recognizing what John Rawls in *Political Liberalism* describes as "reasonable pluralism" and the "burdens of judgement" in conducting oneself with civility in democratic deliberation (Rawls, 1993, p. 58–66; Vinx, 2007). Knowledge of the reasonableness of strong differences of opinion in a free society, viz. moral and cognitive/epistemic relativism, counsels that one regard one's interests and deeply held convictions f r o m t h e s t a n d p o i n t o f o t h e r s. Recognizing that others – whose reasonable interests conflict with one's own, and whose identities have

been shaped by different comprehensive cultural worldviews than one's own – might not be rationally persuaded to embrace one's own interests and convictions, obligates us to refrain from tyrannically imposing these interests and convictions in the course of our political deliberations and voting conduct.

To conclude, Kelsen's understanding of liberal democracy as a deliberative procedure of lawmaking invokes an ethical conception of mutual recognition as a precondition for the subjectively binding force (legitimacy) of objectively recognized laws. Although Kelsen clearly endorses this ethos, he does so indirectly, by endorsing a corresponding democratic ideal, which he believes is most conducive to securing lawful peace and order in our times. As he describes it, the recognitive expectations of democracy are not chosen or agreed upon so much as given in the enabling conditions for the kind of deliberative democratic practice he highlights. Indeed, these expectations – to recognize fellow deliberative consociates as equal possessors of human rights, as collaborators in a joint venture oriented toward their mutual benefit, as peace-loving critics of their own fallible understanding of what is true, and as friends who care about each other and are willing to make sacrifices on their behalf if need be – might well be built into our basic competence as beings who mutually understand and affirm each other, cooperate together, and resolve differences peacefully through critical discussion (Habermas, 1987, p. 1996).

4. THE STRUCTURAL TRANSFORMATION OF THE *RES PUBLICA*: THE POPULIST THREAT TO DEMOCRACY

The structural transformation of politics over the last thirty years tells a story of polarization in which the public sphere has lost much of its democratic recognitive ethos. Kelsen's intriguing idea that democratic legitimacy depends on cultivating a procedure of deliberation wherein participants relinquish or compromise the dogmas informing their existential, narrative identities finds little traction in today's politics of recognition founded on a more revelatory conception of divine or sacral (secular or otherwise) notion of democratic

legitimacy. Along with Kelsen's legal understanding of legitimacy, civility, respect for basic rights, epistemic modesty, and the spirit of compromise have largely vanished.

Taylor himself describes this degeneration as a three-pronged democratic regression (Taylor, 2023). Democracy, he warns, is becoming too complicated for people to understand, so people either become apathetic or rebel against what they perceive to be a rigged system run by oligarchic elites. This downward slide feeds into a second regression: the exclusion of people from participation, either by their own accord or by the efforts of others. Finally, connected to this politics of exclusion is a kind of majoritarian tyranny, either of the upper and middle classes over the poorer classes or of a dominant 'native' ethnic nationality over immigrants and racial-ethnic-religious minorities.

I propose to elaborate on these points by focusing attention on the regressive transformation of established parties across the political spectrum, which, as Taylor notes, cease to provide straightforward, easily understood political representation, having shed their former, transparent, class-based partisan identities. Changes in work, education, and mass media now favor populist movements that embrace a revelatory, charismatic kind of legitimacy whose democratic logic inclines more towards exclusionary forms of nationalism and authoritarianism. I shall argue that the democratic model of legitimacy that theorists of deliberation and recognition propose can unwittingly contribute to this populist dissolution of class-based parties. I conclude, however, that structural changes in political organization that favor popular revolts against party establishments do not foreclose the reinvention of a genuinely liberal democracy combining deliberation and partisan political recognition in some mutually qualified equilibrium.

The key to reinventing democratic political parties depends on balancing the necessity of expanding voting base while maintaining partisan identity. Adoption of popular platforms with broad appeal does not as such entail diluting or abandoning core partisan commitments but whenever it does the temptation to link these platforms with the populist logic of charismatic leadership cannot be lightly dismissed. All parties center their platforms around universal values such as liberty, equality, security, and well-being but rank, define,

and apply them differently. Established parties dilute and multiply these partisan value interpretations to attract voters beyond their narrow base, creating what Otto Kirchheimer described as c a t c h a l l parties that encompass diverse and by no means harmonious constituencies and platforms (Kirchheimer, 1966). In this respect parties that avoid splintering into narrow sectarianism often die from populist dissolution of their ideological identities (Urbinati, 2019, p. 140).

The political dialectic between parties on the right and left exemplifies this trend. Prioritizing equality, welfare, and positive liberty qua individual and group empowerment, Left parties have sought to broaden their appeal beyond the poor, marginalized, and working classes to include women, minorities, and in some cases immigrants. The decline of blue-collar membership, coupled with the rise of educated and youth membership, has also made Left parties more cosmopolitan, middle class and environmentally conscientious, which in turn has led them to downplay their traditional class identity (notwithstanding their continued support for working class policies) – a phenomenon that the Right can exploit to declare that they, and not the Left, are the true guardians of working class interests.

Platform diversification, generalization and de-differentiation set the conditions requisite for promoting deliberative compromises between party elites and between these elites and rank-and file voters, and ultimately set the conditions for deliberative compromises between elites representing the oligarchic interests of opposing parties. Popular revolts against these insider compromises aim to reassert the democratic primacy of the people against party oligarchs. They segue into populist movements once the people reject partisan parties for being too divisive and unrepresentative of the people's will.

It bears repeating that popular discontent with entrenched party elites in the form of popular social movements reflects an essential, critical resource for revitalizing the representative democratic pretensions of political parties and must be distinguished from populism as an anti-democratic distortion of party organization (Runciman, 2018, p. 65). To appreciate how this transition from p o p u l a r revolt to p o p u l i s t rebellion transforms the dynamic of democratic politics, recall that the party system evolved as a mechanism for organizing diffuse public opinion around distinctive pro-labor and pro-business interests. The power gap between elite party representatives and

rank and file voters necessitates that the former be held rationally accountable to the latter (Young, 2000). In this way, the local and immediate concerns of average voters can be negotiated with the longer, future-oriented viewpoints of educated party elites as they reconcile older ideological commitments to the technical task of addressing prospective challenges.

As Habermas notes,

> governments give priority to their short-term national interests [...] the more strongly they are exposed at home to the undertow of right-wing populism (cited in Urbinati, 227–115).

In so doing populist governments circumvent the deliberative dynamic between educated party elites and average voters that depends on distinguishing voters' short-term and long-term interests, with the latter linking prospective hopes and emancipatory ideological traditions. Indeed, they reject the cornerstone of modern mass parties as Kelsen understands it, that behind each vote lies a plurality of interests and preferences that defy simple aggregation, thereby requiring that platforms and policy-positions be endlessly negotiated.

The indecisiveness and divisiveness of deliberation, which, even when it succeeds in compromising conflicting viewpoints, can be accused of selling out one constituency for another, frustrates the average voter's desire for decisive action in defense of the people's common interest. Partisanship on behalf of the people re-emerges as u n c o m p r o m i s i n g hyper-partisanship; viz., partisanship opposing g r o u p s (friends versus enemies) rather than i d e o l o g i e s (Left versus Right) (Urbinati, 102). Populism identifies the friends of the people with only a part of the body politic: the 'good people,' or those who are not in any way affiliated with the enemy: the establishment elites. On the right, these elites are identified with the educated and those for whom they speak (government regulators and international human rights advocates); on the left, they are identified with the rich who monopolize investment (finance and digital capitalists) and their enforcers (the military-industrial establishment).

In truth, 'the people' to whom populist movements appeal are not pre-given as a symbolic authority underwriting the constitution but are created as a passive audience and fictive political identity out of the polarizing propaganda of mass media (Manin, 1997; Morgan,

1988, p. 90–91). Ernesto Laclau describes how the disaggregation of demands put forward by different parties and their re-aggregation as "populist demands […] through their equivalential articulation, constitute a broader subjectivity" (Laclau, 2005, p. 74). Furthermore, because 'the people' are presumed to be one in spirit and will, they can only be represented as one, in the form of a single populist leader. Only the leader can navigate between the Left/Right divide that 'falsely' separates them. The authoritarian dynamics of this form of non-ideological, charismatic political representation becomes apparent once the reverse side of the people's passive, media-constructed identity comes into view; namely, their uncritical, emotional attachment to the leader and acquiescence to his or her dismissal, upon ascension to power, of indecisive parliamentary bodies and constitutional checks (Adorno, 1991).

With their acknowledgement of the need to combine in some healthy balance rational deliberation and partisan commitment, the deliberative and recognitive theories of democracy I have examined would seem antithetical to populism. In practice they are not. Embracing a Schmittian interpretation of democratic life as a form of existential identity politics, Chantal Mouffe openly endorses a Left populism as does her comrade-in-arms, Ernesto Laclau, who once acted as consultant to the populist Argentinian presidential reigns of Néstor and Cristina Kirchner. Conventional left party leadership, they claimed, had sold-out the people for the sake of accommodating the powers that be. Left populism is the solution, which requires "federating the democratic demands into a collective will to construct a 'we,' a 'people' confronting a common adversary: the oligarchy" (Mouffe, 2018, p. 24).

As Nadia Urbinati astutely observes, Mouffe's populist movement cannot succeed in coming to power without compromising its identity. An uncompromising populist government cannot govern in the name of the people once it becomes a part of a constitutionally authorized establishment. It must confine itself to redemptive campaign rhetoric and delegate governing to an entrenched civil service, or it must empower the populist leader over and against all branches of constitutional government. In the latter instance it threatens the very democratic conditions of its own populist rule, which, if they were accommodated, would once again set in motion the system of institutionalized checks and balances, civil service administration, and elite-dominated,

party-based compromise on problem solving policies. Michels' law of oligarchy remains the necessary rule of order in any constitutional democracy, our egalitarian, anti-elitist yearnings notwithstanding.

For his part, Habermas's deliberative theory harbors a paradox that mirrors in reverse fashion the tendential transcendence of party politics implicit in Mouffe's partisan model. With the exception of non-partisan bodies devoted to local problem-solving, isolated experiments in deliberative polling, and representative focus groups, deliberative politics has become too elitist, too demanding for most people with average levels of education and political knowledge. Coupled with their relative powerlessness in controlling how elected officials behave in deliberative chambers, average citizens act rationally by eschewing party identification and identifying with simple-to-understand single issues. Mass parties that seek to unite various constituencies around such simple issues lack a strong ideological identity, thereby making it easier for rational voters to pick and choose policy positions from across the political spectrum.

Although politically independent voters are not inherently predisposed to populism, their desire to pick and choose policy preferences from across the political spectrum sets them at odds with parties and disposes them favorably toward populist movements whose platforms straddle the Left/Right divide, as exemplified in Italy's Five Star Movement's support for restrictions on both environmental degradation and immigration. Habermas himself recognizes the danger of political fragmentation posed by a deliberative politics geared toward rational discourse and pragmatic policy analysis concerning immediate problems but he misses the further risk this poses toward the incitement of anti-democratic populism (Habermas, 2009, p. 178).

5. REVITALIZING DEMOCRACY IN THE ERA OF NEO-LIBERAL CAPITALISM AND DIGITAL IDENTITY POLITICS

I have argued that deliberative and recognitive forms of democratic legitimation can unintentionally promote authoritarian populist movements unless they qualify each other. Deliberation oriented

toward impartial problem solving and rational conciliation remains vulnerable to elitism and issue-bound political fragmentation unless it functions as a form of inter- and intra-party-based negotiation wherein ideological narratives of justice and the common good, which present themselves as largely unquestioned faith commitments, help frame the political agenda. Conversely, ideological narratives of justice and the common good succumb to dogmatic rigidification the more they are framed in the recognitive language of pure identity politics and charismatic personification.

If my hypothesis is correct, the party-based alliance between educated elites and average voters in which deliberative and recognitive forms of democratic legitimation once fruitfully – albeit often imperfectly – intermeshed, has receded. In the remainder of this chapter, I would like to briefly comment on whether the structural changes in occupation, education, and social media that contributed to this erosion can offer opportunities for reversing it, and in so doing, revitalize democratic life.

Several structural changes are worth noting in this regard. The importance of digital networks under global capitalism places a premium not only on technical education in information and communication technology but also on cultural education in inventing new ideas and applications. The emergence of the internet and a flexible gig economy poses new challenges to older models of labor organization and exploitation. At the same time, it fragments the workforce and complicates political organization. This tendency bodes well for right-wing populist movements, ill for traditional Left parties founded on labor unions that organize in factories and rely upon on-site, face-to-face accountability linking rank and file with leadership.

Besides favoring tech-savvy youth, network capitalism encourages entrepreneurial branding, crowd sourcing, and the unprecedented exploitation of data to manipulate and reinforce consumption behavior. Aside from its ideology of 'prosumer' individualism and focus on immediate stimulation, social media have proven to be a toxic venue for platforms spreading misinformation and addictive reinforcement of all manner of hyper-partisanship. Social media qualitatively change the theatrical aesthetics and rhetoric of traditional political propaganda by immediately eliciting rapidly and widely disseminated plebiscitary acclaim in a continuous stream of posts,

the repetitive reinforcement and addictive attention-grabbing effects of which cement the audience to its leader and provide no relief for private, undistracted reflection.

Needless to say, the potential of social media for expanding and deepening a public sphere geared toward deliberation seems questionable at best (Ingram & Bar-Tura, 2014). Indeed, populist movements are most adept at exploiting social media to draw in members who are invited to participate in the on-line construction of party platforms. Despite the appearance of inclusive popular participation in a deliberative enterprise, this process is highly scripted by an elite who control the digital platform (Garbaudo, 2018, p. 131-141).

For better or worse, there is no turning back to the kind of pre-internet politics in which propaganda and audience crowds were more easily tamed by deliberative public spheres. Digital parties are here to stay. That said, genuine digital democracy cannot be ruled out. As British Labor leader Jeremy Corbyn notes, such democracy depends on creating a digital commons, or a publicly owned and fully accessible digital platform for political organizing, which avoids the domination of elites in privately licensed digital party platforms. Creating such a commons, in turn, depends on narrowing the gap between highly educated and less educated workers. Capitalism's demand for an educated, tech savvy labor force suggests one trend working in this direction; the other is the increasing precarity of an educated middle class that increasingly no longer feels insulated from the economic dislocations and planetary catastrophes suffered by the less educated and more vulnerable.
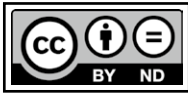
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